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## FREDERICK COUNTY BOARD OF APPEALS

### AUGUST 24, 2023

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**TITLE:** O'Connor Accessory Dwelling Unit (ADU)

**CASE NUMBER:** B-23-15 (B267831)

**REQUEST:** Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 119-8.321 of the Frederick County Code. The ADU is 2,490 Sq.Ft.; the property size is 28 acres.

**PROJECT INFORMATION:**

ADDRESS/LOCATION: 3603 Fry Road, Jefferson, MD 21755  
TAX MAP/PARCEL: Tax Map 93, Parcel 0191  
ZONE: Agricultural (A)  
REGION: Adamstown  
WATER/SEWER: W-NPS/S-NPS  
COMP. PLAN/LAND USE: Agricultural/Rural

**APPLICANT/REPRESENTATIVES:**

APPLICANT: Thomas and Kelly O'Connor  
OWNER: Thomas and Kelly O'Connor  
ENGINEER: N/A  
ARCHITECT: N/A  
ATTORNEY: N/A

**STAFF:** Mike Paone, Zoning Planner

**RECOMMENDATION:** Based on the findings and conclusions in the staff report, Staff finds that the proposed Special Exception, to allow a 2,490 Sq. Ft. ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

**ATTACHMENTS:**

- Attachment 1: ADU 1<sup>st</sup> Floor Plan**
- Attachment 2: ADU 2<sup>nd</sup> Floor Plan**
- Attachment 3: Site Plan**
- Attachment 4: Aerial**
- Attachment 5: Zoning**
- Attachment 6: Comprehensive Plan**

## **Background:**

The Accessory Dwelling Unit (ADU) is to be constructed as a separate structure on the Property. The ADU is located on Agricultural zoned land with the total ADU size of 2,490 sq.ft and a footprint of 1,800 sq.ft. (**Attachments 1&2**) The size of the primary residence is 5,600 Sq.Ft., with a footprint of 3,900 sq.ft.

## **Special Exception.**

- A. An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

**The Applicants state that they are the owners of the property and are requesting the special exception.**

- B. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

1. The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and

**The Applicants state that the requested ADU is a separate structure, originally built as a garage. The ADU is consistent with the Frederick County Comprehensive Plan in that it promotes affordable housing for senior and disabled citizens and maximizes the efficient and functional use of the county infrastructure by creating housing opportunities without creating new developments or conversion of agriculture land. This home is for the Applicants' son.**

2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

**The Applicants state that the proposed ADU will be used strictly as a residence with no business or commercial operation of any kind and that it will be in harmony with the surrounding residential homes.**

3. Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

**The Applicants state that the use of the ADU will not add to, increase, or create any noise, fumes, vibration or other ill effects on the neighboring properties, and that it will be consistent with the surrounding residential use. The Applicants' son will be living in the ADU.**

4. Parking areas will comply with the off-street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

**The Applicants state that there is adequate parking to accommodate the main house and the ADU in the existing driveway. (Attachment 3)**

5. The road system providing access to the proposed use is adequate to serve the site for the intended use.

**The Applicants state that Fry Road, fully paved and striped, is more than adequate to serve the ADU.**

C. In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ [1-19-8.320](#) through [1-19-8.355](#) of this Code.

**The Applicants state that they understand this requirement.**

D. A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception.

**The Applicants state that they understand this requirement.**

E. The Board of Appeals shall not grant a special exception unless and until:

- (1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and

**The Applicants state that they understand this requirement.**

- (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

**The Applicants state that they understand this requirement.**

G. The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

**The Applicants state that they understand this requirement.**

H. No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

**The Applicants state that they understand this requirement.**

I. If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

**The Applicants state that they understand this requirement.**

J A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

**The Applicants state that that they understand this requirement.**

**1-19-8.321: The following provisions shall apply to all accessory dwelling units greater than 1,000 square feet in the RC, A, R1, R3, R5, R8, R12, R16, VC, MXD, PUD and MX districts.**

A. Only 1 accessory dwelling unit may be created on a lot.

**The Applicants state that the proposed ADU will be the only one on the lot.**

B. Accessory dwelling units greater than 1,000 square feet shall be allowed in single-family dwellings, in an accessory structure, or built as a separate accessory structure, on a single-family lot.

