

**DECISION
GRAFTON PLANNING BOARD**

**SPECIAL PERMIT (SP 2015-15) & SITE PLAN APPROVAL
Construction of Elevated Deck in the Flood Plain District
5 Hitchings Road, North Grafton, MA 01519**

Randy Gagne (Applicant / Owner)

Decision of the Grafton Planning Board (hereinafter the Board) on the petition of Randy Gagne, 5 Hitchings Road, North Grafton 01536 (hereinafter the APPLICANT), for construction of an elevated deck on property located at 5 Hitchings Road, North Grafton, Assessors Map 55, Lot 8, owned by the Applicant (hereinafter the SITE) by deed recorded in the Worcester District Registry of Deeds (WDRD) in Book 48064, Page 161. Said property is located in Medium Residential (R-20) zoning district, a Flood Plain (FP) zoning district and located within the Water Supply Protection Overlay District (WSPOD).

The application for Approval of a Modified Definitive Subdivision Plan was filed with the Planning Board December 16, 2015. Notice of the public hearing and the subject matter thereof was published in the Grafton News on December 24 and December 31, 2015, and posted with the Town Clerk's Office. Abutters were notified by First Class Mail. The public hearing on the Application was opened on January 11, 2016. During the public hearing, all those wishing to speak to the petition were heard. Following public input the hearing was closed on January 11, 2016.

The following Board members were present throughout the public hearing: Chairman Sargon Hanna, Vice Chairman Michael Scully, Clerk Robert Hassinger, and members Linda Hassinger, David Robbins.

At the hearing, the Applicant and presented the proposal. The record of the proceedings and submissions upon which this decision is based may be referred to in the Office of the Town Clerk or in the Office of the Planning Board.

I. SUBMITTALS

The following items were submitted to the Board for its consideration of this application:

EXHIBIT #1. Unbound application packet prepared by the Applicant, received December 16, 2015 including the following:

- Application for Special Permit; dated December 15, 2015; 1 page.
- Correspondence; Re: requesting permission to build a deck partially in the Flood Plain; prepared by Norman G. Hill, Land Planning Incorporated, Inc.; dated December 12, 2015; 1 page.
- Certificate of Good Standing; stamped by the Treasurer/Collectors Office on December 15, 2015; 1 page.
- Certified Abutters List; dated December 15, 2015 by the Grafton Assessors; 2 pages.
- Copy of Correspondence from the Grafton Conservation Commission; Determination of Applicability – 5 Hitchings Road; dated August 5, 2015; 7 pages.

- Proposed Deck Plot Plan; prepared by Land Planning, Inc.; 8 ½” X 11”; black and white; revised date December 14, 2015; 1 page.
- Site Picture; 8 ½” X 11”; color; no date; 1 page.

EXHIBIT #2. Departmental Comment Form, Board of Health, received December 29, 2015, 1 page.

EXHIBIT #3. Departmental Comment Form, Zoning Board of Appeals, received January 4, 2016, 1 page.

EXHIBIT #4. Public Hearing Sign In Sheet, January 11, 2016; 1 page.

II. FINDINGS

At their meeting of [REDACTED] after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by [REDACTED], seconded by [REDACTED]) voted [REDACTED] to make the following Findings:

- F1. That determinations regarding the following findings are based upon the documents and plans identified in this Decision, as well as the information and EXHIBITS submitted and presented in association with the Application.
- F2. That determinations regarding the following findings are also predicated upon satisfactory completion of the work and site improvements shown on the Plans in accordance with this Decision, as well as all applicable Federal, State and Local regulations, except where modified by this Decision.
- F3. That the Site is located in a Residential 20 (R-20) and located within the Flood Plain District as defined by Section 6.0 of the Grafton Zoning By-Law. The site is located within the Water Supply Overlay District. The site is approximately 0.16 acres in size.
- F4. The Applicant is proposing to build a 16 foot x 16 foot elevated deck off the back of his house. It will be supported by techno metal posts. The proposed deck will be approximately 6 feet off the ground. The plot plan submitted shows that approximately half of the proposed deck extends into the 100 year flood plain elevation of 307.20. However, the Applicant notes that the deck is elevated six feet above the flood plain elevation. (See EXHIBIT #1)
- F5. That the work described in FINDING #F4 is allowed in the R-20 zoning district. However, based on the requirements set out in Section 6 of the Grafton ZBL (Flood Plain District), the proposed work requires the issuance of a Special Permit by the Planning Board.
- F6. That during the public hearing the Board and the Applicant discussed flood storage capacity and the impacts the proposed deck may have. It was noted that, given the nature of the proposed deck and its footings that there would be little to no decrease in flood storage capacity.
- F7. The Board notes that the Applicant submitted information from the Grafton Conservation Commission (see EXHIBIT #1). The Commission had met on August 4, 2015 to review the proposed deck. The Commission voted to issue a negative determination which included conditions. A negative determination means that the Applicant does not need to proceed with a Notice of Intent.

