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## FREDERICK COUNTY BOARD OF APPEALS

### December 14, 2023

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**TITLE:** Phillip and Christy Keller (ADU)

**CASE NUMBER:** B-23-21 (B275876)

**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 1-19-8.321 of the Frederick County Code.<sup>1</sup> The unattached ADU is 1,773 sq. ft. and the property size is 28.91 acres.

**PROJECT INFORMATION:**

ADDRESS/LOCATION: 12770 Barnett Road, Mt. Airy, MD 21771  
TAX MAP/PARCEL: Tax Map 80, Parcel 0170  
ZONE: Agriculture (A)  
REGION: New Market  
WATER/SEWER: W-NPS/S-NPS  
COMP. PLAN/LAND USE: Agricultural/Rural

**APPLICANT/REPRESENTATIVES:**

APPLICANT: Phillip Keller and Christy Keller  
OWNER: Phillip Keller and Christy Keller  
ENGINEER: N/A  
ARCHITECT: N/A  
ATTORNEY: N/A

**STAFF:** Mike Paone, Zoning Planner

**RECOMMENDATION:** Based on the findings and conclusions as set forth in this staff report, Staff finds that the proposed Special Exception to allow a 1,773 sq ft ADU on the subject property complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Code.

**Attachment:**

**Attachment#1:** ADU Site Plan  
**Attachment#2:** ADU Elevation and Floor Plan  
**Attachment#3:** Aerial  
**Attachment#4:** Zoning  
**Attachment#5:** Comprehensive Plan  
**Attachment#6:** Environmental Features

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<sup>1</sup> All Code references herein are to the Frederick County Code unless otherwise specified.

## **Background:**

An Application for an Accessory Dwelling Unit (ADU) was approved by the Board of Appeals (BOA), for this property on March 24, 2022, see Attachment #7. The approved size was 1,805 Sq.Ft., during construction the approved ADU was modified and including an area not approved as part of the original BOA Application. The Applicant has confirmed that currently 1,773 Sq.Ft. is the accurate size of the proposed ADU.

The Accessory Dwelling Unit (ADU) is constructed as part of a private horse-riding arena structure on the Property. The ADU is located on agriculturally zoned property. The total square footage of the arena structure is 10,080 Sq.Ft. with the total ADU size of 1,773 Sq.Ft. The structure in which the ADU will be located within, is a riding arena. The primary residence on the property is 6,812 Sq.Ft. with a footprint of 3,889 Sq.Ft.

The riding arena structure was built in 2005 the ADU is part of the existing structure on the Property. The ADU will be updated to meet the Frederick County Code zoning and building code requirements for a dwelling unit.

### **§1-19-3.210 - General Requirements for a 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 request.

**The Applicants state that this Special Exception is being requested by Phillip and Christy Keller, owners of Lot 6 Barnett Subdivision located at 12770 Barnett Drive, Mount Airy, Maryland. The address of the ADU is 12766 Barnett Drive.**

- 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 Chapter 1-19 of the Frederick County Code; and

**The Applicants state that the existing ADU was established in 2005 and is consistent with the purpose and intent of the Comprehensive Development Plan and Chapter 1-19 of the Frederick County Code. The ADU is located on agriculturally zoned land. Per § 1-19-8.321 of the Frederick County Code an Accessory Dwelling Unit greater than 1,000 SF is allowed in an agriculturally zoned lot. The property is 28.9 acres and zoned agricultural.**

**\*Please note that the ADU was constructed in 2005 without proper permits or approvals.**

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 ADU is 1,773 SF and is located a minimum of 153 ft. from the property line. The ADU is approximately 640 ft. from the adjacent property single family house. In addition, it is adjacent to a large riding area on the lot and, since it is located on a 28.9-acre lot, it is in harmony with the surrounding neighborhood. The primary residence is 6,812 Sq.Ft.**

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 ADU is located a minimum of 153 ft. from the property line. The Auxiliary Dwelling Unit is approximately 640 ft. from the adjacent property single family house. In its current location on a 28.9-acre lot, there are no adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties.**

4. Parking areas will comply with the off-street parking regulations of Chapter 1-19 of the Frederick County Code 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 the ADU complies with the off-street parking regulations of the Frederick County Code and is screened from adjoining residential uses by existing vegetation and topography.**

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

**The Applicants state that the ADU access is via the primary residence's driveway which connects to Barnett Drive, a public roadway.**

- 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 the Frederick County Code.