**The Applicants state that the proposed ADU will be located in an accessory structure on the property.**

C. The owner of the property must reside in the principal dwelling or in the accessory dwelling unit.

**The Applicants state that that they understand and are complying with this requirement. The owner will live in the principal dwelling.**

D. There must be at least 1 additional parking space provided for the accessory dwelling unit. On-street parking may be utilized to meet this requirement.

**The Applicants have complied with this requirement through the provision of a two-car parking pad at the entrance to the ADU.**

E. An accessory dwelling unit located in an accessory structure or built as a separate accessory structure must comply with the accessory structure requirements of § 1-19-8.240(B).

**The ADU is proposed in a detached accessory structure.**

F. ADUs are intended to serve ongoing housing needs of county residents. Short term rental of ADUs in the nature of extended stay hotels, Airbnbs, or seasonal temporary housing is not permitted.

**The Applicants state that that they will not use the ADU as a short-term rental.**

G. The owner of the principal residence shall file an annual statement with the Zoning Administrator verifying that the conditions under which the special exception was granted remain the same.

**The Applicants state that that they understand and will comply with this requirement.**

H. If the ownership of the lot changes, the subsequent owner must provide a statement to the Zoning Administrator as to the continuing use and eligibility of the accessory dwelling unit.

**The Applicants state that that they understand and will comply with this requirement.**

I. Due to the nature of this use, site plan approval can be granted by the Zoning Administrator in lieu of the Planning Commission.

**The Applicants state that that they understand this requirement.**

J. An accessory dwelling unit meeting the provisions of § 1-19-8.212 shall be considered a permitted accessory use and therefore not subject to this section.

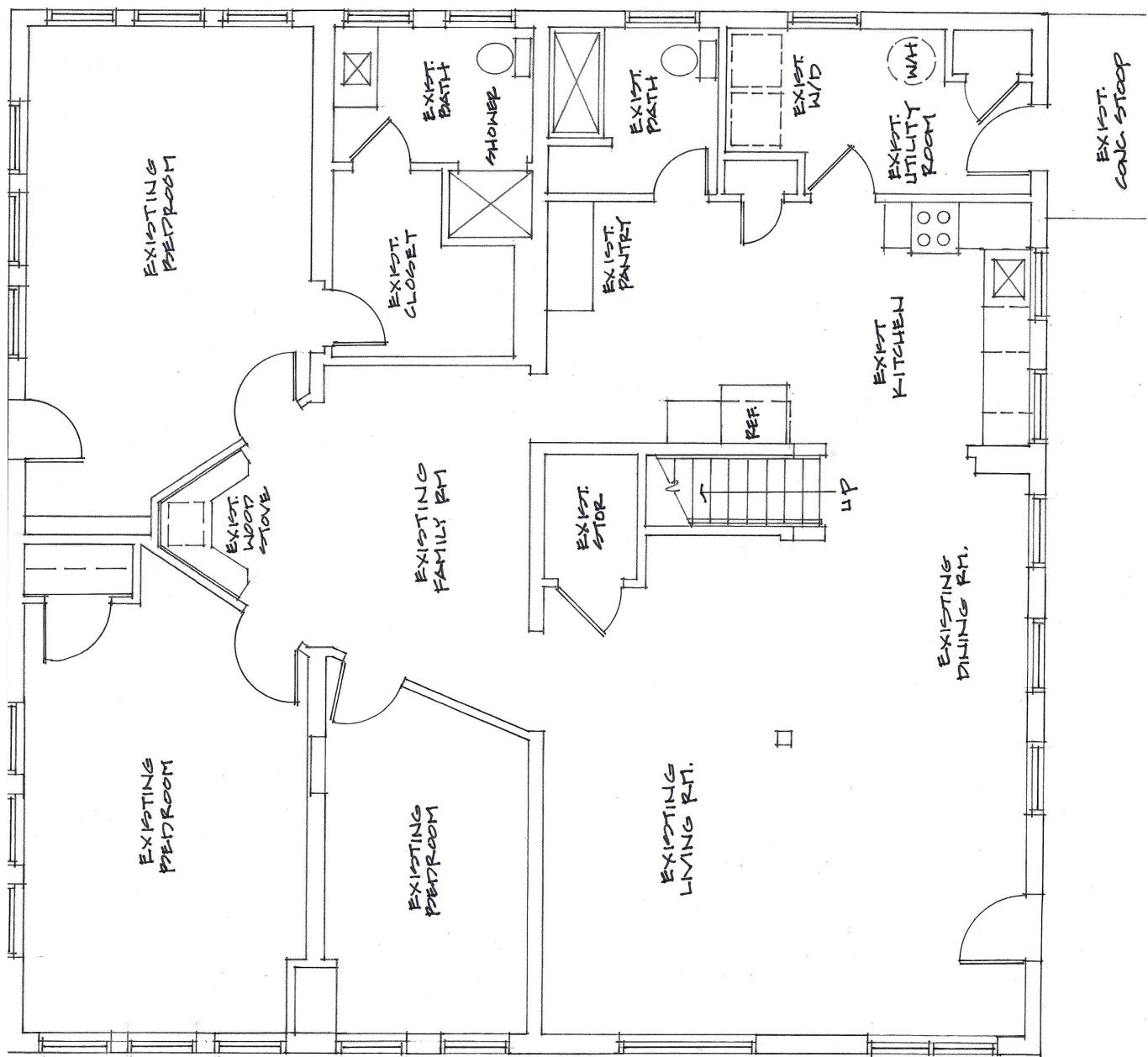
**The Applicants state that that they understand this requirement.**

