

**DECISION  
GRAFTON PLANNING BOARD**

**SPECIAL PERMIT (SP 2016-11) & SITE PLAN APPROVAL  
Accessory Apartment  
56 Fitzpatrick Road, Grafton, MA**

**Layth Alkhadady (Applicant/ Owner)**

RECEIVED TOWN CLERK  
GRAFTON, MA  
2016 SEP 15 AM 11 15  
29

Decision of the Grafton Planning Board (hereinafter the BOARD) on the petition of Layth Alkhadady, 56 Fitzpatrick Road, Grafton (herein after the APPLICANT / OWNER) for a Special Permit and Site Plan Approval for an Accessory Apartment, on property located at 56 Fitzpatrick Road, Grafton, shown as Grafton Assessor's Map 88, Lot 9, (hereinafter the SITE) by deed recorded in the Worcester Registry of Deeds Book 55760, Page 18.

**I. BACKGROUND**

The application for the above referenced Special Permit and Site Plan Approval (hereinafter Application) was submitted on July 22, 2016. The public hearing on the Application was held on August 29, 2016. Notice of the public hearing and the subject matter thereof was published in the Grafton News on August 11 and August 18, 2016, and posted with the Town Clerk's Office. Abutters were notified by First Class Mail.

The following Board members were present throughout the public hearing: Chairman Michael Scully, Vice Chairman Robert Hassinger, Clerk David Robbins, Members Linda Hassinger and Tracy Lovvorn. At the hearing, Layth Alkhadady (Applicant / Owner) presented the Application to the Board. At the public hearing, all those wishing to speak to the petition were heard. Following public input the hearing was closed on August 29, 2016.

**II. SUBMITTALS**

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

**EXHIBIT 1.** Unbound application materials submitted by the Applicant / Owner, received July 22, 2016; includes the following:

- Application for Special Permit; dated July 20, 2016, 1 page.
- Application for Site Plan Approval; dated July 20, 2016, 1 page.
- Correspondence; Re: Accessory Apartment, dated July 20, 2016; 1 page.
- List of Requested Waivers; no date; 1 page.
- Certificate of Good Standing; dated by the Treasurer/Collector's Office on July 1, 2016; 1 page.
- Certified Abutters list; signed by the Assessor's Office Manager on July 1, 2016; 2 pages.
- Town of Grafton GIS Map - Locus Plan; 8 ½" X 11"; color; dated July 22, 2016; 1 page.
- Town of Grafton GIS Map of Property; 8 ½" X 11"; color; dated May 10, 2016; 1 page.

- Floor Plans, Al Khadady Residence, 56 Fitzpatrick Road, Grafton, MA, prepared by Gallant Architecture, dated July 22, 2016; 11” x 17”, black & white; 2 sheets.
  - Existing Conditions Photos; 11” x 17”, color; no date; 1 page.
- EXHIBIT 2.** Email Correspondence; Re: SP 2016-11: Accessory Apartment – 56 Fitzpatrick Road; from Katrina Koshivos, Zoning Board of Appeals; dated and received August 1, 2016; 1 page.
- EXHIBIT 3.** Email Correspondence; Re: SP 2016-11: Accessory Apartment – 56 Fitzpatrick Road; from Nancy Connors, Board of Health; dated and received August 3, 2016; 1 page.
- EXHIBIT 4.** Public Hearing Notice, stamped received by the Town Clerk’s Office on August 9, 2016; 1 page.
- EXHIBIT 5.** Public Hearing Sign In Sheet for the August 29, 2016 hearing, 1 page.

