



**TOWN OF CONCORD
BOARD OF APPEALS
141 KEYES ROAD
CONCORD, MASSACHUSETTS 01742**

Applicant: Michael Gresty
Owner of Property: Irina D. Mladenova Trust
Application For: Special Permit under Concord Zoning Bylaw §§ 11.6 and 4.2.2.2 for a detached additional dwelling unit (“ADU”).
Subject Property: Concord Assessor’s Map Parcel 4262-5 (262 Virginia Road)
Dates of Hearing: March 28, May 9, June 13, and July 11, 2024
Board of Appeals: Theo Kindermans (Chair), Thomas Swaim and Ravi Faiia
Decision: To **DENY**, by a vote of 3 in favor and 0 opposed, the application for a Special Permit.

I. PROCEDURAL BACKGROUND

This decision is in response to an application filed on January 31, 2024. After causing notice of the time and place of the public hearing and of the subject matter thereof to be published in the Concord Bridge on March 8 and 15, 2024, posted, and mailed to the Applicant, abutters, and other parties of interest as required by law, the public hearing was opened on March 28, 2024, and continued to May 9, June 13, and July 11, 2024.

In accordance with Massachusetts General Laws (MGL) Chapter 39, Section 23D, Board member Swaim certified that he examined all evidence and reviewed a video recording of the missed session on March 28, 2024, which was accepted by the Chair at the meeting on July 11, 2024.

After due consideration of the application, the record, presentations by the Applicant and his attorney, significant public comment, input from Town Counsel, and based upon review of the issues set forth herein, the Board voted 3 to 0 (Kindermans, Swaim and Faiia) on July 11, 2024, to **DENY** the Special Permit based on the following findings:

II. FINDINGS

The Project

1. 262 Virginia Road is a “J” shaped 1.64-acre parcel located in the Residence A district in Concord.
2. The existing Colonial-style house (2,786 gross floor area, “GFA”) with gable roof is oriented east-west and situated on the southern third of the property, just on the cusp of the “J.” No alterations to the existing house are included in the proposed ADU project.

3. The proposed project is an ADU with two bedrooms, a double height living-dining area, an open plan kitchen, two bathrooms, an unfinished basement, an attic, and one deck off of both bedrooms and the living room. The proposed ADU would also include a parking area for two cars, and a new gravel drive would connect the parking area directly to Virginia Road via a new entrance off Virginia Road.
4. The applicants argue that their project requires the full 1,000 GFA allowed as they intend to provide accommodation for family members, including aging parents, who may stay for extended periods, and others who may stay for shorter periods and who would not be able to comfortably share the existing house.

The Board's Review

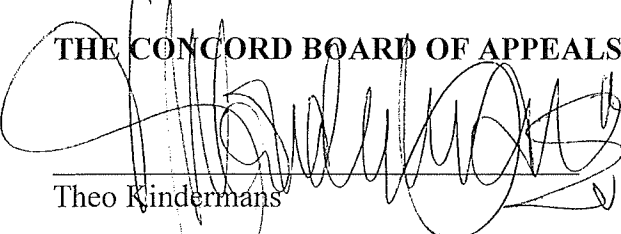
5. In reviewing the application, the Board reviewed Concord Zoning Bylaw (the "Bylaw") Section 4.2.2.2 as well as Zoning Bylaw Section 6.2.3. Both of those sections of the Bylaw are reproduced in their entirety in Exhibit A.

The Board finds that the project does not meet the requirements of either Section 6.2.3 or Section 4.2.2.2.

