

From: Hugh McCrory

Sent: Tuesday, August 8, 2023 1:42 PM

To: Elizabeth Hughes <ehughes@concordma.gov>; Hayleigh Walker <hwalker@concordma.gov>

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Subject: Zoning Bylaw 4.2.2.2 - Important and time-sensitive issue for the ZBA.

For the attention of the ZBA Members: Theo Kindermans, Ravi Faiia, Thomas Swaim, Elizabeth Akehurst-Moore

Dear Members, I am writing to draw attention to the potential approval of a building permit and special permit that could be in violation of Bylaw, section 4.2.2.2, which is set to be discussed at this week's ZBA meeting on Thursday, August 10th. This letter pertains to an application at #537 Barretts Mill Rd, discussed during the ZBA July 2023 meeting, where there seems to be a misunderstanding of the wording and intent of Bylaw 4.2.2.2, adopted in 2020 and amended in 2022. I will elaborate on the details below.

I am not opposed to ADUs, but I am concerned that the Town of Concord might face inadvertent legal issues if this matter is not comprehensively understood, discussed, and addressed by relevant town officials. In fact, I strongly urge the ZBA to encourage the applicant and property owner to apply for an ADU under 4.2.2.1 instead of 4.2.2.2.

Both the applicant corporation and the property owners are applying under 4.2.2.2, which complicates the matter. The 4.2.2.2 Bylaw states that:

"For the purpose of providing small additional dwelling units for rent in the Town that will not significantly alter the Town's appearance or enabling owners of single-family dwellings larger than necessary for their present needs to share space and the responsibilities of homeownership, a building permit may be issued for one additional dwelling unit in a single-family dwelling or detached accessory structure, provided that:"

(Refer to: <https://concordma.gov/DocumentCenter/View/1394/Zoning-Bylaw---Full-Document-PDF>, see Section 4, pages 14-15)

However, this application is not constructing the ADU within (or attached to) the existing single-family structure, nor is there a detached accessory structure on the

property (except for a small garden shed under 750 sq. ft., which does not qualify as an accessory structure). As a result, the special permit application should be dismissed, as the building permit should not be granted according to the Bylaw. Because it is not within an existing structure (such as a home or an accessory structure like a barn or garage), Section 4.2.2.2 bullet (b) reinforces this point:

"b) The additional dwelling unit shall occupy no more than 750 square feet of gross floor area of the single-family dwelling or detached accessory structure"

Considering the amendment at the 2022 Town Meeting (where section (n) was added for permitting prior ADUs), the text states:

"The ADU Bylaw was amended in 2020 as a result of the 2018 Envision Concord Comprehensive Long-Range Plan Housing Goal #5, which states: '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.'"

This once again emphasizes that accessory dwelling units should be within existing structures in all zoning districts.

(Refer to: <https://concordma.gov/DocumentCenter/View/35028/2022-Concord-Annual-Town-Meeting-Warrant>). The "Final Envision Concord-Bridge to 2030 Comprehensive Long Range Plan" on page 124 clearly specifies "existing structures in all zoning districts," (see: <https://www.concordma.gov/DocumentCenter/View/15433/Section-43-Housing-Plan-Element>). Furthermore, it elaborates:

"Cluster development that concentrates the impact of building on the land and preserves open space and wildlife corridors can serve various goals, including land conservation."

The proposed second dwelling structure abuts the conservation land of Barretts. Mill Farm. Section 4.2.2.2 of the Bylaw additionally states:

*"For the purpose of providing small additional dwelling units **for rent** in the Town that ..."*
-- During the July 2023 ZBA meeting, the applicant corporation and the co-owners indicated that the ADU is intended for one of the owners and will not be rented. Consequently, this application does not align with the intent of the Bylaw as outlined in 4.2.2.2. Furthermore, the Bylaw states ... (abridged below):

"The Board may grant a Special Permit for relief for an additional dwelling unit... an additional dwelling unit up to 1,000 gross square feet... provided that the requested relief

does not cause significant harm to the neighborhood and remains consistent with the purpose of this Bylaw."

This type of application clearly deviates from the Bylaw's intent and will be detrimental to the neighborhood. It appears that some individuals are conflating the terms "detached accessory structure" and "additional dwelling unit" in the text of the 4.2.2.2 Bylaw. These terms are distinct. "Detached accessory structure" pertains to an existing standalone structure, such as a garage, barn, or pool house, whereas the "additional dwelling unit" refers to the new living space. (See 7/13 ZBA meeting minutes at 56:20 <https://www.youtube.com/watch?v=k2CQWpZYSLE>) In essence, this Bylaw was not designed to permit any 750 sq ft ADU to be constructed on a vacant part of any lot in any zone. Rather, it allows a homeowner to utilize 750 sq ft of their existing home or detached accessory structure.

The property owners are recent Town residents (they acquired the house within the last year) and have expressed immediate interest in erecting a standalone second home on the property as an ADU. The intent of the ADU Bylaw was not to cater to the buyers of luxurious homes who then construct a stand-alone ADU. This precedent could potentially open the flood gates for any future purchaser to build a conforming 750 sq ft additional dwelling unit in any zone. This interpretation of our ByLaw is being disseminated by an out-of-state for profit corporation (refer to: <https://backyardadus.com/adu-regulations-ma/concord-ma-adu-rules>). Penultimately, If the above mis-interpretation of the Bylaw is used what this means is that anyone, can build an ADU up to 750 Sqft without a special permit when applying under section 4.2.2.2 but they would need a special permit when applying under section 4.2.2.1. This is not the intent of the Bylaw and therefore 4.2.2.2 would inadvertently undermine 4.2.2.1.

As a taxpayer, I am concerned about the following scenario: the permits are mistakenly granted, construction commences at the owner's expense, and later the Town identifies the oversight, placing the Town in a challenging position. I hope that this can be averted through appropriate discussions among the relevant Town officials concerning this application and similar cases in the future, across all zoning districts. Numerous neighbors are alarmed by the possible precedent and are attempting to engage with the new neighbors. Nonetheless, this is fundamentally a Town of Concord matter, addressing the interpretation and application of the Bylaw. I would request that this letter is forwarded to Town Counsel. Sincerely,

Hugh McCrory, 59 Lee Drive Reference: Minutes from the ZBA July 13th for the 4.2.2.2 ADU application are here: <https://www.youtube.com/watch?v=k2CQWpZYSLE> starting @ 21:55)