



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: James Newman, Zoning Administrator
DATE: August 4th, 2020 for the August 11th City Council meeting
RE: **Terry Coley SE2020-02** requests a special exception for an accessory dwelling unit at 1306 Graham Drive

ISSUE

Council is considering a proposed special exception request from Code § 72-42.5, to permit an accessory dwelling unit within a PD-R Zoning District.



RECOMMENDATION

Recommend **approval** of the Special Exception subject to the following conditions:

1. Together, the occupancy of the principal dwelling unit and the accessory dwelling unit shall not exceed the definition of a ‘family’, as defined in City Code Section 72-84¹.
2. The Accessory Dwelling Unit shall be located entirely within the existing square footage of the house.

CITY COUNCIL MEETING – JULY 14, 2020

City Council held a public hearing on July 14, 2020. At the hearing, Councilors had questions:

¹ Family: *One person or two or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, with no more than two boarders; or a group of not more than three unrelated persons living together as a single housekeeping unit.*

Q: How many overcrowding complaints have been investigated and prosecuted in the past year?

A: Since July 2019, 11 overcrowding cases had been investigated. Out of those, there were four confirmed cases of overcrowding.

Q: If additional dwelling units and kitchens are illegally installed, how is that dealt with?

A: City Staff visit the subject property and require that the owner remove the appliances and supporting outlets.

Q: How would a sunset clause be enforced for this Special Exception?

A: If a sunset clause was included, then at the expiration of approval the appliances and supporting outlets would need to be removed.

The applicant spoke about how the approval was necessary for her. Approval of the Special Exception would permit her mother to live with her, rather than having to live in an assisted living facility, which are dangerous due to the current pandemic. The vote on the public hearing was set for August 11, 2020.

PLANNING COMMISSION MEETING – JUNE 24, 2020

The Planning Commission voted on this item at its June 24, 2020 meeting. There were three spoken public comments. Two were opposed and one was in favor. The comments in opposition were concerned about the impact on the neighborhood, such as parking and the use of amenities. The comment in favor spoke of Ms. Coley's character and that the impact of the ADU would not be different from that of existing dwelling units. The applicant spoke in person to address comments and questions. Total public comment for the two Planning Commission meetings, both written emailed to staff and spoken comments at the public hearings, came out to 20 comments. 11 were in opposition, and 9 were in favor. At the meeting Commissioners asked:

Q: How are overcrowding regulations enforced?

A: Overcrowding enforcement generally starts with a complaint, which is investigated. If evidence of overcrowding is found, a notice of violation is sent. After multiple notices, the case goes to court. Since January 1, 2020 City Staff have investigated 6 overcrowding complaints.

Q: What are the impacts from ADUs?

A: Due to the condition that only one family can occupy the structure, the addition of an accessory dwelling unit will be no different from the impact of a standard single-family dwelling.

The Planning Commission **recommended approval** on a 3-2 vote (with 1 abstention and 1 absent.)

PLANNING COMMISSION MEETING – JUNE 17, 2020

The Planning Commission held a public hearing for this item at its June 17, 2020 meeting. Three persons spoke during the public comment portion of the hearing. All comments received and given at the public hearing are in opposition to the proposed special exception. The main concern was that having another kitchen would be more attractive to people looking to use the property as a rental. Other concerns were about the impact of additional vehicles, as well as building/fire safety. The applicant spoke by phone to address comment and questions.

At the meeting, Commissioners Pates and O’Toole expressed reservations about the request, believing there was nothing special, extraordinary, or unusual about the request. The application is special in that this is no record of any such request having gone before Council, reflecting a unique urgency for the applicant. At the meeting Commissioners asked:

Q: How the use would differ from a duplex?

A: instead of two families in one building, this application would only permit one family.

Q: How the use would enhance the character of the community?

A: it would allow a resident to bring an additional family member to her home, strengthening ties to the neighborhood.

Q: Would the addition of an ADU pose a danger from a fire/safety aspect?

A: the Building Official stated that the Building Code ADU is not viewed as a more intense use than the existing single family use, no extra fire rating is required, and the structure has been inspected and meets building code requirements.

GENERAL BACKGROUND

The applicant, Ms. Coley, wishes to have an accessory dwelling unit (ADU) within the same structure as the primary dwelling unit. The purpose of the ADU is to provide living quarters for her mother.

The State’s residential building code defines a **Dwelling Unit** as:

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

City Code §72-82.4 defines a **Dwelling** as

A building or portion thereof, but not a mobile home, designed or used for residential occupancy. The term shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for transient occupancy.