- F8. The Board notes that the Board of Health submitted a Departmental Comment Form indicating that they had reviewed the Application (see EXHIBIT #2). The Board of Health stated that they had no comment.
- F9. The Board notes that the Zoning Board of Appeals submitted a Departmental Comment Form indicating that they had reviewed the Application (see EXHIBIT #3). It was noted that the site is located within the Water Supply Protection Overlay District.
- F10. No public input was submitted in written form or by verbal testimony at the public hearing.

At their meeting of [REDACTED] after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by [REDACTED], seconded by [REDACTED]) voted [REDACTED] to make the following Findings with regard to the specific issues listed in Section 1.3.3 and Section 3.2.2 of the ZBL:

- F11. That Section 1.3.3.2 of the ZBL requires that the procedure for Site Plan Review, as defined in the ZBL, be incorporated into the procedure for reviewing Special Permits. Section 1.3.3.3 of the ZBL defines the procedure for Site Plan Review, including a description of the plans and materials to be submitted to the Planning Board. The Board further finds that Section 1.3.3.4 of the ZBL allows an applicant to request waivers from certain requirements of the Site Plan Review procedure. No waivers were requested.
- F12. That with respect to the nature of this particular Application for an elevated deck with within a flood plain district as described within EXHIBIT #1 of this Decision, the resulting site plan, **is / is not** contradictory or inconsistent with the intent and purposes set forth in Sections 1.2 and 1.3.3.1 of the ZBL.

At their meeting of [REDACTED] after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by [REDACTED], seconded by [REDACTED]) voted [REDACTED] to make the following Findings with regard to the specific issues listed in Section 1.5.5 of the ZBL:

- F13. With regard to Section 1.5.5(a), that based on the Exhibits and the Findings stated within this Decision, ingress and egress to the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe, **is / is not** adequate. This is not applicable given the nature of the proposed project.
- F14. With regard to Section 1.5.5(b), that based on the Exhibits and the Findings stated within this Decision, that off-street parking is adequate. The Board further finds with regard to Section 1.5.5(b) that the economic, noise, glare, or odor effects of the special permit on adjoining properties and properties generally in the district **are / are not** satisfactory. This is not applicable given the nature of the proposed project.
- F15. With regard to Section 1.5.5(c), that based on the Exhibits and the Findings stated within this Decision, that refuse collection or disposal and service areas **are / are not** satisfactory. This is not applicable given the nature of the proposed project.
- F16. With regard to Section 1.5.5(d), that based on the Exhibits and Findings stated within this Decision, screening and buffering with reference to type, dimensions and character **are / are not** adequate.

- F17. With regard to Section 1.5.5(e), and based upon on the Exhibits and Findings stated within this Decision, signs and exterior lighting with reference to glare, traffic safety, economic effect **is / is not** compatible and in harmony with properties in the district. No signs are proposed as part of this Application.
- F18. With regard to Section 1.5.5(f), that based upon on the Exhibits and Findings stated within this Decision, the required yards and other open space requirements **are / are not** adequate.
- F19. With regard to Section 1.5.5(g), that based upon on the Exhibits and Findings stated within this Decision, that the proposed use of the facility **is / is not** generally compatible with adjacent properties and other properties in the district. Many of the surrounding properties have decks at the rear of their properties.
- F20. With regard to Section 1.5.5(h), that based upon on the Exhibits and the Findings stated within this Decision and upon satisfying and complying with all applicable requirements of the Massachusetts DEP, Grafton Water District, and all other applicable agencies, the proposed facility **will / will not** have any significant adverse impact on any public or private water supply.
- F21. With regard to Section 1.5.5(i), the Board finds that the site is located within the Water Supply Protection Overlay District. The Board further finds that based on the Exhibits and Findings stated within this Decision that there **will / will not** be any significant or cumulative impact upon municipal water supplies.
- F22. With regard to Section 1.5.5(j), that based upon on the Exhibits and the Findings stated within this Decision the Board finds that important historic, cultural and scenic landscapes **are / are not** protected.

