

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Land Court Department
Case No. 24 MISC 000407

MICHAEL GRESTY)
 Plaintiff,)
 v.)
 TOWN OF CONCORD, TOWN OF)
 CONCORD ZONING BOARD OF)
 APPEALS, THEO KINDERMANS, RAVI)
 FAIIA, THOMAS SWAIM, and)
 ELIZABETH DWYER LEONARD, as they)
 are members of THE TOWN OF CONCORD)
 ZONING BOARD OF APPEALS,)
 Defendants.)

ORDER ON MOTION FOR REMAND

On July 24, 2024, the plaintiff, Michael Gresty (Gresty), filed a complaint under G.L. c. 40A, § 17, against the defendants, Town of Concord and Town of Concord Zoning Board of Appeals and its four members (collectively, “Defendants”).¹ Gresty challenged the Town of Concord Zoning Board of Appeals’ (“Board”) July 17, 2024 decision denying his application for a special permit pursuant to the Concord Zoning Bylaw §§ 11.6 and 4.2.2.2 to build a detached additional building unit at his property located at 262 Virginia Road, Concord, MA 01742.

On agreement of the parties, after due proceedings, it is hereby:

ORDERED that the application in Misc. Case No. 24 MISC 000407 is remanded to the Board. It is further

¹ Theo Kindermans, Ravi Faiia, Thomas Swaim, and Elizabeth Dwyer Leonard.

ORDERED that the following tasks will be undertaken forthwith following the entry of this Court's Order ("the Remand Order"):

1. Within thirty (30) days of the entry of this Order, Mr. Gresty shall file a revised application that will reduce the ceiling height in the basement, request relief with regard to the siting of the dwelling unit, and request relief from setback requirements. The Board shall hold a hearing on Mr. Gresty's revised application in accordance with the requirements of the Zoning Act and the Concord Zoning Bylaw ("Remand Hearing") including considering the effects of recent amendments to the Zoning Act regarding accessory dwelling units, and the recently enacted amendment to Chapter 40A, §3 as it pertains to accessory dwelling units.

2. The Board shall schedule, advertise, and provide notice of the Remand Hearing to the extent G.L. c. 40A, § 11, and the Town of Concord Zoning Bylaw require. Such hearing shall be held no later than ninety (90) days after Mr. Gresty submits the Amended Application.

3. The Board shall consider Mr. Gresty's revised application at the Remand Hearing and makes no representations as to how the Board will vote at this time.

4. If no one timely appeals the Board's decision on remand, the parties to this action shall file promptly a stipulation of dismissal of this action.

5. If Mr. Gresty disagrees with the Board's decision on remand, then within twenty (20) days of the Board filing the remand decision with the Town Clerk, Gresty may move for leave to amend his complaint in this action, to appeal the remand decision. Such motion must include a copy of Mr. Gresty's proposed amended complaint.

6. The Court retains jurisdiction over this case, including but not limited to any appeal described in Paragraph 5 above.

7. Nothing in this Order shall affect the rights of persons other than the parties to this action to appeal the Board's decision on remand.

It is further

ORDERED that this action is stayed pending the remand. It is further

ORDERED that the parties shall file a joint status report every sixty (60) days, until parties file a stipulation of dismissal or other pleading, or upon further order of the court.

SO ORDERED,

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson, Recorder

Dated: September 30, 2024