The same City Code Section defines an **Accessory Dwelling Unit** as

A secondary dwelling unit established in conjunction with and clearly subordinate to a principal dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot.

City Code §72-42.5 ‘*Table of Common Accessory Uses*’ identifies several accessory uses and the various districts wherein they are permitted. *Accessory Dwelling Unit* does not appear on the list of common accessory uses. That same code section states “*The Zoning Administrator shall evaluate potential accessory uses that are not identified in Table 72-42.5, Table of Common Accessory Uses, on a case-by-case basis, as an Interpretation.*” So far in 2020 alone there have been 4 inquiries for accessory dwelling units, with several other inquires in 2019. Using this code section to approve them would no longer be a case-by-case review but rather a frequent review. This issue of a recurring request for a use not listed in the Ordinance is best addressed by City Council through a text amendment. In the interim, Special Exceptions are the only process available.

The structure is a single-family detached house. It is 3,229 sq. ft. in area, with a finished basement area of 1,170 sq. ft. The proposed ADU would occupy the basement. The creation of a bedroom for the

applicant's mother, a separate living room, a separate bathroom, and an additional dining space are all permitted. The applicant, by requesting an accessory dwelling unit, is affectively asking for approval to add a second kitchen. Currently, citizens who wish to add an accessory dwelling unit may add additional living, dining, eating, and sanitation rooms to their house. The addition of a second kitchen (specifically a 220 volt outlet for a full cooking range unit) combined with those other elements, is what constitutes an additional dwelling unit.

Two conditions are recommended: first, that the combined occupancy of the dwelling unit and accessory dwelling unit meets the definition of a 'family'. Using this definition prevents overcrowding by limiting occupancy. The current definition is: *One person or two or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, with no more than two boarders; or a group of not more than three unrelated persons living together as a single housekeeping unit.*

The second condition would limit the accessory dwelling unit to the existing square footage of the house. Any additions onto the house would not be permitted for use of the ADU.

The applicant volunteered 8 conditions for the Special Exception. These conditions were reviewed by the City Attorney's Office, and it was determined that the two conditions recommended by staff and approved by the Planning Commission are sufficient to regulate the use.

SPECIAL EXCEPTION ANALYSIS

Unified Development Ordinance (UDO) §72-22.7 contains review criteria that the Planning Commission and City Council shall use when evaluating an application for a Special Exception. These criteria are:

1. Consistency with the Unified Development Ordinance

The purpose of the Planned Development Residential (PD-R) Zoning District is:

"to encourage innovative and creative design, to facilitate use of the most advantageous construction techniques, and to protect watercourses, stream valleys, forest cover in watersheds, and areas with scenic vistas. The district is designed to permit a greater degree of flexibility in terms of layout, design and construction of planned development than is found in conventional zoning classifications. It will permit planned mixed use communities comprising residential, commercial, office and service uses..."

The applicant seeks to convert a portion of an existing structure into an accessory dwelling unit for the applicant's mother. This additional unit will provide flexibility in residential housing choice.

2. Conformance with the Comprehensive Plan

The property lies within Land Use Planning Area 3: Plank Road/Route 3. The Future Land Use map identifies this area as Transect-3 (Sub-Urban). This category states: *"The Idlewild neighborhood is designated as a T-3. It contains a mix of house types and scales including both attached and detached single-family housing. The neighborhood has a strong inclusion of public shared open space and values their connection to the designated trails as part of the T-1 space surrounding the neighborhood."*

The requested special exceptions and associated development are in accordance with goals of the Comprehensive Plan:

Environmental Protection Goals – pg. 1-8

Goal 6. Livability

“Strengthen existing policies and develop new ones to actively promote a sustainable future by promoting clustered and compact development, which would be balanced by additional open space, and redevelopment of land and repurposing of structures”.

Residential Neighborhoods – pg. 1-10

Goal 2. Neighborhood Quality

“Enhance the quality of the City’s residential areas, to promote livability and a sense of community. Livability is defined as safe and walkable, with a variety of housing choices and ready access (walking, biking, transit, automobile) to work, shopping, and services.”

Goal 5. Enhanced Connections

“Support inclusive neighborhoods for the elderly and persons with disabilities, through multi-modal transportation that enhances connections between affordable and accessible housing, places of employment, other neighborhoods, and services.”

Goal 7. Affordable Housing

“All persons who live and work in Fredericksburg should have the opportunity to rent or purchase safe, decent, and accessible housing within their means.”

Goal 8. Variety of Housing

“Provide a variety of housing opportunities throughout the City that respect the character of the community.”

3. Whether there has been a sufficient period of time for investigation and community planning with respect to the application.

