

**DECISION
GRAFTON PLANNING BOARD**

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**MINOR RESIDENTIAL SPECIAL PERMIT (SP 2018-13)
FLEXIBLE DEVELOPMENT SPECIAL PERMIT**

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**71, 73, 73S Potter Hill Road
Spinney Properties, LLC (Applicant/Owner)**

Decision of the Grafton Planning Board (hereinafter the Board) on the petition of Bruce & Elizabeth Spinney of Spinney Properties, LLC (hereinafter the Applicant), for a Flexible Development Special Permit (SP 2018-13) for a Minor Residential Development on property located at 71, 73 & 73S Potter Hill Road, and shown as Grafton Assessor's Map 71, Lots 2B, 2C & 102B (hereinafter the Site), and owned by Bruce & Elizabeth Spinney of Spinney Properties, LLC by deed recorded in the Worcester District Registry of Deeds (WDRD) in Book 53258, Page 142 & Book 56518, Page 344.

I. BACKGROUND

The above referenced Application for a Flexible Development Special Permit Approval (hereinafter Application) was submitted on October 10, 2018. Notice of the public hearing and the subject matter thereof was published in the Grafton News on October 19 & 26, 2018, posted with the Town Clerk's Office on October 12, 2018 and abutters were notified by First Class Mail. The public hearing on the Application was opened on November 5, 2018, at which time all those wishing to speak to the petition were heard and following public input the hearing was closed on November 5, 2018.

The following Board members were present throughout the public hearing: Chairman Robert Hassinger, Vice Chairman Linda Hassinger, Clerk Sharon Carroll-Tidman, Members David Robbins and Michael Scully and Associate Member Paul Monroe. At the hearing, Bruce Spinney (Applicant/Owner) presented the application to the Board.

II. SUBMITTALS

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

1. Unbound application packet submitted by the Applicant on October 10, 201; to include the following:
 - Application for Special Permit dated August 7, 2018, 1 page.
 - Certificate of Good Standing, signed by Treasurer/Collector's office on October 9, 2018, 1 page.
 - Certified Abutters List dated August 27, 2018, 1 page.
 - Project Narrative prepared by WDA Design Group, dated August 17, 2018, 2 pages.
2. Plans prepared by WDA Design Group, entitled "Existing Conditions Plan, 71-73 Potter Hill Road", last revision date August 17, 2018, 24" x 36", black & white, 3 sheets as follows:
 - Sheet C1.00: Existing Conditions
 - Sheet C2.00: Conventional Development Plan
 - Sheet C3.00: Minor Flexible Development Plan
3. Public Hearing Notice, stamped by Town Clerk's office on October 12, 2018, 1 page.

4. Email Correspondence from Police Chief, Re: Potter Hill Road - Spinney Properties, LLC - Flexible Development, dated/received October 15, 2018.
5. Email Correspondence from Board of Health, Re: SP 2018-13, dated October 22, 2018, received October 23, 2018, 1 page.
6. Email Correspondence from Zoning Board of Appeals, Re: Potter Hill Road – Spinney Properties, LLC – Flexible Development, dated/received October 25, 2018, 1 page.

III. FINDINGS

At their meeting of November 19, 2018 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 Mr. Scully, seconded by Ms. Carroll-Tidman) voted 5-0 in favor to make the following Findings:

1. That this Application is for a Flexible Development Special Permit of a Minor Residential Development as defined in the Grafton Zoning Bylaws (hereinafter ZBL) Section 2.1.
2. That this Application for a Flexible Development was submitted pursuant to Section 5.3.3.b of the ZBL voluntarily.
3. The Board finds that since the application for a Flexible Development was submitted at the Applicant's option and that there is no requirement for the proposed development to receive special permit approval as a Major Residential Development, the Board is not required to provide its opinion of its preference between the Flexible Development Plan or the Conventional Development Plan. The Board further finds that the Conventional Development Plan does not require Planning Board approval and could approved by right with the endorsement of an Approval Not Required Plan.
4. That per ZBL Section 3.2.3.1, the allowance for a Flexible Development is authorized with the issuance of a Special Permit within the Low Density Residential (R-40) zoning district by the Planning Board in accordance with Sections 1.5 and 5.3 of the ZBL.
5. That determinations regarding the following Findings are based upon the plans identified in this Decision, as well as the information and materials submitted and presented in association with the Application and are also predicated upon satisfying all of the conditions stated within this Decision.
6. That the Site is located in the Low Density Residential (R-40) zoning district, as shown on that Plans and identified within the Exhibits of this Decision.
7. That the Applicant submitted a Conventional Development Plan (see Exhibit #2) which depicts a total of three (3) building lots and a Flexible Development Plan that shows three (3) building lots and one Open Space lot for a total of four (4) lots.
8. That determinations regarding the following Findings are predicated upon the submission and endorsement of an Approval Not Required plan developed substantially as shown on the relevant

