



**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)

Date of Hearing: December 12, 2024

Board of Appeals: Theo Kindermans (Chair), Elizabeth Dwyer Leonard 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 October 22, 2024 by Applicant Michael Gresty (the “Applicant”), in accordance with the Remand Order in the Land Court case *Michael Gresty v. Town of Concord et al.*, Case No. 24 MISC 000407, dated September 30, 2024 (“Order”). 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 November 22, 2024 and November 29, 2024, posted, and mailed to the Applicant, abutters, and other parties of interest as required by law, the public hearing was opened on December 12, 2024.

After due consideration of the application, the record, a presentation by the Applicant, significant public comment, input from Town Counsel, and based upon review of the issues set forth herein, the Board voted 3 to 0 (Kindermans, Dwyer Leonard and Faiia) on December 12, 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.
5. The proposed project is substantially similar to the application filed by the Applicant on January 31, 2024, with the only modification being the reduction of the basement ceiling height.

The Board’s Review

6. In reviewing the application, the Board reviewed Concord Zoning Bylaw (the “Bylaw”) Section 4.2.2.2 as well as Section 6.2.3. Both of these sections of the Bylaw are reproduced in their entirety in Exhibit A.
7. The Board also reviewed the recent revisions to G.L. c. 40A, § 3 and associated draft regulations at 760 CMR 71.00. Though the statute does not go into effect until February 2, 2025, and the regulations are still in draft form, the Board nevertheless considered their guidance as though they were currently in effect.
8. The Board finds that, as revised, the Application meets the square footage requirements of Section 4.2.2.2, which permits the Board to grant a Special Permit for relief for an ADU up to 1,000 gross square feet. The gross floor area of the proposed ADU is 999 s.f.
9. The Board finds that the project does not meet the requirements of Bylaw Section 6.2.3, even considering the upcoming revisions to G.L. c. 40A, § 3.
10. 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.”

11. 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 unit to the sideline of the right-of-way shall not be less than the minimum lot frontage.¹
12. The text of the 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.
13. 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.
14. 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.
15. The Applicant argued that, under the upcoming amendment to G.L. c. 40A, § 3 and related regulations at 760 CMR 71.00, requiring the Project to comply with the requirements of Section 6.2.4 is an unreasonable requirement, and thus the Board should waive these requirements as to the Project.
16. The upcoming amendment to G.L. c. 40A, § 3 defines an ADU to include any self-contained housing unit that, among other requirements, "is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller."
17. Here, 1/2 the gross floor area of the principal dwelling is 1,393 square feet. Because 900 square feet is smaller, a proposed ADU at 262 Virginia Road must be smaller than 900 square feet in order to be protected under the upcoming amendment to G.L. c. 40A, § 3.
18. The Applicant's Project is an ADU of 999 s.f., and is therefore not an ADU protected by the upcoming amendment to G.L. c. 40A, § 3.
19. However, even if the ADU did qualify for protection under the upcoming amendment to G.L. c. 40A, § 3, the Board finds that applying the regulations found in Section 6.2.4 or 6.2.3 would be reasonable.

¹ In addition, the Bylaw states that "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," though that portion of the bylaw is not germane to this Application.