6. Bylaw Section 6.2.3 and Table III of the Zoning Bylaw describe the Minimum Lot Frontage required for each zoning district. Bylaw Section 6.2.4 provides an exception to that frontage requirement for the Residence AA, A, and B districts where a lot has at least "eighty (80) percent of the minimum lot frontage."
7. The exception provided in Section 6.2.4 is subject to the limitation that the lot width at the nearest point on the front wall of the dwelling to the sideline of the right-of-way shall not be less than the minimum lot frontage. In addition, "the angle formed by the intersection of the side lot line and the sideline of the right-of-way shall not be less than 45 degrees."
8. The text of the Zoning Bylaw does not distinguish between a primary or principal dwelling and an additional dwelling unit. Thus, if an ADU is built on a lot with reduced frontage, the ADU must also comply with the requirements of Section 6.2.4. Any ADU on a reduced frontage lot must be situated in a location such that the lot width at the nearest point on the front wall of the ADU meets the minimum lot frontage for a given zoning district, just as with a primary dwelling.
9. The lot at 262 Virginia Road only has 120' of frontage. Therefore, in order to comply with the Bylaw, the project must meet the exception provided under Section 6.2.4. The ADU would have to be placed on the property such that the lot width at the nearest point on the front wall of the ADU to the sidelines of the right-of-way shall not be less than 150', the minimum lot frontage is the Residence A district.
10. Because the ADU is not so placed, and instead is located at the top of the property's "J" shape, where the frontage is only approximately 120', the ADU does not meet the requirements for Section 6.2.4 or 6.2.3.
11. The Board finds that the project also does not meet the requirements of Bylaw Section 4.2.2.2, as it occupies a GFA of greater than 1,000 gross square feet.

12. Section 1.3.12 of the Bylaw defines "Gross Floor Area" as: "The sum of the horizontal areas of the floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, not including any space where the floor to ceiling height is less than six feet, eight inches (6'8")."
13. The definition of GFA in the Bylaw does not exclude basements, unless otherwise stated. Section 4.2.2.2 does not exclude basements for the purposes of calculating GFA. The inclusion of basements in the calculation of GFAs for ADUs is consistent with the purpose of Section 4.2.2.2, which states that "a building permit may be granted for one additional dwelling unit in a single-family dwelling or detached accessory structure...[f]or the purpose of providing small additional dwelling units to rent in the Town that will not substantially alter the appearance of the Town or for the purpose of enabling owners of single-family dwellings larger than required for their present needs to share space and the burdens of homeownership..." *Id.* (emphasis added).
14. The Board finds that the GFA of the proposed ADU is 999.17 sf (the first floor of the house) + 1050.33 sf (the basement), or 2049.5 sf total. This exceeds the maximum permissible 1000 sf, and thus is not eligible for a Special Permit.
15. The Board therefore **DENIES** the application for a Special Permit to construct an additional dwelling unit.
16. Appeals, if any, shall be made in accordance with M.G.L. Ch. 40A Sec. 17 within twenty (20) days after this decision is filed with the Town Clerk.

THE CONCORD BOARD OF APPEALS:



Theo Kindermans



Ravi Faiia



Thomas Swaim

Decision filed with the Office of the Town Clerk:



Kaari Mai Tari, Town Clerk

7/17/24
Date

EXHIBIT A – Record

Note: Record items are available electronically from the Building Inspections Division or Planning Division Office. Videos of Board of Appeals hearing are available on Minuteman Media Network's Board of Appeals YouTube Playlist, <https://www.youtube.com/playlist?list=PLITTzrWEKOOkvyEhAjRNv3TatHRZFxfwG>

1. **Special Permit Application** (January 22, 2024)
2. **Project Narrative** (January 22, 2024)
3. **Revised Project Narrative** (February 12, 2024)
4. **Existing Conditions Plan** (January 31, 2024)
5. **Existing Site Plan** (January 31, 2024)
6. **GFA/ FAR Calculations** (Undated)
7. **GFA/ FAR Calculations (Revised)** (February 12, 2024)
8. **Sewage Disposal Plan** (January 31, 2024)
9. **Plans and Elevations** (January 31, 2024)
(Plans and Elevations (Revised)) (February 12, 2024)
10. **E. Hughes Email** (April 26, 2023)
11. **Town Counsel Memo** (May 2, 2024)
12. **Applicant Attorney Memo** (May 9, 2024)
13. **Town Counsel Memo (Revised)** (May 28, 2024)
14. **Applicant Attorney Letter** (June 10, 2024)
15. **Public Comments**
16. **Draft Decisions** (July 9, 2024)