At their meeting of [REDACTED] after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by [REDACTED], seconded by [REDACTED]) voted [REDACTED] to make the following Findings with regard to the specific issues listed in Section 6.4 of the ZBL:

- F23. With regard to Section 6.4(a), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the proposed use **does / does not** comply with the provisions of the underlying district.
- F24. With regard to Section 6.4(b), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that per the requirements of this section the Board of Heath responded “No Comment” on the Department Comment Form (see EXHIBIT #2). No reports were received from the Board of Selectmen, the Conservation Commission, the Building Inspector, or the Town Engineer. However, it is noted that the Applicant provided a copy of correspondence from the Conservation Commission noting that the Commission had made a negative determination for the proposed work and issued conditions for the project (see EXHIBIT #1).
- F25. With regard to Section 6.4(c), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that Applicant **did / did not** demonstrate that the encroachment **shall / shall not** result in any increase in flood levels during the occurrence of a one hundred (100) year flood. (see FINDING #F7)

- F26. With regard to Section 6.4(d)(1), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the requirement to satisfactorily demonstrate that the location and construction of utilities will minimize or eliminate flood damage is not applicable. No utilities are proposed (see EXHIBITS #1).
- F27. With regard to Section 6.4(d)(2), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the requirement for sewage, refuse and other waste disposal resulting from the use permitted on the site and for providing adequate drainage will minimize flood damage is not applicable in this particular case (see EXHIBITS #1).
- F28. With regard to Section 6.4(d)(3), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the Applicant **did / did not** demonstrate a good and sufficient case.
- F29. With regard to Section 6.4(d)(4), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that failure to grant the Special Permit **would / would not** result in exceptional hardship to the Applicant.
- F30. With regard to Section 6.4(d)(5), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the granting of the Special Permit **will / will not** result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws (see FINDING F# _____).
- F31. With regard to Section 6.4(d)(6), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that the work proposed in Special Permit **is / is not** for the minimum construction necessary, considering flood hazard, to avoid relief.
- F32. With regard to Section 6.4(e), that based upon on the Exhibits and Findings stated within this Decision, the Board finds that it **does / does not** require additional materials or conditions necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

III. DECISION AND CONDITIONS

At their meeting of _____ after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by _____, seconded by _____) voted ___-___ to **APPROVE / DENY** the Special Permit and Site Plan Approval with the following conditions:

- C1.** Unless modified by this Decision, the proposed elevated deck shall be constructed as shown on, and be maintained to conform to, the plans identified within EXHIBIT #1 this Decision.
- C2.** All other applicable Federal, State or Local permits and approvals for the proposed use shall be secured by the Applicant at the appropriate time, and copies of all pertinent documents regarding said permits and approvals shall be filed with the Planning Board in a timely manner.
- C3.** Construction of the improvements shown on the Plans approved as part of this Decision is subject to approval by the Grafton Conservation Commission. If such Order of Conditions and/or permits require substantial modifications to any of the plans approved by the Planning Board, the Board may, upon its determination, require a modification of this Decision if it finds that the proposed

changes are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision.

- C4. As stated in Section 1.5.8 of the Grafton Zoning By-law, this Special Permit and Site Plan Approval shall lapse one (1) year after the date of granting if substantial use, or construction, has not been commenced except in accordance with law.
- C5. Failure to comply with the requirements of Section 1.5 of the Grafton Zoning By-law (or as modified by this Decision), as well as all applicable Federal, State and local regulations, shall cause this Special Permit to be invalid.
- C6. This Decision shall be recorded at the Worcester District Registry of Deeds within thirty (30) days following the expiration of the appeal period.
- C7. A copy of such recorded Decision, including Deed Book and Page Number shall be submitted to the Planning Board office within thirty (30) days of recording. By recording this Decision in the Worcester Registry of Deeds, the applicant agrees to and accepts the conditions set forth in this Decision.

IV. RECORD OF VOTE

Constituting a majority of the Planning Board, the following members voted **___** to **APPROVE / DENY** the Applicant's Application to Construct and Elevated Deck within a Flood Plain with Conditions based on the information received at the public hearing and the aforementioned findings.

<u>Sargon Hanna, Chairman</u>	AYE / NAY	<u>Linda Hassinger, Member</u>	AYE / NAY
<u>Michael Scully, Vice Chairman</u>	AYE / NAY	<u>David Robbins, Member</u>	AYE / NAY
<u>Robert Hassinger, Clerk</u>	AYE / NAY		

DATE OF FILING OF DECISION: BY ORDER OF THE BOARD

Joseph Laydon, Town Planner

Date

- cc: Applicant
- Owner
 - Building Inspector
 - Conservation Commission
 - Zoning Board of Appeals

To Whom It May Concern: This is to certify that the 20 day appeal period has passed and there have been no appeals made to this office.

Donna Girourd, Town Clerk

Date
DRAFT – 2/4/16