Plans identified within the Exhibits of this Decision, and conform to this Decision and the *Rules and Regulations Governing the Subdivision of Plans: Grafton, Massachusetts* (revised through May 11, 2009, hereinafter *Rules and Regulations*), except where modified by the Decision, and also conforms to all applicable Federal, State and other Local regulations.

9. That the existing structures shown on Lot 1, Sheet C3.00 will be torn down and replaced with a new single-family dwelling. The existing dwelling units shown on Lot 2 (73 Potter Hill Road) and Lot 3 (71 Potter Hill Road) will remain. The Board further finds that the house at 73 Potter Hill Road was recommended for listing in the National Historic Register of Historic Places.
10. That the properties are serviced by private septic systems and private wells.
11. That the Applicant has requested a waiver (see Exhibit #1) from ZBL Section 5.3.4(b) 1: Plan showing deep soil test pits and percolation tests results. The Applicant requests that the testing for the third lot be delayed until such time as they are ready to apply for a building permit.
12. With regard to Section 5.3.4(b) 2, that the Applicant has requested materials submitted in association with this Application satisfy the filing requirements of this Section regarding a Flexible Development Plan.
13. With regard to Section 5.3.4(b) 3, that the materials submitted in association with this Application satisfy the filing requirements of this Section regarding a Land Use Plan.
14. With regard to Section 5.3.4(b) 4, that the materials submitted in association with this Application satisfy the filing requirements of this Section regarding a comparison of the impacts of a Flexible Development Plan to those that would result from the Conventional Development Plan.
15. With regard to Section 5.3.4(b) 5, that the materials submitted in association with this Application satisfy the filing requirements of this Section regarding a list of requested waivers from the *Rules and Regulations*.
16. With regard to Section 5.3.4(b) 6, that the materials submitted in association with this Application satisfy the filing requirements of this Section regarding the number of copies of required plans and/or reports.
17. With regard to Section 5.3.6(a) that the Plan identified as Exhibit # 2 Sheet C3.00 entitled “Minor Flexible Development Plan” satisfies the applicable average lot area requirement.
18. With regard to Section 5.3.6(b), that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plan” satisfies the applicable minimum lot area requirement.
19. With regard to Section 5.3.6(c) that the Plan identified as Exhibit #2 Sheet C3.00 entitled “Minor Flexible Development Plan” satisfies the applicable minimum lot frontage requirement.

20. With regard to Section 5.3.6(d) that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plan” satisfies the applicable minimum front yard setback requirement.
21. With regard to Section 5.3.6(e) that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plan” satisfies the applicable minimum side yard setback requirement.
22. With regard to Section 5.3.6(f) that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plans” satisfies the applicable minimum rear yard setback requirement.
23. With regard to Section 5.3.6(g) requires that the front, side and rear setback lines be shown on the Approval Not Required plan.
24. With regard to Section 5.3.6(h) that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plan” satisfies that applicable buffer area requirement.
25. With regard to Section 5.3.6(i) that the Plan identified as Exhibit #2 Sheet C3.00, entitled “Minor Flexible Development Plan” satisfies the applicable buffer calculation standards for Common Land requirement.
26. With regard to Section 5.3.6(j) that the Applicant has not indicated that accessory uses will occur in the required front yards. The Board further finds that the requirements of Section 5.3.6(j) shall remain in effect and govern any residential use authorized by and subject to this Decision.
27. That the Plans and information submitted satisfy the minimum requirements of Section 5.3.7 of the ZBL regarding Required Amount of Common Land.
28. That the Plans and information submitted satisfy, to the extent necessary for consideration of a Flexible Development Special Permit, the requirements of Section 5.3.11 regarding Use of the Common Land.
29. The maximum number of dwelling units authorized by this Flexible Development Special Permit for a Minor Residential Development that could reasonably be expected to be developed on the property under the Flexible Development Plan in full conformance with zoning, *Rules and Regulations*, health codes, wetland bylaws, and other applicable requirements is not to exceed three (3).
30. That the Applicant informed the Board and as required by Section 5.3.9 of the ZBL, that they wished to pursue the Flexible Development Plan. The Board further finds that said Exhibit satisfies the requirements of Section 5.3.9 regarding communicating this preference to the Board.
31. With regard to Section 1.5.5(a), and based upon the Findings stated within this Decision, that 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.

