

September 14, 2023

Concord Zoning Board of Appeals
c/o Theo Kindermans, Chair
141 Keyes Road, 1st Floor
Concord, MA 01742
c/o Heather Carey, Administrative Assistant (hcarey@concordma.gov)

Re: 537 Barretts Mill Road

Dear Chair Kindermans and Zoning Board of Appeals Members:

This firm represents Allegra & Zachary Wilson and Rosalind Walter, the owners of 537 Barretts Mill Road (the “Property”), in connection with the application for a special permit under Section 4.2.2.2 of the Concord Zoning Bylaw to construct an additional dwelling unit (“ADU”) at the Property, in which Ms. Walter will live. I write to address certain questions about the project which I believe are based on misinterpretations of the applicable zoning provisions.

It has been suggested that the project should proceed under Zoning Bylaw Section 4.2.2.1 rather than Section 4.2.2.2. That suggestion overlooks significant differences between Sections 4.2.2.1, which governs the creation of two-family dwellings, and 4.2.2.2, which governs the creation of small ADUs. Section 4.2.2.1 allows for the conversion into a two-dwelling building of any building that existed when its lot was placed in a single residence district:¹

The Board may grant a special permit for the alteration and use of a building existing at the time its lot is placed in a single residence district for not more than two (2) dwelling units, provided the gross floor area, excluding basements, open or screened porches, and decks, of any additions shall not exceed in all one-fifth of the gross floor area, excluding basements, open or screened porches, and decks, of the existing building. Any additions to create an additional dwelling unit pursuant to this section shall be integral to and part of the existing building, without use of a tunnel or pergola, and share a common wall or floor with the existing building.²

Any such conversion would be subject to the definition of “two-family dwelling” set forth in Section 1.3.26:

A structure, located on a single lot, containing two (2) dwelling units each of which is totally separated from the other either by an unpierced ceiling and floor extending from exterior wall to exterior wall except for a common stairwell, or by a common vertical wall. This definition includes the duplex dwelling.

¹ The Concord Assessing Department’s on-line database indicates that the existing single-family home at 537 Barretts Mill Road was built in 1973, *i.e.*, may have been built after the lot was placed in a single residence district.

² In the Residence C district, the Board of Appeals also may grant a special permit for the construction of a new two-family dwelling. § 4.2.2.1.



The proposed ADU will not satisfy this definition; it will not be part of the existing single-family home. By contrast, Section 4.2.2.2—the Zoning Bylaws section which does apply to ADUs—provides that:

For the purpose of providing small additional dwelling units to rent in the Town that will not substantially alter the appearance of the Town or for the purpose of enabling owners of single-family dwellings larger than required for their present needs to share space and the burdens of homeownership, a building permit may be granted for one additional dwelling unit in a single-family dwelling or detached accessory structure, provided that [conditions (a) through (n) are satisfied].

An ADU constructed in an existing single-family dwelling likely would not satisfy the requirement of Section 4.2.2.1 that the two units be “totally separated from each other.” And an ADU built in a detached accessory structure would not satisfy the requirement of Section 4.2.2.1 that the two units be located in a single structure. ADUs are subject to fourteen conditions that do not apply to the conversion of an existing structure into a two-family dwelling, including:

- Unless the Board of Appeals grants a special permit, the lot must have the minimum required lot size required for the zoning district;
- Either the ADU or the single-family dwelling must be owner-occupied; and
- The ADU must not be legally separated or sold apart from the single-family dwelling, whereas a two-family dwelling could be converted into a condominium and the units sold separately.

The addition of an ADU does not create a two-family dwelling subject to Section 4.2.2.1. That section does not apply to the proposed project.

It has been suggested that any ADU not constructed within a single-family dwelling must be built within an *existing* accessory building. The language of Section 4.2.2.2 does not support this conclusion. It provides that “a building permit may be granted for one additional dwelling unit in a . . . detached accessory structure [subject to conditions (a) through (n)].” It does not require that the accessory structure exist when the building permit is granted, *i.e.*, contemplates that the ADU will be built in an entirely new accessory structure. By contrast, the previous section, 4.2.2.1, which provides for the creation of a two-family dwelling in a single residence district, requires that the building being altered must have existed at the time the lot was placed in a single residence district. The drafters of Section 4.2.2 knew how to specify when an existing building is required. And condition (b) to Section 4.2.2.2 allows an ADU—whether in a single-family dwelling or a detached accessory structure—to occupy up to 750 square feet of gross floor area without a special permit. This equates to a building with a footprint of approximately 25 by 30 feet, well in excess of any typical garden shed, children’s playhouse, detached garage, or other common accessory structure. A detached ADU may be built as an entirely new accessory structure.



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I hope this letter will assist you in your deliberations about the request for a special permit to allow the construction of a detached ADU at 537 Barretts Mill Road, the proposal for which satisfies the criteria of Section 4.2.2.2(a) through (n).

Sincerely,

A handwritten signature in black ink, appearing to read "Chal" followed by a stylized flourish.

cc: Allegra & Zachary Wilson and Rosalind Walter
Elizabeth Hughes, Town Planner (ehughes@concordma.gov)