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December 10, 2020

**Planning Board
Grafton, MA**

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MEMORANDUM

To: Chairman Hassinger and Members of the Town of Grafton Planning Board
From: A. Eli Leino on behalf of Stanley and Lisa McGriff, Applicants
Date: December 10, 2020
Regarding: Requested Waiver and Public Benefit – 11 Wheeler Road Subdivision

Mr. Chairman and Members of the Planning Board:

As you know, the Applicants have requested a waiver from the “Alignment” requirement of the Town’s “Rules and Regulations Governing the Subdivision of Land” (the “Subdivision Rules”). Significant time has been afforded during both the preliminary and definitive subdivision application hearings attempting to quantify what the Applicants should provide in exchange for the requested waiver and how such a proposal would benefit the public interest. Following continued conversations with the Grafton Land Trust, Mr. and Mrs. McGriff are prepared to provide significant restoration to the portion of trail network abutting 11 Wheeler Road, or in the alternative, donate \$13,000.00 to the Land Trust to be best used as determined by the recipient.

THE REQUESTED WAIVER

Per Section 6.1.1 (Waivers) of the Subdivision Rules:

- a) Strict compliance with the requirements of these Rules and Regulations may be waived when in the judgment of the Board such action is in the public interest and not inconsistent with the Subdivision Control Law (M.G.L. Ch. 41 §81M) and with the purpose(s) and intent(s) of these Regulations.
- b) Any such waiver must be made in writing by the Board as a part of its approval or amendment thereof; otherwise all requirements contained herein are deemed applicable.

As is required, the Applicants submitted a written Request for Subdivision Waivers dated April 23, 2019 and received by the Town on June 5, 2019 as part of the application package. From the Waiver Request:

§ 4.1.3 - Alignment

§4.1.3.6

Street shall be laid out so as to intersect with adjacent street or adjacent unsubdivided land at intervals of from six hundred feet (600') to twelve hundred feet (1,200'). In special instances the Planning Board may approve a right-of-way for a future street to remain in fee ownership of the applicant, in lieu of actual construction of a cross street.

The applicant requests a waiver from this requirement as the existing property is located within six hundred feet (600') of both Worcester Street (Route 140) and Meadow Lane. Although the requirement of this section cannot be met, the proposed roadway has been placed in a location that is generally equidistant for each existing adjacent road while also providing adequate sight distance in both directions along Wheeler Road.

During the course of preliminary subdivision hearings, Vice-Chairman Robbins led discussions on the purpose of the “Alignment” regulation and further disclosed that a clear legislative history and intent of the prescribed alignment distances is not readily available in the public record. With the dearth of additional information, no compelling reason to strictly prohibit waivers on this particular provision exists, and the Board may consider granting the requested waiver. Planning boards may “waive strict compliance with their own subdivision rules and regulations ‘where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law.’” Conway v. Planning Bd. of Westford, Misc. 16-000570 (Mass. App. Ct. (2020)) (citing M.G.L. c. 41, § 81R).

BENEFIT TO THE PUBLIC INTEREST

With the understanding that a waiver request requires an offset in the public’s interest, the Applicants have held continuous discussions with the Grafton Land Trust through its president Rob Aberg. As part of its mission, the Grafton Land Trust aims to “maintain open space in the town of Grafton” and “create and maintain trails on select properties for public use.” (<http://graftonland.org>, “Mission”). The land abutting the rear of the 11 Wheeler Road property is owned by the Land Trust and is maintained as a public recreation trail. With the expectation that home owners in the new subdivision would also enjoy the use of the trail network, the Applicants believe there is an opportunity to help the Land Trust as it continues its mission of public benefit.

Consideration of the benefit provided by a donation to the Land Trust, merits evaluation of the legal standard of review regarding the Board’s broad latitude in determining such waivers. The Supreme Judicial Court summarized the matter thusly:

“The board’s determination whether a particular waiver is in ‘the public interest’ involves a large measure of discretion, and if ‘reasonable minds might in good faith differ, without doubting the reasonableness of the opposing view, the conclusion reached by the planning board should be sustained on judicial review. For it is the board, not the court, to whom the statute delegates the discretion, and the role of the court is merely to ascertain whether the board exceeded its authority.” Krafchuk v. Planning Board of Ipswich, 453 Mass. 517, 529 (2009).

One additional consideration is the sufficiency of off-sight improvements or monetary contributions vis-à-vis public benefit. In Conway v. Planning Bd. of Westford, the court upheld sidewalk waivers granted in exchange for either a payment to the town’s “Sidewalk Gift Account” or reconstruction of certain portion of sidewalk at a location selected by the town. This confirmation of the adequacy of the public benefit corresponds with the broad discretion afforded planning boards on the matter of granting waivers.

CONCLUSION

The Grafton Planning Board has broad discretion to grant waivers from a strict application of the Subdivision Rules. The Applicants have complied with the written submission requirement. The proposed waiver would not contravene the Subdivision Control Act which is silent on the provision from which a waiver is sought. Through the course of numerous hearings, it is undisputed that the Grafton Land Trust provides a public benefit to the residents of Grafton. A contribution of either site work or money by the Applicants to the Grafton Land Trust (in whichever form the Land Trust and Planning Board would prefer), will further the publically beneficial mission of the Land Trust and therefore warrants the granting of the waiver under section 6.1.1 of the Subdivision Rules.