**The Applicants states that they understand and agree to 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 and agree to 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 Applicant states that they have completed 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 and agree to 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 states that they understand and agree to 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 and agree to 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 and agree to 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 they understand and agree to this requirement.**

**§1-19-8.321 - The following provisions shall apply to all accessory dwelling units greater than 1000 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 there is only one accessory dwelling unit 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 Accessory Dwelling Unit is 1,773 SF and is attached to the riding arena, located on the agriculturally zoned lot. The primary residence is also on this lot.**

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

**The Applicants state that the owners of the property, Phillip and Christy Keller reside on the lot in the principal dwelling structure.**

- 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 state that there is a minimum of one parking space for 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 Applicants state that the ADU is constructed as part of the arena structure on the property. The ADU is located on the property and is in conformity with § 1-19-8.240(B) since the total square footage of the ADU is 1,773 SF and does not exceed the size of the principal dwelling unit which is 6,812 Sq.Ft. with a footprint of 3,889 Sq.Ft.**

- 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.

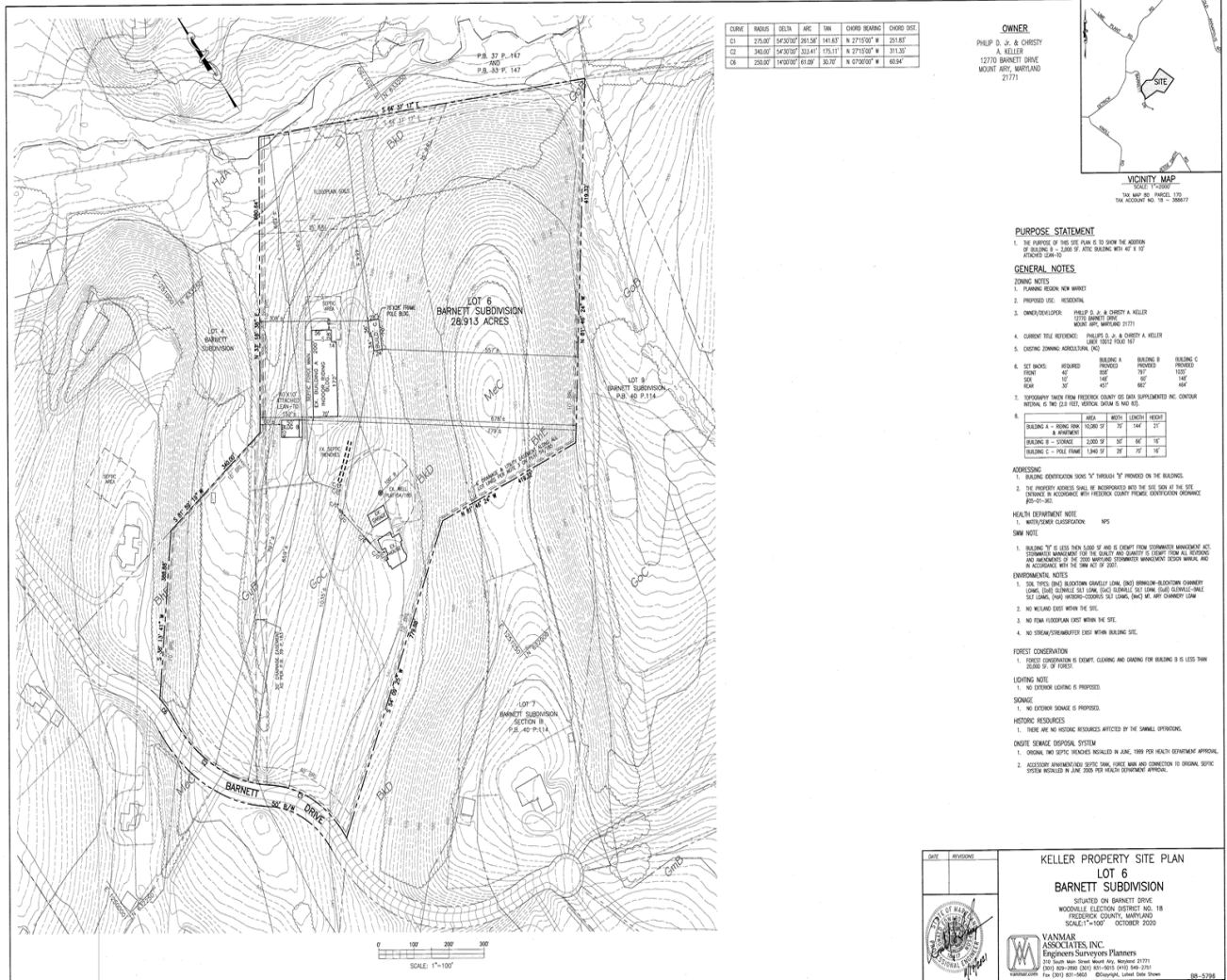
**The Applicants state that the ADU is serving the ongoing housing needs of the county residents and is not used for short term rental in the nature of extended stay hotels, Airbnb's, or seasonal temporary housing.**

