

May 9, 2024

Via On-Line Submission

To: Concord Zoning Board of Appeals
From: Irina D. Mladenova and Michael Gresty
Re: Accessory Dwelling Unit Frontage Exception
262 Virginia Road, Concord, MA 01742 (Parcel # 4262-5)

MEMORANDUM IN SUPPORT OF APPLICANTS

This office represents Applicants, Irina D. Mladenova and Michael Gresty, of 262 Virginia Road, Concord, MA 01742 in regard to the Accessory Dwelling Unit (“ADU”) Special Permit Application currently pending with the Town of Concord’s Zoning Board of Appeals (“ZBA”). Said plans for the ADU are hereinafter referred to as “the Project.”

This Memorandum is being submitted in support of the Applicants and in response to concerns raised by the ZBA at the initial hearing held on March 28, 2024 as well as the Memorandum from Town Counsel dated May 2, 2024. Respectfully, it is contended that the ZBA has mistakenly taken an overly narrow, conservative view of the Zoning Bylaws (April 2023) to the detriment of the Applicants and fellow citizens of Concord.

I. Bylaws § 4.2.2.2 conspicuously does not reference frontage.

The ADU section of the Bylaws, § 4.2.2.2, conspicuously does not include a reference to frontage requirements. Indeed, the only requirements for an ADU regarding where it may be placed on a parcel are contained within subsection (g):

§ 4.2.2.2(g) The additional dwelling unit **shall meet the required setbacks for the primary structure** of the applicable Zoning District and a site plan, at a measurable scale, shall be submitted with the application to the Building Inspector showing the location of the additional dwelling unit, and the location and arrangement of parking spaces on the property; (emphasis added)

There is no mention of frontage requirements for an ADU at any portion of § 4.2.2.2. The ZBA and Town Counsel read into this section an additional frontage requirement which is not present. It is not disputed that the Project complies with all the setback requirements of the Bylaws.

The position that § 6.2.4 applies to all “dwellings” including ADUs is unreasonable given the lack of any mention of frontage in § 4.2.2.2 and the nature of an ADU itself. To wit, an ADU should not reasonably be held to the same standards as the primary dwelling hence its express separate designation in the Bylaws, a separate dedicated section at § 4.2.2.2, and a separate

definition at § 1.3.28: “Use, accessory: Any use which (1) is subordinate to a principal use, (2) is secondary in physical area, intensity of use, and purpose to the principal use served, and (3) is customarily incidental to the principal use.” There is no basis to graft on the superfluous requirement of frontage for an ADU when none is explicitly referenced. Therefore, the Project ADU, being compliant with all Bylaws, should be approved.

II. Bylaws would allow for an equivalent or larger structure at the same location.

It should be noted that the Applicants could, as a matter of right, construct any number of other equally, or more, obtrusive structures on the same location as the ADU. By way of example, the Bylaws would not prohibit the Applicants from constructing a large garage or barn of equal or larger size as the ADU in the exact same location.

Thus, the frontage argument couched in appropriateness of location or preservation of neighborhood character drop away because those aforementioned structures (garage, barn) would not need to comply with the frontage requirement yet would, presumably, affect these arguments too.

III. Approval of the Applicant’s Project and Special Permit is warranted.

Therefore, in light of the foregoing, the Applicant’s Project and Special Permit should be approved without conditions. The ZBA and Town Counsel’s view of the frontage requirement for ADUs is not supported in the Bylaws, would frustrate the ostensibly desired development of other ADUs in Concord, and creates an unreasonable equivalence between the lesser ADU and a primary dwelling. *See e.g. Valcourt v. Zoning Bd. of Appeals of Swansea*, 48 Mass. App. Ct. 124, 129 (1999) (“A zoning by-law should be construed sensibly, with regard to its underlying purposes . . . and, if possible, as a harmonious whole); *McLaughlin v. Brockton*, 32 Mass. App. Ct. 930, 932 (1992)(if possible, superficially discordant provisions of the bylaws should be harmonized); *Jenkins v. Town of Pepperell*, 18 Mass. App. Ct. 265, 270 (1984) (where town presented no extrinsic evidence on correct interpretation of ambiguous zoning district boundary, interpretation most favorable to landowner controls). More practically too, the proposed location of the ADU is simply the best, most logical place for it to be positioned on the parcel without substantial detriment to the neighborhood.

Should the ZBA not grant unconditional approval of the Project, it is requested that the matter be continued for further review of the arguments raised herein by Town Counsel, and for the ZBA to conduct a site inspection.

All rights available to my clients are hereby reserved. Thank you for your consideration.

Respectfully, on behalf of the Applicants, Irina D. Mladenova and Michael Gresty,



Lawrence A. Wind, Esq.