20. Applicant offered four reasons why imposing the requirements found in Sections 6.2.4 would pose a hardship and would therefore be unreasonable: (1) overtaxed shared driveway, inconveniencing abutters, (2) location in Town wetland buffer and risk of flooding, (3) expensive excavation for foundations, basement, and new septic tank, and (4) tree removal and loss of privacy.
21. The Board finds that none of the proffered hardships are genuine hardships on the Applicant justifying the waiver of the reduced frontage provision.
- a. Overtaxed driveway: Applicant argued that any ADU located south of the 150' width line would have to be served by the existing shared drive, which is in poor condition due to use. At the Hearing, abutters noted that (a) the drive is not in nearly as bad condition as the Applicant describes, and (b) because the Applicant has not contributed to the upkeep of the shared driveway, that is not a reason to allow the applicant to create an additional driveway. Though the Applicant cites "inconvenience to abutters" as a main reason for not requiring the Project to use the existing drive, abutters themselves oppose the project and refute the facts on which the Applicant bases this hardship.
 - b. Location in Wetland Buffer and risk of flooding: Applicant argues that because the southeast corner of the parcel is located in Town wetlands, there is only a small portion of the lot on which he could build an ADU that would conform both with the frontage requirement and the wetland setback. The Board did not credit this as a hardship, as the Applicant could still build an ADU in any of multiple locations on the remaining portions of the parcel.
 - c. Expensive excavation: Applicant argues that the portion of the lot that complies with the frontage requirement and the wetland setback is a rocky outcrop, and that excavating this outcrop to include a basement in the ADU would be prohibitively expensive. There is no requirement in the Bylaw that the Applicant be allowed to include a basement in his proposed ADU. In fact, most ADUs in Concord do not have basements and instead are built on slab. Building the Project on slab would eliminate the need for such excavation, and thus the cost of excavation is voluntary and not a hardship.
 - d. Tree removal and loss of privacy: Applicant argues that in order to build the ADU in a location that complies with Section 6.2.4, he would have to remove mature pine trees along the boundary with 50 Quail Run Drive, eliminating a natural privacy barrier, and would also be required to cut down additional mature trees on the property that provide shade for the main dwelling in the summer. The Board does not find these claims to constitute a sufficient hardship to warrant waiving the frontage requirement. But the Board also does not credit the Applicant's contentions about privacy concerns. At the hearing, abutters from 50 Quail Run Drive noted that locating the ADU as proposed would be more intrusive on their privacy as compared with placing the ADU in a location that would comply with

the frontage requirement, even considering removing trees. Placing the ADU in a location compliant with Section 6.2.4 may be more intrusive of *applicant's* privacy, but would be more protective of neighbors' privacy.

- 22. Allowing the Applicant to build the Project at the proposed location would also require an additional curb cut, and partial removal of a fieldstone wall along Virginia Road. This is undesirable for planning reasons.
- 23. The Board therefore **DENIES** the application for a Special Permit to construct an additional dwelling unit.
- 24. Appeals, if any, shall be made in accordance with G.L. c. 40A, § 17 within twenty (20) days after this decision is filed with the Town Clerk. In accordance with Paragraph 5 of the Remand Order, the Applicant may move for leave to amend his Land Court complaint within twenty (20) days after this decision is filed with the Town Clerk in order to appeal this Decision.

THE CONCORD BOARD OF APPEALS:

Theo Kindermans

Ravi Faiia

Elizabeth Dwyer Leonard

Decision filed with the Office of the Town Clerk:

Kaari Mai Tari, Town Clerk

Date

EXHIBIT A – Record

Note: Record items are on file with the Town Clerk. Further information, including videos of ZBA hearings, are available on Town’s website, <https://www.concordma.gov/1439/ZBA-Current-Meeting-Documents>.

1. **Special Permit Application** (January 22, 2024)
(<https://www.concordma.gov/DocumentCenter/View/46801/262-Virginia-Rd---Application>)
2. **Project Narrative** (January 22, 2024)
([https://www.concordma.gov/DocumentCenter/View/46805/262-Virginia-Rd---Narrative-Project-Narrative-Accessory-Dwelling-Unit-for-262-Virginia-Rd-\(concordma.gov\)](https://www.concordma.gov/DocumentCenter/View/46805/262-Virginia-Rd---Narrative-Project-Narrative-Accessory-Dwelling-Unit-for-262-Virginia-Rd-(concordma.gov)))
3. **Revised Project Narrative** (February 12, 2024)
(<https://www.concordma.gov/DocumentCenter/View/47083/262-Virginia-Rd---Narrative-Revised-2-12-24>)
4. **Existing Conditions Plan** (January 31, 2024)
(<https://www.concordma.gov/DocumentCenter/View/46802/262-Virginia-Rd---Existing-Conditions-Plan-1-31-24>)
5. **Existing Site Plan** (January 31, 2024)
(<https://www.concordma.gov/DocumentCenter/View/46803/262-Virginia-Rd---Existing-Site-Plan-1-31-24>)
6. **GFA/ FAR Calculations** (Undated)
(<https://www.concordma.gov/DocumentCenter/View/47089/262-Virginia-Rd---GFA-FAR-Calculations-Revised-2-12-24>)
7. **GFA/ FAR Calculations (Revised)** (February 12, 2024)
(<https://www.concordma.gov/DocumentCenter/View/47089/262-Virginia-Rd---GFA-FAR-Calculations-Revised-2-12-24>)
8. **Sewage Disposal Plan** (January 31, 2024)
(<https://www.concordma.gov/DocumentCenter/View/46806/262-Virginia-Rd---Sewage-Disposal-Plan-1-31-24>)
9. **Plans and Elevations** (January 31, 2024)
(<https://www.concordma.gov/DocumentCenter/View/46807/262-Virginia-Rd--Plans-and-Elevations-1-31-24>)
10. **Plans and Elevations (Revised)** (February 12, 2024)
(<https://www.concordma.gov/DocumentCenter/View/47084/262-Virginia-Rd---Plans-and-Elevations-Revised-2-12-24>)