## **RECOMMENDATION**

Based on the findings and conclusions in the staff report, Staff finds that the proposed Special Exception, to allow a 1,773 sq ft ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Code.

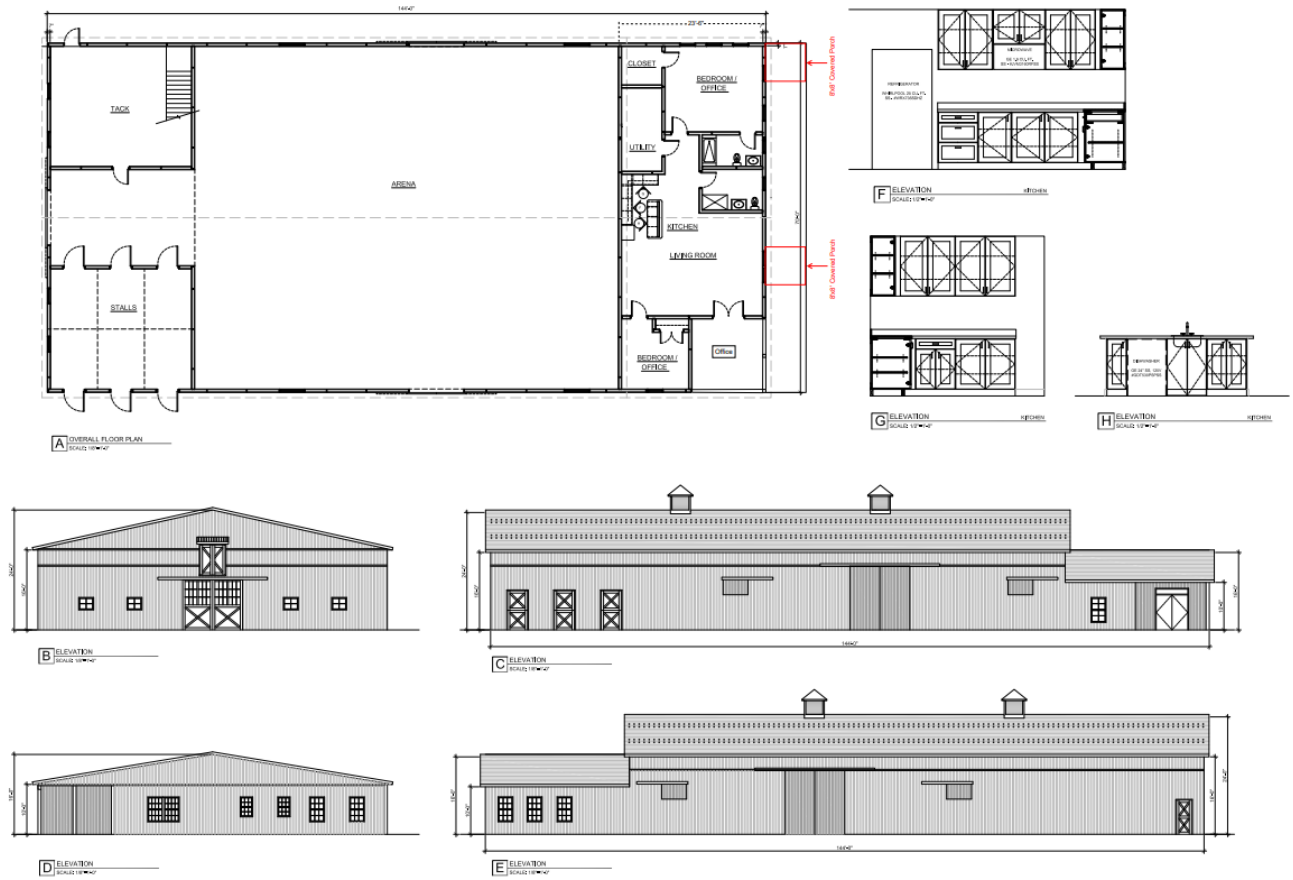
**A decision of the Board of Appeals granting a special exception will be void 5 years from the date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in the accordance with 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: Site Plan