## **RECOMMENDATION**

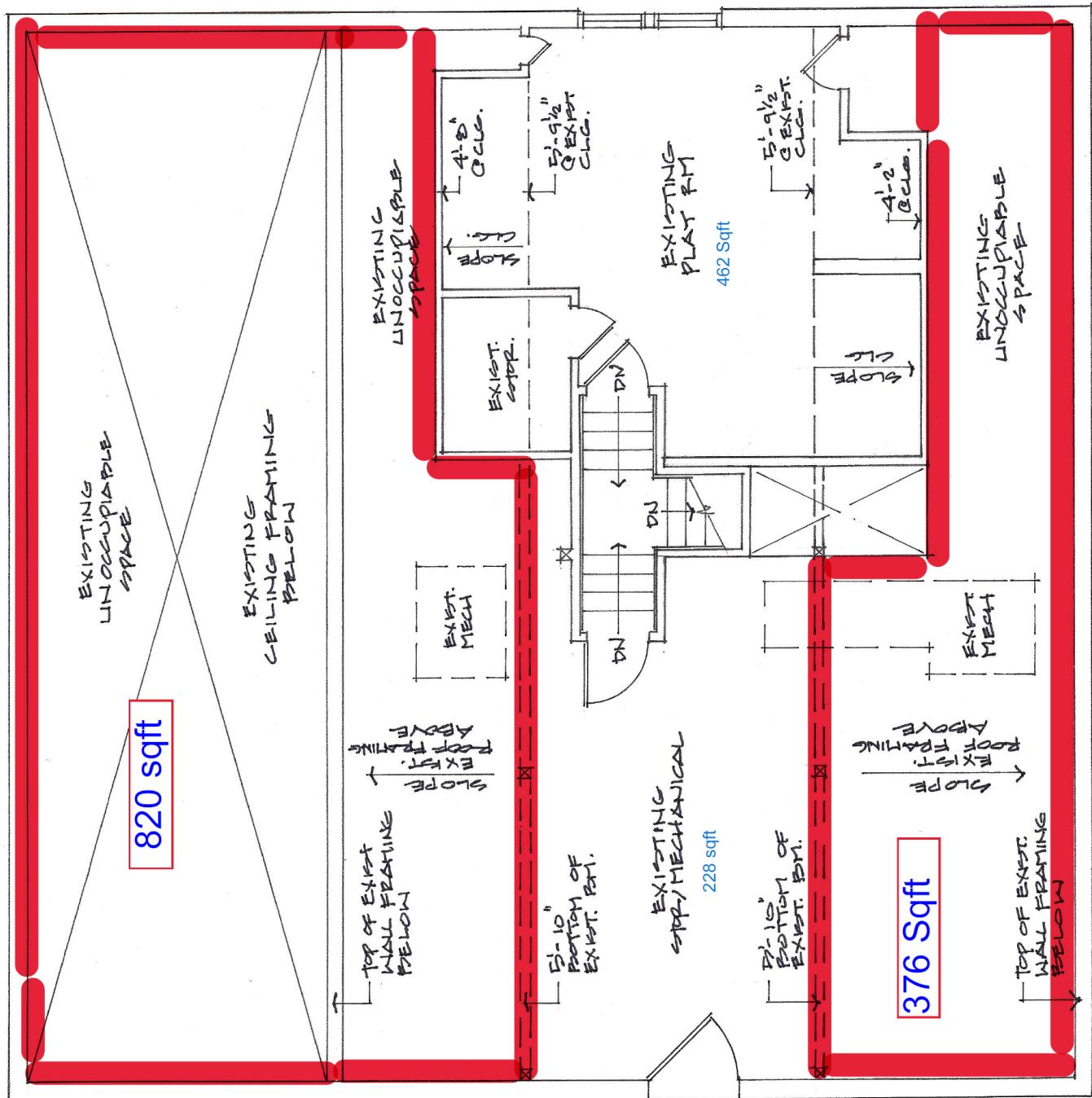
**Based on the findings and conclusions in the staff report, Staff recommends approval of the proposed Special Exception, to allow a 2,490 Sq.Ft. ADU on the subject property, as it complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Code.**

