

# DECISION

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GRAFTON, MA

## GRAFTON PLANNING BOARD SPECIAL PERMIT (SP 2019-2) & SITE PLAN APPROVAL 2022 APR 12 1 PM 5: 41 REMANDED BY APPEAL

### Multi-Family Dwellings

41 Church and 14 West Streets  
David W. Brossi (Applicant)  
David W. Brossi and Brigati Village, LLC (Owner)

Decision of the Planning Board of the Town of Grafton, Massachusetts (hereinafter the BOARD) for reconsideration of the petition of David W. Brossi, 15 Juniper Lane, Grafton, MA 01519 (hereinafter the Applicant) for Special Permit & Site Plan Approval (SP 2019-2) for multi-family dwellings on property located at 41 Church and 14 West Streets, Grafton, MA, and shown as Grafton Assessor's Map 74, Lots 33 and 30, owned by David Brossi, and Brigati Village, LLC, by deed recorded in the Worcester District Registry of Deeds: Book 55774, Page 378; and Book 91, Page 97. This reconsideration is made pursuant to the remand ordered by the Commonwealth of Massachusetts Land Court Department of the Trial Court dated December 9, 2021 (19 MISC 000551 (MDV)).

### I. BACKGROUND

The remand of the Planning Board's Decision regarding Special Permit and Site Plan Approval (hereinafter Application) was ordered by the Court by decision dated December 9, 2021. Pursuant to the Court's decision and Order, a public hearing on the Application was opened on February 7, 2022 and continued to February 28, 2022. Notice of the public hearing and the subject matter thereof was published in the Worcester Telegram & Gazette on January 19 and 26, 2022, 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 David Robbins, Vice Chairman Justin Wood, Clerk Linda Hassinger, Members Robert Hassinger and Prabhu Venkataraman, and Associate Member Maura McCormack. At the public hearing, the Board voted unanimously to proceed on the information included within the existing record and not to accept new information. The hearing was closed on February 28, 2021.

### II. PROJECT HISTORY AND OVERVIEW

This Remand Decision represents reconsideration of the Special Permit and Site Plan Approval application (SP 2019-2) for 41 Church and 14 West Streets. This remand deals specifically with an order issued by the Court to reconsider the Applicant's request for a waiver from Section 4.7.6.3 of the Grafton Zoning Bylaw as set forth in W5 of the Board's Decision (2019-2) dated October 21, 2019. The Board's proceedings and this Decision are therefore limited to that issue.

The permitting history of this site for this use includes:

1. Application for Special Permit (SP 2019-2) and Site Plan Approval - *Denied October 21, 2019* – for the construction of eleven, two-story residential multifamily, town house-style buildings containing three to six units for a total of 57 two-bedroom market rate rental units.

### III. SUBMITTALS

The following items were submitted to the Board for its consideration in these remand proceedings:

- EXHIBIT 1.** Public Hearing Legal Notice, Grafton Planning Board; Town Clerk Stamp on January 19, 2022; 1 page.
- EXHIBIT 2.** Public Hearing Continuance Request, signed by John F. Del Prete, Jr., Law Offices of John F. Del Prete, Jr., P.C., 971 Concord Street #4, Framingham, MA 01701. dated January 14, 2022, 1 page.
- EXHIBIT 3.** Findings of Fact and Conclusions of Law (Rule 52, Mass. R. Civ. P.), Commonwealth of Massachusetts Land Court Department of the Trial Court (19 MISC 000551 (MDV)), dated December 9, 2021, 19 pages.

### **III. FINDINGS**

At their meeting of March 28, 2022, 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 Robert Hassinger, seconded by Linda Hassinger, voted five (5) in favor and zero (0) opposed 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.)** The remand of the Planning Board's Decision regarding Special Permit and Site Plan Approval (2019-2) was ordered by the Commonwealth of Massachusetts Land Court Department of the Trial Court by decision dated December 9, 2021, specifically to reconsider the waiver request from Section 4.1.6.3 of the Grafton Subdivision Rules and Regulations as provided in W5 of the Grafton Planning Board's Decision dated October 21, 2019.
- F3.)** That during the public hearing the Board voted unanimously to proceed on the information included within the existing record and not to accept new information. The hearing was closed on February 28, 2021.
- F4.)** That the provided plans show the total length of Drive "B" is in excess of 500 feet with a total length of 1,052.8 feet from West Street.
- F5.)** That during the public meeting of March 14, 2022, the Board deliberated on the Remand Order (Exhibit 3) and Planning Board's Decision (2019-2), dated October 21, 2019, specifically regarding the waiver request from Section 4.1.6.3 of the Grafton Subdivision Rules and Regulations as provided in W5 of the abovementioned Decision. Specific points of deliberation included the following:
- a. That the Court identified a prior waiver this Board granted in 2003 in its decision regarding the Hillview Estate I development (WDRD: 31235/319), but the membership makeup of the Board has changed since 2003. The Board's 2019 Decision in this case thus reflects the rationale and interpretations of a different Board membership than the Hillview Estate I membership. The membership makeup of the Board has not changed from its 2019 Decision date to present. This point is a key feature in that the Board's interpretation of "a substantial public or conservation benefit to be achieved" (SRR 4.1.6.4) is not the same as it was in 2003.

- b. That the application proposal for Special Permit and Site Plan Approval (SP 2019-2) is both unique and distinguishable from the cited Planning Board Decision regarding Hillview Estates I in a number of respects including, but not limited to:

- i. In consideration of the waiver request for Hillside I, the Board cited mitigation proposed by the Applicant including the turn-around areas at the end of the driveways serving the multi-family buildings and the access driveway constructed of grass pavers between the upper and lower driveways serving the buildings on the westerly side of the Site. The Board also noted comments from the Grafton Fire Department in voting the request. In consideration of the waiver request for Brigati Village, the Board cites no such mitigation as proposed and lacks a recommendation from the Fire Department.