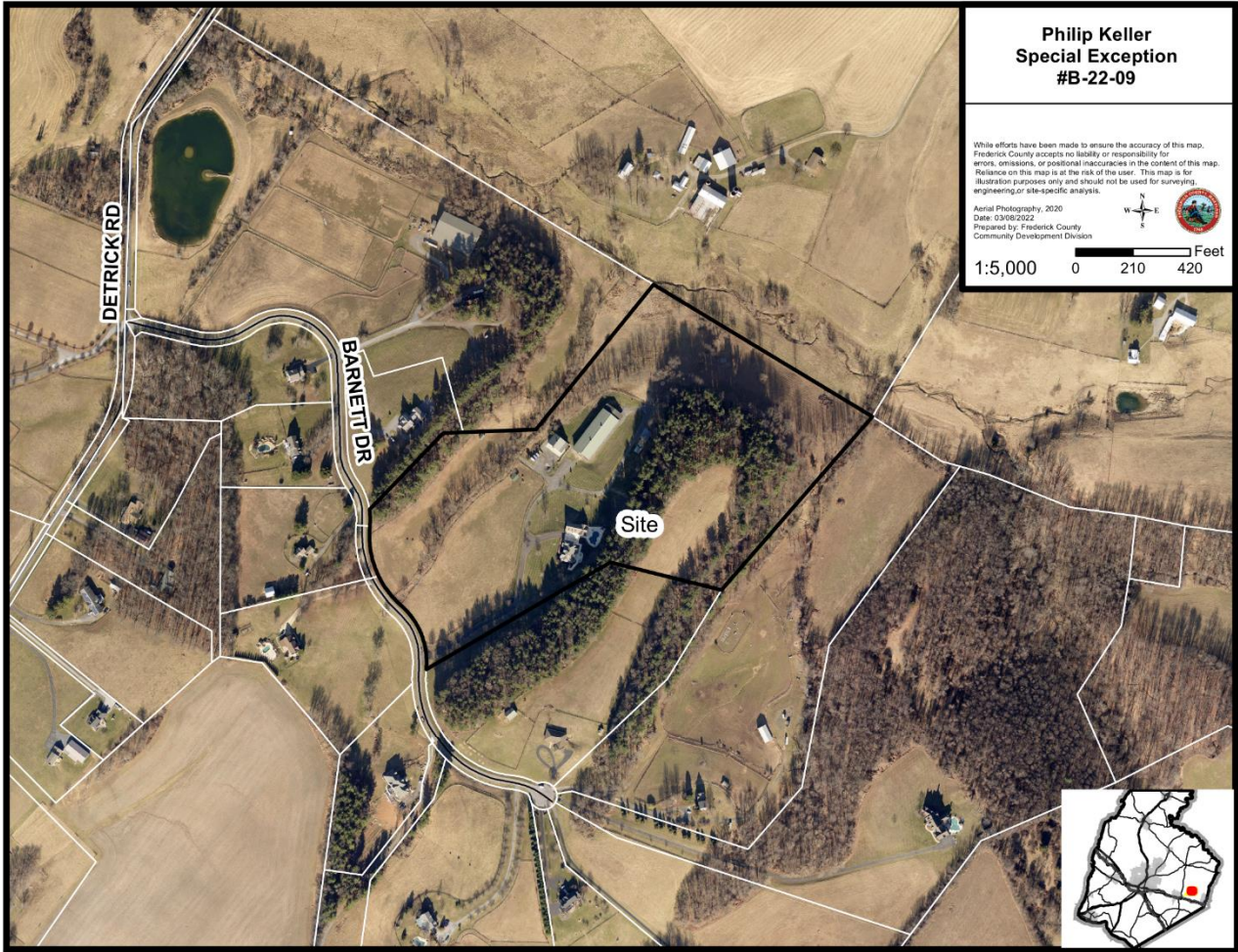




## Attachment #2: ADU Elevation and Floorplan (1,773 Sq. Ft.)

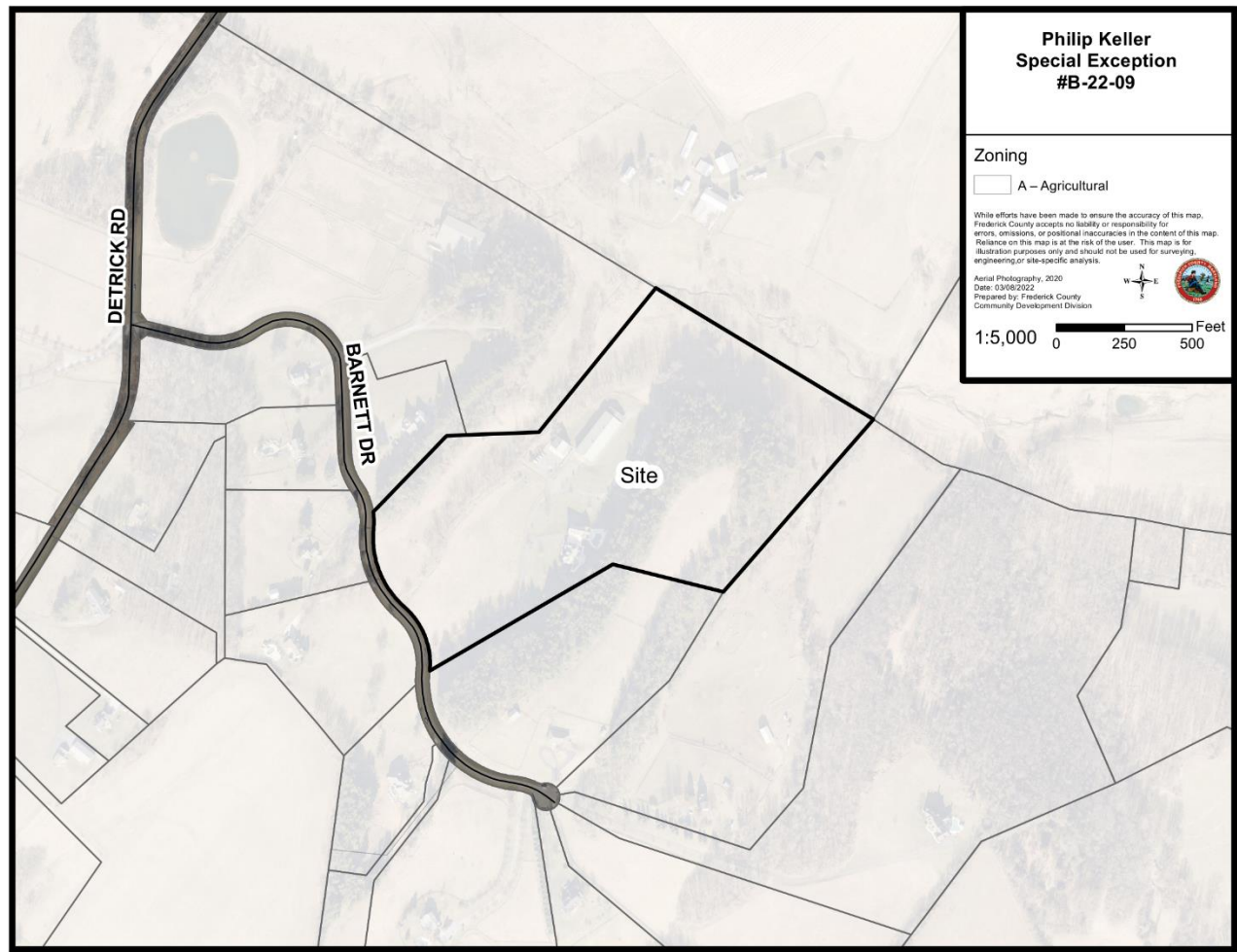


Attachment #3: Aerial Map

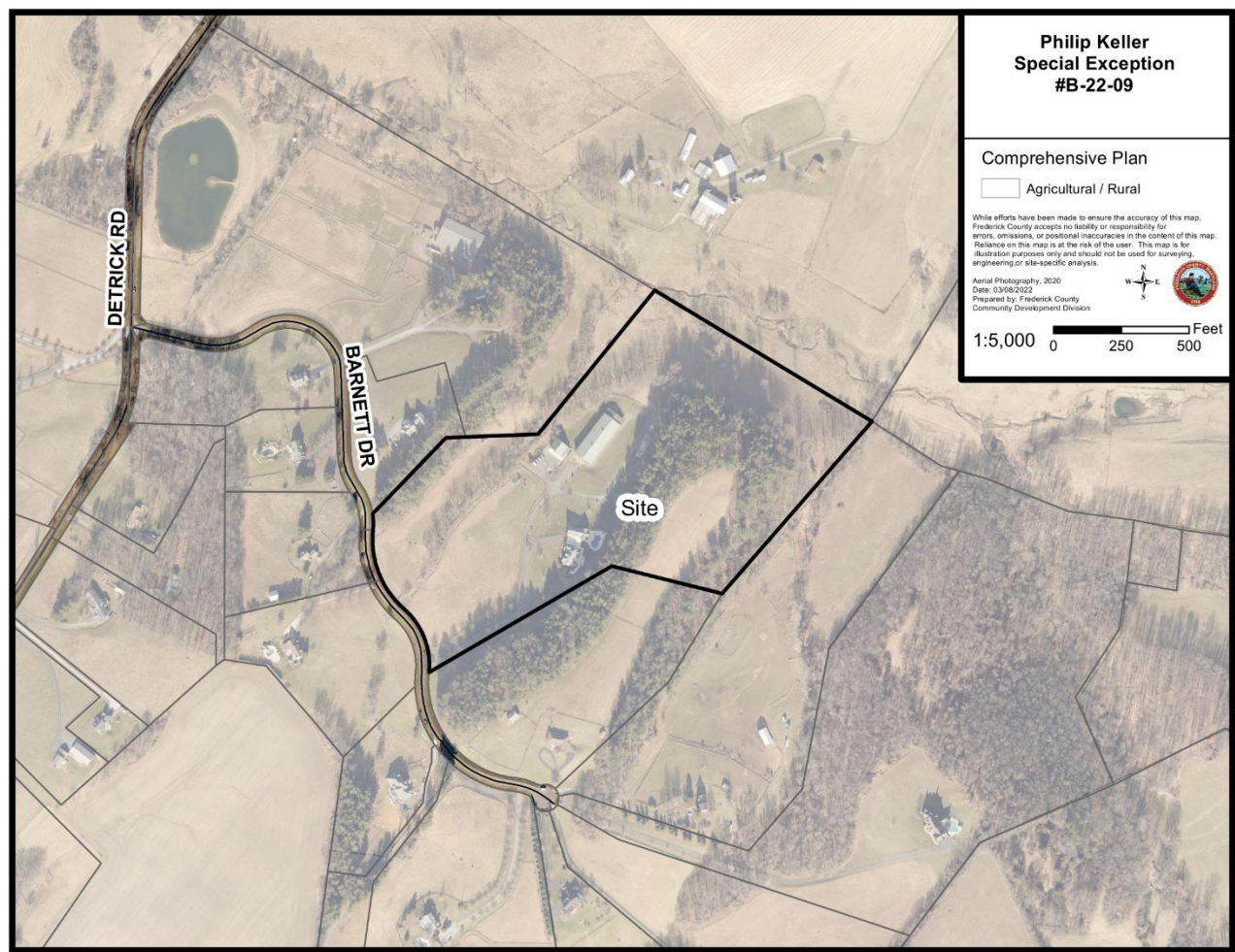




Attachment # 4 Zoning Map