### **III. FINDINGS**

At their meeting of September 12, 2016 after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion Mr. Robbins, seconded by Mr. Hassinger) voted 5-0 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 Applications.
- F2.)** That this Application is for an accessory apartment on the Site as defined in Section 2.1 and Section 3.2.3.1 (Accessory Uses) of the Grafton Zoning By-law (hereinafter ZBL), and as shown on the plans identified in EXHIBIT #1 of this Decision.
- F3.)** That the Site is located in the Low Density Residential (R40) zoning district. The Board further finds that accessory apartments are permitted in an R40 zoning district only upon the issuance of a Special Permit by the Planning Board. The site is located within the Water Supply Protection Overlay District (WSPOD).
- F4.)** That determinations regarding the following Findings are also predicated upon the maintenance of the Site in accordance with this Decision, as well as all applicable Federal, State and Local regulations, except where modified by this Decision.
- F5.)** The Board notes that it received a project review memorandum from the Zoning Board of Appeals (EXHIBIT #2) which noted that the property is located within the Water Supply Protection Overlay District. The Board notes that this information was included on the Application forms.
- F6.)** The Board notes that it received a project review memorandum from the Board of Health (EXHIBIT #3) which noted the following: “Applicant needs to get an engineer to attest that the existing septic will be in conformance with current Title 5 standards for sizing of system based on 12 total proposed rooms in house. This department feels that the system design should accommodate 6 bedrooms based on the definition of bedroom per 310 CMR 15.002.”

- F7.)** That during the public hearing the Applicant / Owner presented the application to the Board. He noted that the existing accessory apartment over the garage when he purchased the property. No proposed changes to the existing structure (house or garage) are proposed. The existing apartment includes a bedroom / living area, kitchen and bathroom located above the existing garage with access from the garage. He is proposing to reconfigure the apartment to convert the garage into the kitchen and living area and to repurpose the second floor into a bedroom with the existing bathroom. There are three points of access – one into the existing house from the garage and two to the exterior. No changes are proposed to the entrances / exits. Mr. Alkhadady noted that he would be occupying the accessory unit and his sister and her family would be occupying the main house. (See EXHIBIT #1)
- F8.)** That during the public hearing, the Planning Board informed the Applicant that previously issued special permits for accessory apartments typically included a condition that limited occupancy of such apartments only to family members. The Board finds that the Applicant acknowledged this condition.
- F9.)** That during the public hearing the Board received testimony from Thomas Tassinari, of 54 Fitzpatrick, Road. He noted his support for the family-only accessory apartment, while expressing his concern with the neighborhood becoming open to rental property. He also noted that the applicant had issues with the septic system in the past. The Applicant noted have been since resolved. Mr. Tassinari added that himself and the adjacent neighbor, Mr. Holmes of 58 Fitzpatrick Road, who couldn't be in attendance, are in support of the family accessory apartment.
- F10.)** That during the public hearing the Board and the Applicant discussed the issue of the septic system as outlined by the Board of Health (see EXHIBIT #3). Town Planner, Joe Laydon, noted that Town staff had discussed the issue at a Technical Review meeting which included the office manager for the Board of Health who submitted the comments. There had been a miscalculation of number of bedrooms and an assumption was made that the Applicant was adding additional bedrooms. It was clarified that no additional bedrooms were being created but that the existing space below the garage was being reconfigured into the kitchen / living area. The bedroom on above the garage has been in place for a number of years and is not a new bedroom. Mr. Laydon noted that the Board of Health would revisit the bedroom count for the purposes of sizing of the septic system. The Board noted that the Title 5 issues are the purview of others. Any issues would have to be addressed as part of processes and regulations set by others.

At their meeting of September 12, 2016 after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion Mr. Robbins, seconded by Mr. Hassinger) voted 5-0 to make the following Findings:

- F11.)** With regard to Section 1.5.5(a) of the ZBL, that based upon the Findings stated within this Decision, ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe, are adequate. No changes to the existing site layout or expansion of the existing footprint are proposed.