32. With regard to Section 1.5.5(b), and based upon the Findings stated within this Decision, that 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.
33. With regard to Section 1.5.5(c), and based upon the Findings stated within this Decision, that refuse collection or disposal and service areas are satisfactory.
34. With regard to Section 1.5.5(d), and based upon the Findings stated within this Decision, that screening and buffering with reference to type, dimensions and character are adequate.
35. With regard to Section 1.5.5(e), and based upon the Findings stated within this Decision, that signs and exterior lighting with reference to glare, traffic safety, economic effect is compatible and in harmony with properties in the district.
36. With regard to Section 1.5.5(f), and based upon the Findings stated within this Decision, that the required yards and other open space requirements are adequate.
37. With regard to Section 1.5.5(g), that the proposed number of dwelling units conforms to zoning and is similar to abutting properties, and the project is generally compatible with adjacent properties and other property in the district.
38. With regard to Section 1.5.5(h), and upon satisfying and complying with all applicable requirements of the Massachusetts DEP, the applicable Water District, and all other applicable agencies, and based upon the plans and materials referenced in this Decision, there will not be any significant adverse impact on any public or private water supply.
39. With regard to Section 1.5.5(i), and upon satisfying and complying with all applicable requirements of the Massachusetts DEP, the applicable Water District, and all other applicable agencies, and based upon the plans and materials referenced in this Decision, there will not be any significant adverse impact upon municipal water supplies and that permitting of wells will require Board of Health approval.
40. With regard to Section 1.5.5(j), that protection of important historic, cultural and scenic landscapes with regard to the proposed development is satisfactory.
41. That with regard to Section 1.5.5 of the ZBL, the special permit application is in harmony with the general purpose and intent of the ZBL.
42. That with regard to Section 1.5.5 of the ZBL, the special permit application if granted would not create a nuisance, hazard or congestion.
43. That with regard to Section 1.5.5 of the ZBL, the special permit application if granted would not cause substantial harm to the neighborhood.

44. That with regard to Section 1.5.5 of the ZBL, the special permit application if granted would not derogate from the general purpose and intent of the By-law or the stated district objectives or applicable use criteria.

IV. DECISION and CONDITIONS

At their meeting of November 19, 2018 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 Mr. Scully, seconded by Ms. Carroll-Tidman) voted 5-0 in favor to **GRANT the Flexible Development Special Permit for a Minor Residential Development** with the following conditions:

1. This Flexible Development Special Permit is for a Minor Residential Development.
2. Based upon the Findings (see Finding #8 & #29) of this Decision, the total number of dwelling unit lots that could be developed under this Flexible Development Special Permit for Minor Residential Development Decision shall not exceed three (3) single family units, two (2) of which are existing structures. This Condition shall not be construed as approving the buildability of any lots shown on the Plans. All applicable Federal, State or other Local permits/approvals must be obtained for each lot prior to construction on each said lot.
3. Pursuant to Section 5.3.10.1 of the ZBL, all subsequent submissions, requirements and approvals for the creation of the lots authorized by this Special Permit shall be as specified in the *Rules and Regulations*, as applicable. Any subsequent Plan(s), which shall be developed substantially as depicted on the Plans identified as Exhibit #2 of this Decision, shall be submitted to and reviewed by the Planning Board pursuant to Subdivision Control Law and the Rules and Regulations, and be developed in accordance with, and conform to, the Rules and Regulations, unless modified by this Decision. This Condition shall not be construed as approving any other Plan(s) for the development specified in this Decision.
4. Pursuant to Section 5.3.10.3 of the ZBL, the Planning Board reserves the right to require changes to the Flexible Development Plan and impose additional conditions, safeguards and limitations as it deems necessary to secure the objectives of the Bylaw.
5. Pursuant to Section 5.3.10.4 of the ZBL, subsequent to the granting of this Flexible Development Special Permit and the approval of any Plan(s) submitted pursuant to Subdivision Control Law and the Rules and Regulations, the Planning Board may permit the relocation of lot lines within the development without initiating a new Special Permit proceeding. Also pursuant to Section 5.3.10.4, change in the use, ownership, and any other conditions stated in this Special Permit, or any information submitted, including requests for any waiver(s) or other relief that is not part of this Special Permit Application, shall require written approval of the Planning Board in accordance with any applicable regulations. The Planning Board may, upon its determination, require a new Special Permit, in accordance with Section 1.5 of the ZBL, 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 Special Permit decision.
6. If during the review of any Plans derived from this Special Permit, the Planning Board determines that a conflict exists between information from which this Special Permit decision is based and the information associated with such Plans, the Planning Board may, upon its