The Board concurs with the Court's citation of Section 1.5.6 of the By-Law where "the Board is to deem the reviewer as having no objection to the application", however, the Board contends that "lack of opposition" does not constitute support of a proposal and that, lacking a clear recommendation from the Fire Department, the Board still reserves the right to form its own rationale with regard to adequate safety. Further, the Board contends that even if a recommendation of support had been furnished by the Fire Department, the Board would still retain the right to render denial, even if perilous to do so, as it is the Board's responsibility alone to weigh the project and associated waivers as a whole and interpret the extent of "adequate safety" and "a substantial public or conservation benefit to be achieved".

- ii. The Proposed Street/Access Drive layout and provision of alternative emergency vehicle access is different here than it was in Hillview Estates I. There, Juniper Lane runs parallel to Route 122, making a large portion of the Hillview I units accessible from a major thoroughfare; only 26 units are located in the interior of the site. By contrast, the Brigati Village proposal places all of the 57 proposed units on the interior of the site, and the access drive is located on a preexisting dead-end street already approximately 300' in length with no feasible opportunity for alternative access.
- iii. As acknowledged in the Court's remand order, the proposed length of roadway for which the waiver is requested for Brigati Village (SP 2019-2) is substantially greater than it was for Hillview Estates I. Moreover, the Board finds that the prior approval of a waiver request does not obligate the Board to grant subsequent waiver requests, regardless of similarity. The Board acknowledges the Court's suggestion that inclusion of additional narrative within the findings of the Decision surrounding deliberation on how the current proposal differed from previous approval's would have provided additional clarity within the formal record.
- iv. Differences in site characteristics between Hillview Estate I and Brigati Village (including lot area, topography, proposed building coverage, impervious surface, provision of open space, etc.)
- c. That the length of allowable dead-end streets via waiver is of consideration for providing adequate 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. The Board notes particular concern regarding automotive and pedestrian safety and access in case of fire or catastrophe.

- d. That the length of allowable dead-end streets via waiver is of consideration for limiting the number of units which could be potentially cutoff from the public road network in the case such access is rendered impassible or unsafe (flooding, obstruction, damage, etc.).
- e. That the length of allowable dead-end streets via waiver is a key planning principle for ensuring appropriate overall roadway network layout and development, having considerable impact on the future layout and potential roadway network. The Board notes that Nottingham Road, which serves an abutting multi-family development, might be a reasonable connection.

**F6.)** Upon reconsideration and in accordance with Section 5.3.14 of the ZBL, the Planning Board found that the proposed roadway design **does not** serve the interests of good design and determined that adequate access **will not** be provided to all lots in the development by ways that will be safe and convenient for travel.

**F7.)** Upon reconsideration and in accordance with Section 4.1.6.1 of the Grafton Subdivision Rules and Regulations, the Board **did not find** that the proposed dead-end street creates frontage for lots in excess of minimum area requirements of the Zoning By-Law and which are served by minor streets or common driveways.

At their meeting of March 28, 2022, 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 Robert Hassinger, seconded by Linda Hassinger, voted four (4) in favor and one (1) opposed to make the following Findings:

**F8.)** Upon reconsideration and in accordance with Section 4.1.6.4 of the Grafton Subdivision Rules and Regulations the Board **did not find** that there is a substantial public or conservation benefit to be achieved by granting of the waiver. The Applicant has proposed forgoing access from Church Street as a proposed public or conservation benefit due to the reduction in site clearing and impervious surface that would be required. The Board found this suggested benefit **did not** constitute a substantial public or conservation benefit.

At their meeting of March 28, 2022, 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 Robert Hassinger, seconded by Linda Hassinger, voted five (5) in favor and zero (0) opposed to make the following Findings:

**F9.)** That it is the responsibility of the applicant to propose considerations of public or conservation benefit. The Applicant has, to date, not proposed for the Planning Board's consideration a substantial public or conservation benefit to be achieved by granting of the waiver..

#### **IV DECISION**

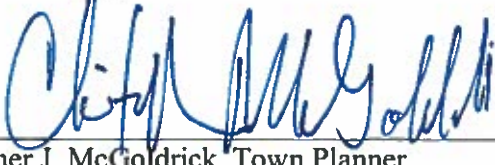
At their meeting of March 28, 2022, after due consideration of the EXHIBITS submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Robert

Hassinger, seconded by Linda Hassinger, voted four (4) in favor and one (1) opposed to **DENY** the Applicant's request for a waiver from the requirements of Section 4.1.6.3 – Dead-end streets.

**V. RECORD OF VOTE**

<u>David Robbins, Chairman</u>	<u>AYE</u>	<u>Robert Hassinger, Member</u>	<u>AYE</u>
<u>Justin Wood, Vice Chairman</u>	<u>NAY</u>	<u>Prabhu Venkataraman, Member</u>	<u>AYE</u>
<u>Linda Hassinger, Clerk</u>	<u>AYE</u>	<u>Maura McCormack, Assoc. Member</u>	<u>AYE</u>

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



Christopher J. McGoldrick, Town Planner

4/12/2022

Date

- cc: Applicant / Owner
- Building Inspector
  - Assessor
  - Board of Health
  - Conservation Commission
  - Graves Engineering

**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.

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Kandy Lavallee, Town Clerk

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Date