**Section 1-19-3.210.I: A decision of the Board of Appeals granting a special exception will be void 5 years from the date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in the accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the Applicant, a time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.**

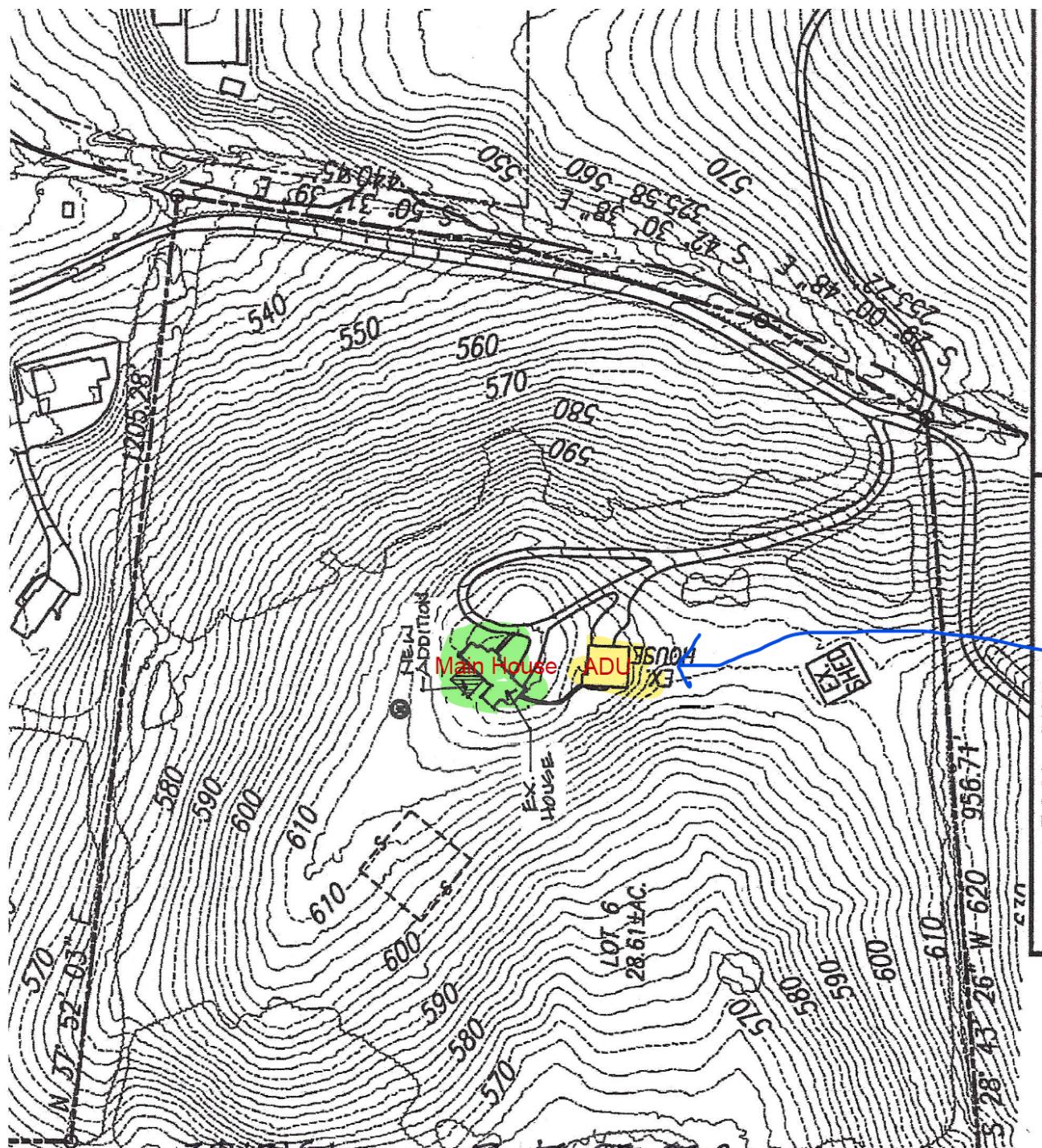
## Attachment 1: ADU First Floor Plan (1800 Sq.Ft.)



