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PLANNING BOARD

Planning Board Report: ZBL-2009-4 Proposed Amendment to ZBL, Section 3.4.2.4 Article 42: May 11, 2009 Town Meeting

April 28, 2009

At their meeting on April 13, 2009, the Grafton Planning Board conducted a public hearing to consider a proposed amendment to the Grafton Zoning By-law (ZBL) submitted by the Board of Selectmen. Board members present were Chairman Christophe Courchesne, and Members Robert Hassinger, and Bruce Spinney III. Those individuals wishing to speak to the proposed amendments were heard. The proposed amendment is:

Amend the Zoning By-Law by replacing the existing wording in Section 3.4.2.4 with the following:

- 3.4.2.4 Nonconforming single family or two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of such structure. The following circumstances shall not be deemed to increase the nonconforming nature of such structure:
- (i) alteration to a structure located on a lot with insufficient area provided that the alteration complies with all current setback, yard, building coverage, and building height requirements.
 - (ii) alteration to a structure located on a lot with insufficient frontage provided that the alteration complies with all current setback, yard, building coverage, and building height requirements.
 - (iii) alteration to a structure which encroaches upon one or more required yard or setback areas, provided that the alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Inspector of Buildings determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may, by finding, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood;

The article was reviewed by Town Counsel for compliance with state laws as well as to form and was found satisfactory.

The Planning Board noted that this proposed amendment was one of the few it received that provided a detailed history and rationale for the proposed change to the ZBL. The purpose of the amendment is to streamline the review process for alterations on non-conforming single- or two-family residential structures by allowing the Building Inspector to make a determination as to whether certain proposed changes would increase its non-conforming nature. The background provided stated that a similar amendment was adopted at the May 2008 Town Meeting but was later disapproved by the State Attorney General as it did not provide specific criteria for the Building Inspector. The proposed amendment would provide such criteria and thereby allow an owner of a single- or two-family residence to receive direction and/or approval without the time and expense of appearing before the Zoning Board of Appeals for such a determination as is currently required.

The Planning Board discussed whether the proposed changes would have the effect of denying the opportunity for abutters to be heard as part of the determination process. The Board found that the criteria address only those situations where the proposed alterations themselves would conform to all current zoning requirements. The Board concluded that, in such situations, the application of the amendments' neutral criteria by the Building Inspector would neither involve any discretion more properly exercised by the Zoning Board of Appeals nor deny any rights to abutters, who would have no basis to object to such proposed changes.

After receiving testimony and reviewing the proposed amendment to Section 3.4.2.4 of the Zoning By-Law, the Planning Board voted to recommend adoption of Article 42.