11. **E. Hughes Email** (April 26, 2023)
(<https://www.concordma.gov/DocumentCenter/View/48428/262-Virginia-Rd---E-Hughes-email-Apr-26-2023>)
12. **Town Counsel Memo** (May 2, 2024)
(<https://www.concordma.gov/DocumentCenter/View/48342/262-Virginia-Rd---Concord-ADU-Zoning-Analysis---Town-Counsel-Memo-5-2-24>)
13. **Applicant Attorney Memo** (May 9, 2024)
(<https://www.concordma.gov/DocumentCenter/View/48443/262-Virginia-Rd---Applicant-Attorney-Memo-5-9-24>)
14. **Town Counsel Memo (Revised)** (May 28, 2024)
(<https://www.concordma.gov/DocumentCenter/View/48784/262-Virginia-Rd---Concord-ADU-Zoning-Analysis---Town-Counsel-Memo-5-28-24-Revised>)
15. **Applicant Attorney Letter** (June 10, 2024)(<https://www.concordma.gov/DocumentCenter/View/48910/262-Virginia-Rd--Applicant-Attorney-Letter-6-10-24>)
16. **Public Comments**
<https://concordma.gov/DocumentCenter/View/51689/262-Virginia-Rd---Letter-Smith-12-5-24>
<https://concordma.gov/DocumentCenter/View/51700/262-Virginia-Rd---Letter-Tekle-12-5-24>
<https://concordma.gov/DocumentCenter/View/52215/262-Virginia-Rd---Letter-Sandeen-12-5-24>
<https://concordma.gov/DocumentCenter/View/52216/262-Virginia-Rd---Letter-Bandi-12-6-24>
<https://concordma.gov/DocumentCenter/View/52218/262-Virginia-Rd---Letter-Sodergren-Kulish-12-6-24>
<https://concordma.gov/DocumentCenter/View/52217/262-Virginia-Rd---Letter-Godolphin-12-7-24>
<https://concordma.gov/DocumentCenter/View/52220/262-Virginia-Rd---Letter-von-Thaden-12-9-24>
<https://concordma.gov/DocumentCenter/View/52937/262-Virginia-Rd---Letter-Chen-12-9-24>
<https://concordma.gov/DocumentCenter/View/52938/262-Virginia-Rd---Letter-Grabenstatter-12-9-24>
<https://concordma.gov/DocumentCenter/View/52975/262-Virginia-Rd---Letter-Karabas-Demirsoy-12-9-24>
<https://concordma.gov/DocumentCenter/View/52974/262-Virginia-Rd---Letter-Lidskog-12-10-24>
17. **Videos of ZBA Meetings**
<https://us02web.zoom.us/rec/play/c6v1HVvzsZA8fqQpEpShI-VU9g-jmv8lhc6-YmPkMOEGBBdk20PhvGrPqzmzbgQZVG->

[dSir_AUi3Z5o1K.P64mqXyOBNJ3vYvh?autoplay=true&startTime=1734048113000](https://concordma.gov/DocumentCenter/View/51623/262-Virginia-Rd---Order-on-Motion-for-Remand-9-30-24)

18. Meeting Minutes

19. Remand Order

<https://concordma.gov/DocumentCenter/View/51623/262-Virginia-Rd---Order-on-Motion-for-Remand-9-30-24>

20. Previous Denied Decision

<https://concordma.gov/DocumentCenter/View/51621/262-Virginia-Rd---DECISION---FINAL-SIGNED-7-17-24>

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