determination, require a new Special Permit if it finds that the proposed changes are substantial in nature and of public concern.

7. The lots shown on the Plans shall be serviced by private water and sewer. This Approval shall not be construed as final approval of any off-site improvements or work for well and septic installation associated with this project and shown on the Plans. All applicable Federal, State and Local approvals/permits shall be obtained by the Applicant prior to the construction of any portion of the development or off-site improvements that warrant such approvals/permits. All applicable requirements of the applicable Grafton Department of Public Works and Board of Health and all other applicable utilities, are hereby incorporated by reference as a requirement of this Decision. All proposed work associated with the creation of the lots authorized by this Decision and subject to the departments/entities noted herein shall be shown on any subsequent Plans submitted pursuant to this Decision.
8. In accordance with Section 1.5.8 of the ZBL, this Special Permit shall lapse within two (2) years from the date of the expiration of the appeal period if a Plan for the creation of the lots authorized by this Decision has not been filed with the Planning Board in accordance with all applicable regulations. 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.
9. The Applicant shall submit to the Board for its review and approval draft documentation ensuring that Lot 4 (Open Space Parcel) has been permanently protected pursuant to Section 5.3.11.a of the ZBL prior to the issuance of a building permit.
10. This Special Permit and Site Plan Approval shall not take effect until the Decision has been recorded at the Worcester District Registry of Deeds (WDRD) and a copy of the recording provided to the Planning Board and the Building Department to include the WDRD Book and Page Number and/or Instrument Number within thirty (30) days of recording.
11. Following expiration of the appeal period for this decision and its recording at the WDRD, the Applicant shall submit a plan conforming to Section 3.1 of the Subdivision Rules and Regulations entitled “Plan Believed Not to Require Approval (Section 81P, ANR)” containing a notation stating the plan is subject to a Flexible Development Special Permit (SP 2018-13) and include the recording information for the decision.
12. 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 and which acceptance shall bind the Applicant and its successors and assigns. Any inability, failure or refusal by the Applicant to comply with the requirements of this Special Permit Approval, when notified of failure of compliance, shall be grounds for the immediate denial of building, construction or occupancy permits with respect to this project.

V. RECORD OF VOTE

Constituting a majority of the Planning Board, the following members voted to **APPROVE** the Applicant's Flexible Development Special Permit (SP 2018-13) and Site Plan Approval application based on the information received at the public hearing and the aforementioned findings, and subject to the aforementioned conditions.

Robert Hassinger, Chairman

David Robbins, Member

Linda Hassinger, Vice Chairman

Michael Scully, Member

Sharon Carroll-Tidman, Clerk

DATE OF FILING OF DECISION:

BY ORDER OF THE BOARD


Joseph Laydon, Town Planner

11-20-2018
Date

cc: Applicant

- Owner
- Graves Engineering
- Town Engineer
- Building Inspector
- Conservation Commission
- Board of Assessors

To Whom It May Concern: This is to certify and verify that twenty (20) days have elapsed since this decision was filed in the Town Clerk's office and that no appeals have been filed in reference to same, or that, if such appeal has been filed, it has been dismissed or denied.

Kandy Lavalley, Town Clerk

Date