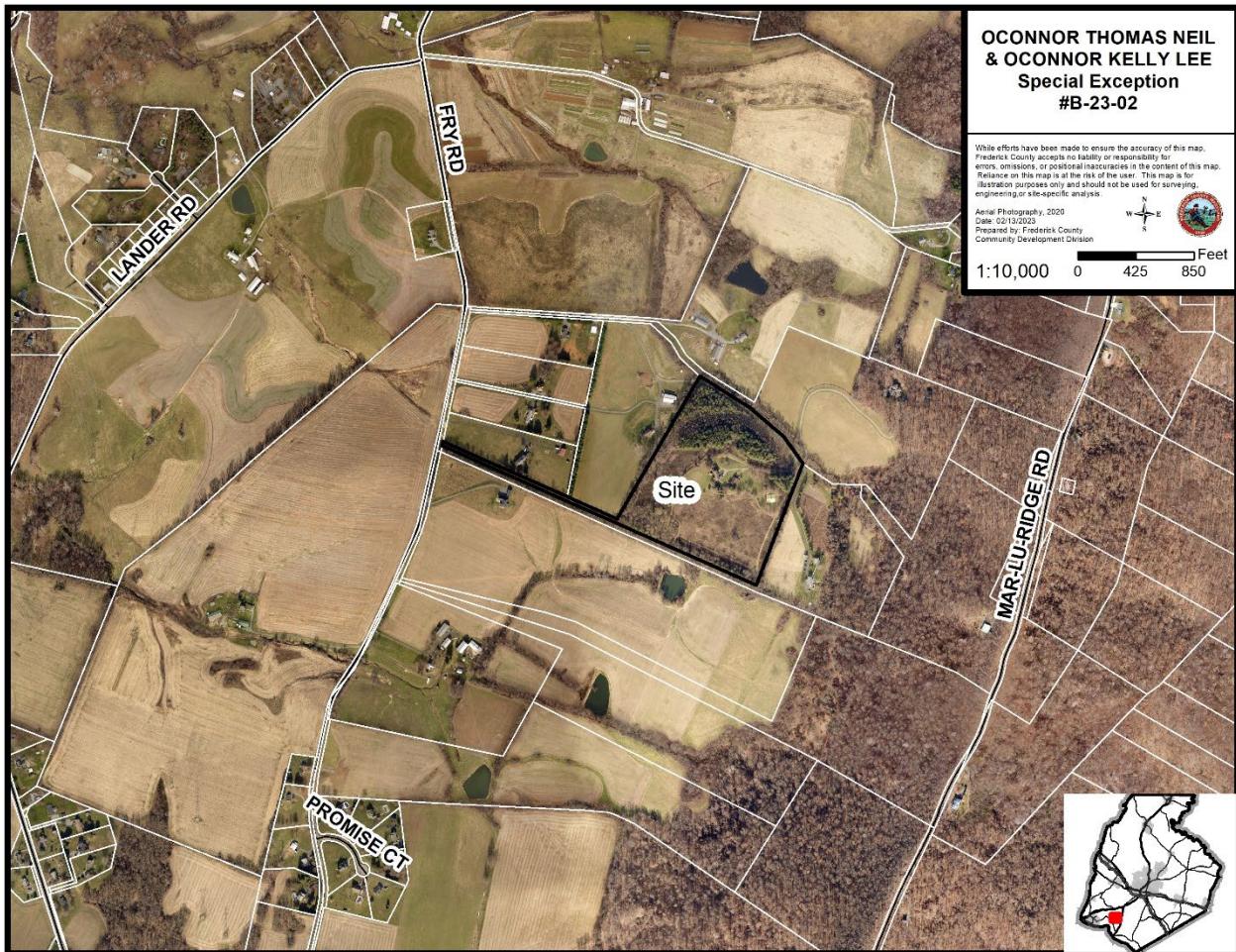
## **Attachment 2: ADU 2<sup>nd</sup> Floor Plan (690 Sq.Ft.)**