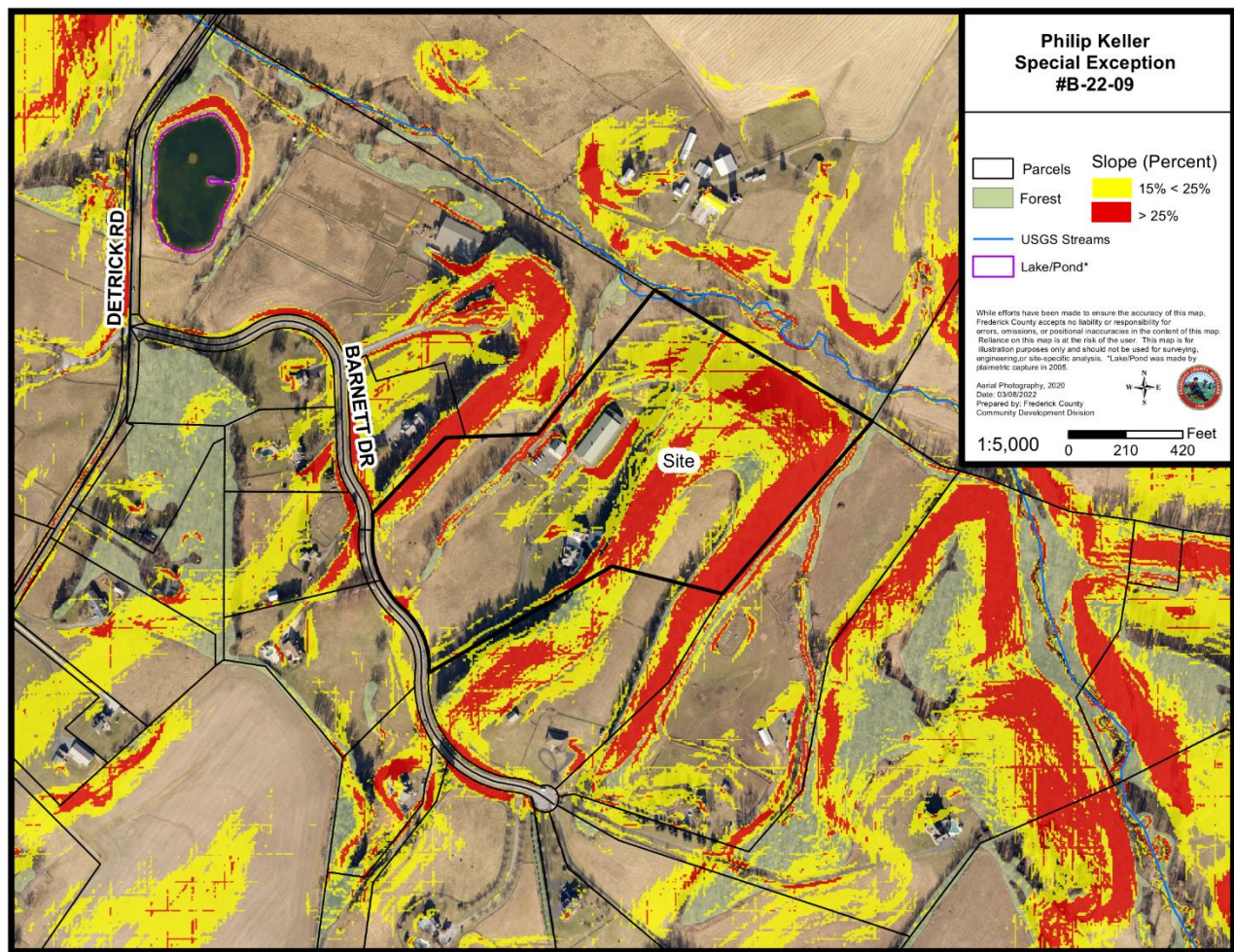


Attachment # 5 Comprehensive Plan





Attachment #6: Environmental Map



**IN MATTER OF:**  
**Philip Keller**  
**12770 Barnett Road, Mt.**  
**Airy, MD 21771**

**Before the Board of Appeals**  
**For Frederick County**

**Case No. B267830 (B-22-09)**

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## **FINDINGS AND DECISIONS**

This matter came before the Board on the application of Philip and Christy Keller (hereinafter the "Applicants") for a Special Exception as provided for in the Frederick County Zoning Ordinance (hereinafter "Ordinance"). The property (hereinafter "Property") for which the Special Exception was requested, is located at 12770 Barnett Road, Mt. Airy, MD 21771, Tax Map 80, Parcel 0170, Tax ID #18388677, Zoned Agricultural (A), Size 28.91 Acres.

