

COMPLAINT

In the Land Court of the Commonwealth of Massachusetts,

Michael Gresty, Appellant,

Vs.

Case. #: _____

Town of Concord,

Zoning Board of Appeals Members

Theo Kindermans, Chair,

Ravi Faiia, Vice Chair,

Thomas Swaim, Associate,

Elizabeth Dwyer Leonard, Associate, and

Appellees.

Notice of Appeal

Comes now Michael Gresty, pro se, and files his Notice of Appeal under M.G.L. Ch.40A Sec. 17, and in support thereof would show the Court the following:

1. That on July 17, 2024, the Concord Zoning Board of Appeals (ZBA) denied the Appellant's Application for Special Permit under Concord Zoning By-Law SS 11.6 and 4.2.2.2 for a detached additional dwelling unit (ADU) at 262 Virginia Rd, and the Appellant is aggrieved by the Decision of the ZBA.
2. That only one of the ZBA's two principal objections to the Application was discussed during the four public hearings, namely to the location of the proposed ADU on the site. The second objection, cited in paragraph 14 of the Decision, that the area in gross square feet (GSF) of the ADU must include basement areas with 6'-8" or higher ceiling heights and that the proposed design would therefore exceed the maximum 1,000 GSF, was never broached for discussion in any of the four public hearings, and the Applicant was therefore not afforded the opportunity to amend his

application to address this objection. This objection was only raised apropos another ADU application during these and other hearings.

3. That that ZBA erred in failing to apply the rule of strict construction in its reading of 6.2.3 and 6.2.4, and inferred absent provisions not applicable to ADUs at 262 Virginia Rd, specifically the “reduced frontage requirement” that applies to the principal dwelling, to the prejudice of the Applicant.
4. That the ZBA’s interpretation of 6.2.3 and 6.2.4 is not consistent with the letter and intent of the bylaw and exceeds the ZBA’s authority under Section 1A of chapter 40A of the General Laws.
5. That the ZBA’s interpretation of sections 6.2.3 and 6.2.4 of the bylaws flies in the face of established policy and the public good in the Commonwealth of Massachusetts, which, like most other states in the US, suffers from a widely acknowledged, severe shortage of affordable housing, and by means of various legislative and fiscal measures over the last decade, has sought to promote the construction of more, and more affordable, housing, including ADUs. The Town of Concord accordingly amended its ADU by-laws in 2022 to achieve the stated intent of the Envision Concord Comprehensive Long Range Plan which reads:

“Encourage renovation of existing single family homes (in all zoning districts), and identify the opportunities to create accessory dwelling units within existing structures in all zoning districts, and allow cluster development and cohousing in designated areas.” (Housing Goal #5)

6. That while the Applicant requested that the ZBA consider an Application for Special Permit for a larger unit (999 GSF vs. 750 GSF as of right), the zealous ZBA Chair, Theo Kindermans, who guided the discussions in his preferred direction from the first public hearing on March 28th, chose

instead to focus on his reading of 6.2.3 and 6.2.4., which reading was in complete contradiction with written guidance provided in April 2023 to the Applicant by the Town Planner of 20 years, Elizabeth Hughes. (See E Hughes email in the public record.) Ms Hughes' recommendation for siting the ADU was both logical and in keeping with the character of the neighborhood, and was adopted by the Applicant. One of the three ZBA members in attendance at this hearing, Elizabeth Akehurst-Moore, firmly disagreed with the Chair and sided with the Applicant. Given the disagreement among the Board, the Board referred the matter to Town Counsel.

7. That Town Counsel provided an initial Opinion that was essentially a paraphrase of the by-laws, designed to comfort the Chair in his position, and which the Applicant rebutted via a first Attorney's letter.
8. That by the 2nd public hearing (May 9th), the composition of the Board changed when Ms Akers-Moore, having completed her mandate in the interim, was replaced by Thomas Swain, and that the Chair "briefed" (prejudiced) Mr Swain on the Application and first hearing, such that Mr Swain simply went along with the Chair's established position.
9. That at this same 2nd hearing, during further discussion regarding Ms Hughes April 2023 guidance, the Chair was abrupt and made insulting comments to the Applicant insisting that "you should have done your homework" by consulting professionals, while failing to acknowledge that the Applicant is a trained architect, that the Owner (also the Applicant's wife) has a master's degree in urban planning from Harvard, that the Owner's parents, who prepared the design, are architects and planners, and that the site was surveyed, and site and septic system engineering drawings

produced by the leading surveyors and civil engineers in Concord, Dillis and Roy.

10. That at the 2nd hearing, the ZBA was not prepared to put the Application to a vote, further evidence of their failure to apply strict construction, and requested an updated memo from Town Counsel to respond to the Applicant's Attorney's letter.
11. That the revised memo, distributed a week before the 3rd hearing on June 13th, essentially doubled down on the position staked out by the ZBA members, without making new arguments. The Applicant's 2nd attorney challenged the revised memo in another letter, but was dismissed by the Chair, and the ZBA then directed Counsel to prepare a draft decision to deny the application.
12. That at the 4th hearing on July 11th, the ZBA simply closed discussion and voted to adopt the draft decision to deny.
13. That in June 2024, both chambers of the Massachusetts legislature approved significant amendments to chapter 40A of the General Laws that remove many restrictions on ADUs and prohibit municipalities from unreasonably restricting the creation or rental of an accessory dwelling unit that is not a short-term rental, thus making the ZBA's decision to deny moot.
14. The Appellant attaches hereto the following documents that were submitted to the ZBA and form the public record:
 - a. Special Permit Application (January 22, 2024)
 - b. Project Narrative (January 22, 2024)
 - c. Revised Project Narrative (February 12, 2024)
 - d. Existing Conditions Plan (January 31, 2024)
 - e. Existing Site Plan (January 31, 2024)
 - f. GFA/FAR Calculations (Undated)

- g. GFA/FAR Calculations (February 12, 2024)
- h. E. Hughes Email (April 26, 2024)
- i. Town Counsel Memo (May 9, 2024)
- j. Town Counsel Memo Revised (May 28, 2024)
- k. Applicant Attorney Memo (May 9, 2024)
- l. Public Comments (Consolidated Letters, various dates)
- m. Applicant Attorney Memo Revised (May 28, 2024)
- n. Applicant Attorney Letter (June 10, 2024)
- o. Draft Decision (July 9, 2024)

These can also be found at <https://concordma.gov/documentcenter>.

Recordings of virtual ZBA Hearings on March 28, May 9, June 13 and July 11, 2024, are available on the Town website.

- 15. The Appellant attaches hereto a copy of the final ZBA decision dated July 17, 2024.
- 16. The Appellant files his appeal without supersedeas.
- 17. The Appellant requests that this appeal be considered de novo by the Court.
- 18. The Appellant prays the Court annul the ZBA's Decision.

Respectfully submitted.

By: Michael Gresty

July 24, 2024