- F12.)** With regard to Section 1.5.5(b) of the ZBL, that based upon the Findings stated within this Decision, off-street parking and loading areas where required, and the economic, noise, glare, or odor effects of the Special Permit on adjoining properties and properties generally in the district are satisfactory. The proposed apartment is located within an existing single family house in a residential neighborhood. No changes to the exterior of the building are proposed.
- F13.)** With regard to Section 1.5.5(c) of the ZBL, that based upon the Findings stated within this Decision, refuse collection or disposal and service areas are satisfactory. Given the nature of application no changes to the existing refuse collection are required.
- F14.)** With regard to Section 1.5.5(d) of the ZBL, that based upon the Findings stated within this Decision, screening and buffering with reference to type, dimensions and character are adequate. No changes to the existing site layout or expansion of the existing footprint are proposed.
- F15.)** With regard to Section 1.5.5(e) of the ZBL, that based upon the Findings stated within this Decision, signs and exterior lighting with reference to glare, traffic safety, economic effect is compatible and in harmony with properties in the district. The proposed apartment is located within an existing single family house in a residential neighborhood. No changes to the exterior of the building are proposed.
- F16.)** With regard to Section 1.5.5(f) of the ZBL, that based upon the Findings stated within this Decision, the required yards and other open space requirements are adequate. The proposed apartment is located within an existing structure and no expansion of the existing footprint is proposed.
- F17.)** With regard to Section 1.5.5(g) of the ZBL, that the proposed accessory apartment use (as presented in the EXHIBITS stated within this Decision and by the Applicant during the public hearing) is generally compatible with adjacent properties and properties in the district. The proposed apartment is located within an existing single family house in a residential neighborhood. No changes to the exterior of the building or existing site layout are proposed.
- F18.)** With regard to Section 1.5.5(h) of the ZBL, that upon satisfying and complying with all applicable Board of Health requirements, and based upon the Findings stated within this Decision, there will not be any significant adverse impact on any public or private water supply. The Board finds that the issues identified by the Board of Health (EXHIBIT #3) were adequately addressed during the public hearing (see FINDING #F6).
- F19.)** With regard to Section 1.5.5(i) of the ZBL, that upon satisfying and complying with all applicable Board of Health requirements, and based upon the Findings stated within this Decision, there will not be any significant or cumulative impact upon municipal water supplies. The site is located within the Water Supply Protection Overlay District. However, no changes to the exterior of the building or expansion of the footprint is proposed
- F20.)** With regard to Section 1.5.5(j) of the ZBL, that based upon the Findings stated within this Decision, protection of important historic, cultural and scenic landscapes with regard to the proposed development is satisfactory. No changes to the exterior of the building or expansion of the footprint is proposed.

At their meeting of September 12, 2016 after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion Mr. Robbins, seconded by Mr. Hassinger) voted 5-0 to make the following Findings:

- F21.) That Section 1.3.3.2 of the ZBL requires that the procedure for the Site Plan Review, as defined in the ZBL, be incorporated into the procedure for reviewing Special Permits.
- F22.) That 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.
- F23.) The Board 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. The Board finds that the Applicant submitted waiver requests from Section 1.3.3 of the Grafton Zoning By-Law (see EXHIBIT #1).
- F24.) That the Application as described within the Exhibits of this Decision, the waivers requested, and the resulting site plan, are not contradictory or inconsistent with the intent and purposes set forth in Section 1.3.3.1 of the ZBL.

#### IV. WAIVERS

W1. At their meeting of September 12, 2016 after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion Mr. Robbins, seconded by Mr. Hassinger) voted 5-0 to **GRANT** the Applicant's request for waivers from the following requirements of **Section 1.3.3.3 (d) Site Plan Requirements** of the ZBL with regard to preparing site plans, for the reasons stated within the Findings of this Decision:

- (10.) Wetlands, ponds, streams, water bodies
- (12.) Existing and proposed topography at two-foot elevation intervals
- (14.) Extent and type of all existing and proposed surfaces
- (15.) Lot coverage
- (16.) Parking calculations
- (17.) Volume of Earth Material
- (19.) Parking and loading spaces
- (20.) Service areas and all facilities for screening
- (21.) Landscaping
- (22.) Lighting
- (23.) Proposed signs
- (25.) Stormwater Management facilities
- (27.) Exterior storage and fences
- (29.) Dust and erosion control
- (30.) Existing vegetation

The Planning Board specifically noted that voting to grant the Waiver was based on the size and scope of the project as well as the absence of specific concerns raised during the public hearing.