The Applicants requested a Special Exception in accordance with Frederick County Zoning Ordinance, Section 1-19-3.210 and Section 1-19-8.321, to permit the construction of an Accessory Dwelling Unit ("ADU") greater than 1,000 square feet.

The Board made the following findings, based on the evidence and testimony presented at the hearing held on March 24, 2022.

### **§1-19-3.210 - General Requirements for a 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 Board finds that this Special Exception is being requested by Phillip and Christy Keller, owners of Lot 6 Barnett Subdivision located at 12770 Barnett Drive, Mount Airy, Maryland. The ADU is located on the Property; its address is 12766 Barnett Drive.**

- 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 Chapter 1-19 of the Frederick County Code; and

**The Board finds that the existing Accessory Dwelling Unit was established in 2005 and is consistent with the purpose and intent of the Comprehensive Development Plan and Chapter 1-19 of the Frederick County Code. The Accessory Dwelling Unit is located on agriculturally zoned land. Per § 1-19-8.321. Accessory Dwelling Unit greater than 1,000 SF is allowed in an agriculturally zoned lot. The property is 28.9 acres.**

**\*Please note that the ADU was constructed in 2005 without proper permits or approvals.**

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 Board finds that the ADU is 1,805 SF and is located a minimum of 153 ft. from the property line. The Accessory Dwelling Unit is approximately 640 ft. from the adjacent property's single family house. In addition, it is adjacent to a large riding area on the lot and, since it is located on a 28.9-acre lot, it is in harmony with the surrounding neighborhood. The primary residence is 4,742 sq. ft.**

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 Board finds that the ADU is located a minimum of 153 ft. from the property line. The Accessory Dwelling Unit is approximately 640 ft. from the adjacent property's single family house. In its current location on a 28.9-acre lot, there is no adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties**

4. Parking areas will comply with the off-street parking regulations of Chapter 1-19 of the Frederick County Code 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 Board finds that the ADU complies with the off-street parking regulations of Chapter 1-19 of the Frederick County Code and is screened from adjoining residential uses by existing vegetation and topography.**

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

**The Board finds that the ADU access is via the Property's driveway connecting to Barnett Drive, a public roadway. This public road is adequate to serve the site in its use as an ADU.**

**§1-19-8.321 - The following provisions shall apply to all accessory dwelling units greater than 1000 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 Board finds that there is only one Accessory Dwelling Unit on the lot.**

- B. Accessory dwelling units greater than 1000 square feet shall be allowed in single-family dwellings, in an accessory structure, or built as a separate accessory structure, on a singlefamily lot.



**The Board finds that the Accessory Dwelling Unit is 1,805 SF and is built as a separate accessory structure, and attached to the riding arena located on the agriculturally zoned lot. The Applicant's primary residence is also located on this lot.**

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

**The Board finds that the owners of the property, Phillip and Christy Keller, reside on the lot in the principal dwelling structure.**

- 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 Board finds that there is a minimum of one parking space for 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 § 1198.240(B).

**The Board finds that the ADU is constructed as part of the arena structure on the Property. The ADU is in conformity with § 1-19-8.240(B) since the total square footage of the ADU is 1,805 SF and does not exceed the size of the principal dwelling unit which is 4,742 sq. ft. with a footprint of 3,889 sq. ft.**

- 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 Board finds that the ADU is not being used for short term rental in the nature of extended stay hotels, Airbnbs, or seasonal temporary housing.**


**Based upon the evidence and testimony presented at the hearing, the Board finds that the request for the Special Exception meets the requirements of the Frederick County Zoning Ordinance, Sections 1-19-3.210 and 1-19-8.321. On a motion by Mr. Lawton, seconded by Mr. Greenwell, the Board voted 5-0 to approve the Applicant's request to for an ADU over 1000 sq. ft.**

**Adopted by the Board of Appeals on the 15<sup>th</sup> day of May, 2022.**

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Kenneth Farrell, Chairman

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Andrew Brown, Vice Chairman

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Dan Lawton, Member

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Shannon Bohrer, Member

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John Greenwell, Member

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### **Ordinance Section 1-19-3.210. Special Exception**

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.