The Technical Review Committee has completed its review and had no comment. If approved, work would be required to be performed in accordance with all Building Code requirements.

4. Whether the special exception is consistent with the principles of good zoning practice, including the purposes of the district in which the special exception would be located, existing and planned uses of surrounding land, and the characteristics of the property involved.

Section 72-12 of the UDO states that *“The City Council has adopted this chapter to promote the health, safety, convenience, and general welfare of the public, to plan for the future development of the community, and to accomplish the objectives of the Code of Virginia and the City of Fredericksburg Comprehensive Plan”*. As stated in that Code Section, zoning is intended to be a tool that provides for, amongst other things:

- A. ...Adequate light, air, convenience of access, and safety from fire, flood, impounding structural failure, crime, and other dangers;*
- C. To facilitate the creation of a convenient, attractive, and harmonious community;*
- G. To encourage economic development that provides desirable employment, including high wage jobs, and enlarge the tax base;*
- J. To implement the Fredericksburg Comprehensive Plan and any special area plan adopted by the City;*

The property is not located within a floodplain or floodway. The development will occur within the existing structure and not add to the footprint of the structure. It will permit a family to live together and support each other, and meets stated goals of the Comprehensive plan.

5. Whether the proposed use or aspect of the development requiring the special exception is special, extraordinary or unusual.

There is nothing special, extraordinary, or unusual about the property. However, she is the first applicant in at least six years to have applied for such a permit. Numerous citizens have contacted the Planning Department to inquire about having an accessory dwelling units, but Ms. Coley is the first to apply for one. The house is 3,229 sq. ft. in area, and is among the larger half of homes on that block face. It is one of two homes on that block face that has 5 bedrooms.

6. Whether the proposed exception potentially results in any adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts.

The proposed condition would limit occupancy to what is currently permissible: one family. Any impacts would be in line with those of a family. The applicant's mother does not have a car, so there would be no initial impact for traffic. Even if the applicant were to move and a new owner to take occupancy, the limit of the accessory dwelling unit to a 'family' would ensure no impacts beyond what is typical of a family.

CONCLUSION

This is a proposal for a special exception to permit an accessory dwelling unit within an existing single-family detached house. The use is compatible with the surrounding neighborhood and meets the goals of the Comprehensive Plan. While the issue is fairly debatable, approval is recommended.

ATTACHMENTS

1. Resolution



August 11, 2020
Regular Meeting
Resolution 20-__

MOTION:

SECOND:

RE: Granting a Special Exception for an Accessory Dwelling Unit Located at 1306 Graham Drive

ACTION: APPROVED: Ayes: 0; Nays: 0

Terry Coley has applied for a special exception to permit an accessory dwelling unit at her property located at 1306 Graham Drive, GPIN 7768-97-1948. The property is situated approximately 220 feet southeast of the intersection of Graham Road and Patrick Street in the Idlewild neighborhood, and it is zoned Planned Development – Residential.

The proposed special exception would permit the applicant to construct an accessory dwelling unit within the same structure as the primary dwelling unit to provide living quarters for her mother. The primary structure is a 3,229 square-foot single-family detached house, and the proposed accessory dwelling unit would occupy the 1,170 square-foot finished basement. The project is further depicted on a diagram submitted by the applicant as Exhibit 3 to the application.

Therefore, the City Council hereby resolves that:

- Council has reviewed and considered the following criteria with respect to the special exception applications: (a) whether the grant of the special exceptions is consistent with the City's Comprehensive Plan; (b) whether the special exceptions are consistent with the goals, purposes and objectives of the City's zoning ordinance; (c) whether there has been a sufficient period of time for investigation and community planning with respect to the applications; (d) whether the special exceptions are consistent with the principles of zoning and good zoning practice, including the purposes of the district in which the special exception would be located, existing and planned uses of surrounding land, the characteristics of the property involved, and the adverse impacts of the proposed use; and (e) whether the proposed use or aspect of the development requiring the special exceptions is special, extraordinary or unusual.
- Pursuant to Section 72.22.7 of the City of Fredericksburg Uniform Development Ordinance, Council hereby grants a special exception for 1306 Graham Drive from Fredericksburg City Code Section 72-42.5, to permit an accessory dwelling unit within a PD-R Zoning District
- The special exception is subject to the following conditions:
 1. Together, the occupancy of the principal dwelling unit and the accessory dwelling unit shall not exceed the definition of a 'family', as defined in City Code Section 72-84.
 2. The Accessory Dwelling Unit shall be located entirely within the existing square footage of the house.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 20-, adopted at a meeting of the City Council held August 11, 2020, at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council