#### **IV. DECISION and CONDITIONS**

At their meeting of September 12, 2016 after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion Mr. Robbins, seconded by Mr. Hassinger) voted 5-0 to **APPROVE** the application for a Special Permit and Site Plan Approval with the following conditions:

- C1.) This Special Permit and Site Plan Approval is granted specifically to the Applicant for property located at 56 Fitzpatrick Road, Grafton (as identified within this Decision). Based on FINDING #F8 this Special Permit is granted to the Owner, as identified within this Decision, and does not run with the land. Once the Owner sells the property, the new owner will be required to make application to the Board to use the space as an accessory apartment.
- C2.) Based on FINDING #F7, the accessory apartment is to be occupied by family members of the property owners (OWNER/APPLICANT) only.
- C3.) The unit may not be occupied by non-family members if, in the future, the unit is vacated. If the unit is vacated then the use of the property reverts back to single family house and the accessory unit ceases to qualify as a separate living unit.
- C4.) This Special Permit decision shall be recorded at the Worcester District Registry of Deeds within thirty (30) days following the expiration of the appeal period. A copy of such recorded Special Permit decision, including Deed Book and Page Number shall be submitted to the Planning Board office within thirty (30) days of recording.
- C5.) By recording this Special Permit Decision in the Worcester Registry of Deeds, the applicant agrees to and accepts the conditions set forth in this Special Permit decision.
- C6.) In accordance with Section 1.5.8 of the ZBL, this Special Permit shall lapse within one (1) year from the date of the expiration of the appeal period if substantial use has not commenced except in accordance with the law. Any request for an extension of said period of validity shall be considered a Modification of this Special Permit, and such request shall be filed and reviewed in accordance with the procedure specified in Section 1.5 of the ZBL.
- C7.) Any modification to the use or Site as described within this Decision and as presented to the Board during the public meeting and in the above referenced EXHIBITS shall require, prior to implementing such change, a determination from the Planning Board as to whether the proposed change is substantially different than presented in the materials and information used in making this Decision. The Planning Board reserves the right to solicit comments from other Town boards, departments and committees, as well as its consulting engineer, in making determinations regarding such changes. The Planning Board may, upon its determination, require a modification of this Decision (or other approvals if deemed necessary) if it finds that the proposed change(s) are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision. Any Modification of this Decision shall be made pursuant to Section 1.3.3 of the Zoning By-law, and any other applicable regulations.

**V. RECORD OF VOTE**

Constituting a majority of the Planning Board, the following members voted 5-0 to **APPROVE** the Special Permit & Site Plan Approval Application with Conditions for an accessory apartment at 56 Fitzpatrick Road, Grafton based on the information received at the public hearing and the aforementioned findings.

<u>Michael Scully, Chairman</u>	<u>AYE</u>	<u>Linda Hassinger, Member</u>	<u>AYE</u>
<u>Robert Hassinger, Vice Chairman</u>	<u>AYE</u>	<u>Tracy Lovvorn, Member</u>	<u>AYE</u>
<u>David Robbins, Clerk</u>	<u>AYE</u>		

**DATE OF FILING OF DECISION: BY ORDER OF THE BOARD**

  
\_\_\_\_\_  
Joseph Laydon, Town Planner

9-15-2016  
\_\_\_\_\_  
Date

- cc: Applicant / Owner
- Building Inspector
  - Assessor

**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 Girouard, Town Clerk

\_\_\_\_\_  
Date