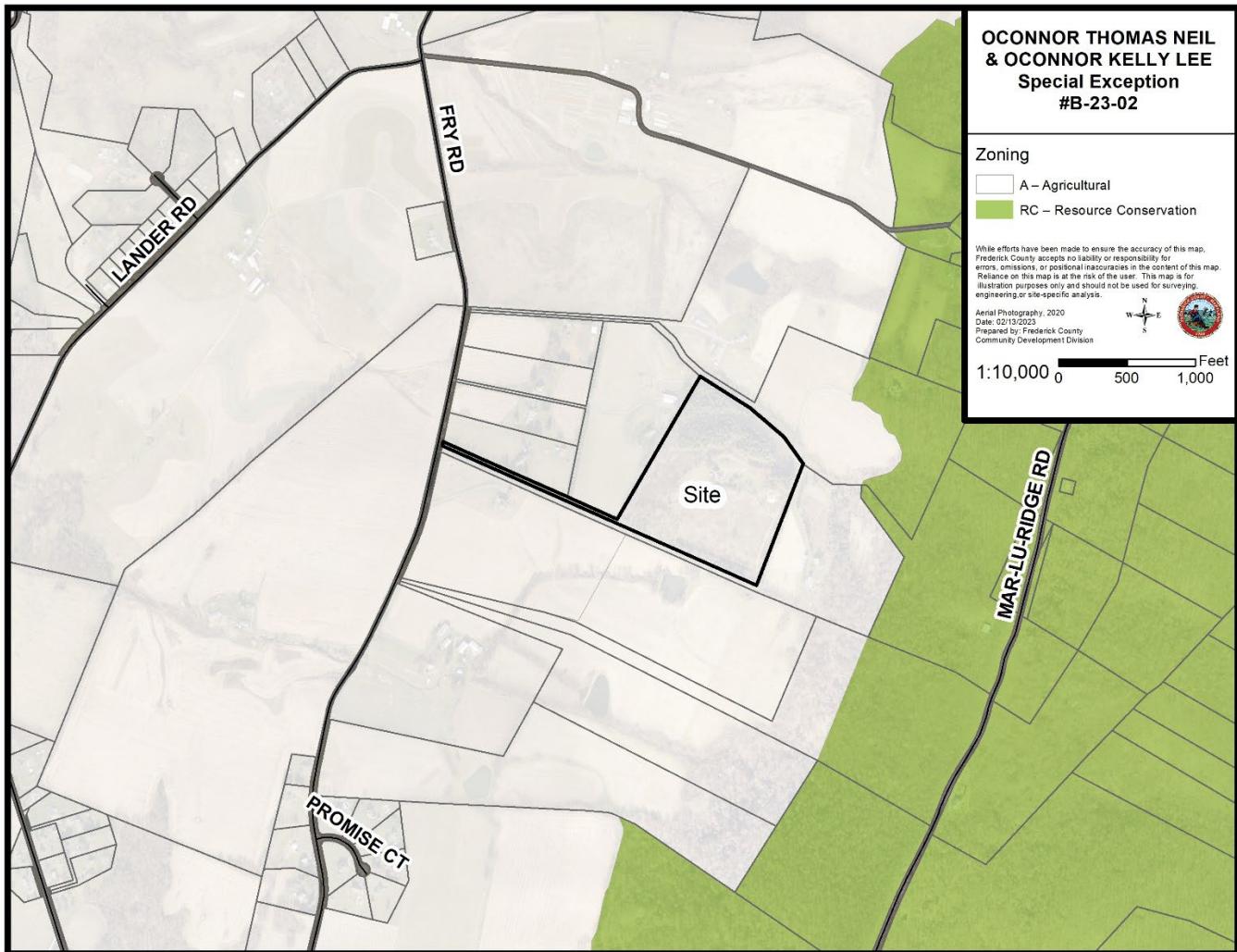
## Attachment 3: Site Plan



## Attachment 4: Aerial Map



## Attachment 5: Zoning Map



## Attachment 6: Comprehensive Plan

