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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

January 13, 2014

Special Permit for Dimensional Variation

A Special Permit for Dimensional Variation was granted to Robert M. & Kathleen R. Herrick, 75 Boucher Road, Lunenburg, MA 01462, under the Lunenburg Protective Zoning By-Law Section 8.3.2.1.4)a. The petitioners were seeking a Special Permit for Dimensional Variation for lot frontage to create a buildable lot. The subject property is located at **41 Country Road, Lunenburg, MA 01462.**

The Board of Appeals of the Town of Lunenburg hereby certifies that a Special Permit for Dimensional Variation has been granted pursuant to the Protective Zoning By-Law of the Town of Lunenburg, Section 8.3.2.1.4)a.

Board Members present: Donald F. Bowen, Chairman, Raymond Beal, James Besarkarski, Alfred Gravelle, Hans Wentrup and (Paul Doherty present but not voting).

Special Permit for Dimensional Variation has been issued to Robert M. & Kathleen R. Herrick, 75 Boucher Road, Lunenburg, MA 01462, affecting the rights of the owner with respect to land and buildings **41 Country Road, Lunenburg, MA 01462**, Book 1293, Page 537 and dated August 30, 1982 as described in plans submitted with the petition. Assessors Map 14, Lot 11.

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said Special Permit, and that copies of said decision, and all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering.

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Attorney John Barrett was present to represent the Herrick's in the petition. He explained that when the property was purchased on August 30, 1982 by Mr. & Mrs. Herrick the lot was property zoned as a buildable lot and had correspondence from the Lunenburg Planning Board that supported that status. The subdivision plan represented a parcel that contained 2.34 acres. The Planning Board letter did not indicate that after an eight year period the parcel would no longer enjoy the status a lot for building. Meanwhile there were changes to the Lunenburg Protective Zoning By-law that changed the frontage requirements in that zoning district from twenty feet to fifty feet. Mr. & Mrs. Herrick continued to pay taxes for a buildable parcel and intended to build a retirement home in the future. In 2010, Mr. Herrick approached the Building Official/Zoning Officer about the status of the parcel. Mr. Sauvageau in a letter to Mr. Herrick said that the lot lost its building status due to the fact that the subdivision control law expired after eight years and the changes in the by-law regarding lot frontage changed deeming it unbuildable. The Board of Assessors changed the status to non-buildable and the parcel is currently being assessed as such. All of the other parcels in the subdivision have homes located on them and this parcel sits empty.

Attorney Barrett said that it was not communicated to Mr. Herrick that he would lose this status after an eight year period. The lot is of the correct size in today's zoning however is twenty feet short in frontage.

The Zoning Board Chairman sought legal counsel from Attorney Joel Bard of Kopelman & Paige. While Attorney Bard agreed with Mr. Sauvageau assessment that it is unbuildable felt that the petitioner did not apply correctly for the Special Permit for Dimensional Variation shown in Section 8.3.2.1.b)4. In his opinion, Attorney Bard felt that this section applies to lots with buildings on them and did not apply to this case, and felt that the Board could reasonably deny the application.

Brian Herrick, 83 Boucher Road, Lunenburg an abutter and brother to the applicant felt that it was a unique situation. He said that the taxes were paid for almost thirty years and the family always assumed that it would be approved for a building permit when the time came to do so.

Mr. Gardula, 847 Chase Road also an abutter asked for clarification as to where the lot was located and he was given a plan to review.

Robert Herrick submitted a letter with several signatures from abutters showing their support of the petition.

Michael Sauvageau, Building Official and Zoning Officer explained in detail his research and how he came to his decision.

Raymond Beal felt that the request before the Board was for a Special Permit for Dimensional Variation only and that the parcel met and exceeded the current requirements for lot area and felt that it was a reasonable request.

Alfred Gravelle agreed that the request was unique and said that the Zoning Board deals with each application on a case by case basis and that the applicant did pay his taxes in good faith.

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Chairman Bowen worried that if granted there would be many other people trying to create lots that lack proper frontage.

James Besarkarski also agreed with Alfred Gravelle and Raymond Beal and did not think that would happen as each petition is individual and didn't feel that folks would line up to try to enjoy buildable status as Mr. Bowen stated.

Attorney Barrett concluded that not all Towns in the Commonwealth have the flexibility in their by-laws that enjoy the status of the granting of Special Permits for dimensional variation and felt that in this matter it applied and therefore could be granted.

MOTION

After due deliberation Raymond Beal made a motion to grant the Special Permit for Dimensional Variation for frontage as requested in accordance with the plans submitted and subsequently on file with the Zoning Board of Appeals. The motion was based on the finding that it would not be more substantially detrimental to the neighborhood and specifically Section 8.3.2.1.b) 4. As outlined below. James Besarkarski seconded the motion.

FINDINGS

In granting a Special Permit for Dimensional Variation the Board of Appeals specifically found:

- a. The specific site is an appropriate location for such building or alteration.
- b. The proposed building or alteration is compatible with the existing neighborhood with regard to size, location and architecture.
- c. The granting of the special permit for dimensional variation will not adversely affect the neighborhood.
- d. The granting of the special permit for dimensional variation will not unreasonably diminish the available light, air, sunlight and other amenities: and there will be no nuisance or serious hazard to vehicles or pedestrians as outlined in Section 8.3.2.1.

The Special Authorization is granted with the contingency that Robert M. & Kathleen R. Herrick comply with all licenses, regulations, statues and ordinances of any and all applicable state, local and federal board or agencies with jurisdiction over the premises.

The Special Permit is subject to a periodic review by the permit granting authority (Zoning Board) or the Enforcement Officer, to insure compliance with the enumerated conditions. Non-compliance to these conditions may result in revocation of this permit.

After closing the discussion, the Board acting in its capacity as the Special Permit Granting Authority, granted the Special Permit Dimensional Variation with the above members present and voting as follows with respect to the issuance of the Special Permit.

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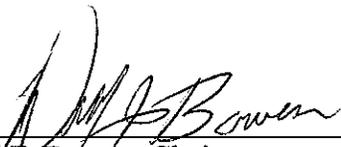
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VOTE

Donald Bowen voted in favor of granting the Special Permit Dimensional Variation.
Raymond Beal voted in favor of granting the Special Permit Dimensional Variation.
James Besarkarski voted in favor of granting the Special Permit Dimensional Variation.
Hans Wentrup voted in favor of granting the Special Permit Dimensional Variation.
Alfred Gravelle voted in favor of granting the Special Permit Dimensional Variation.

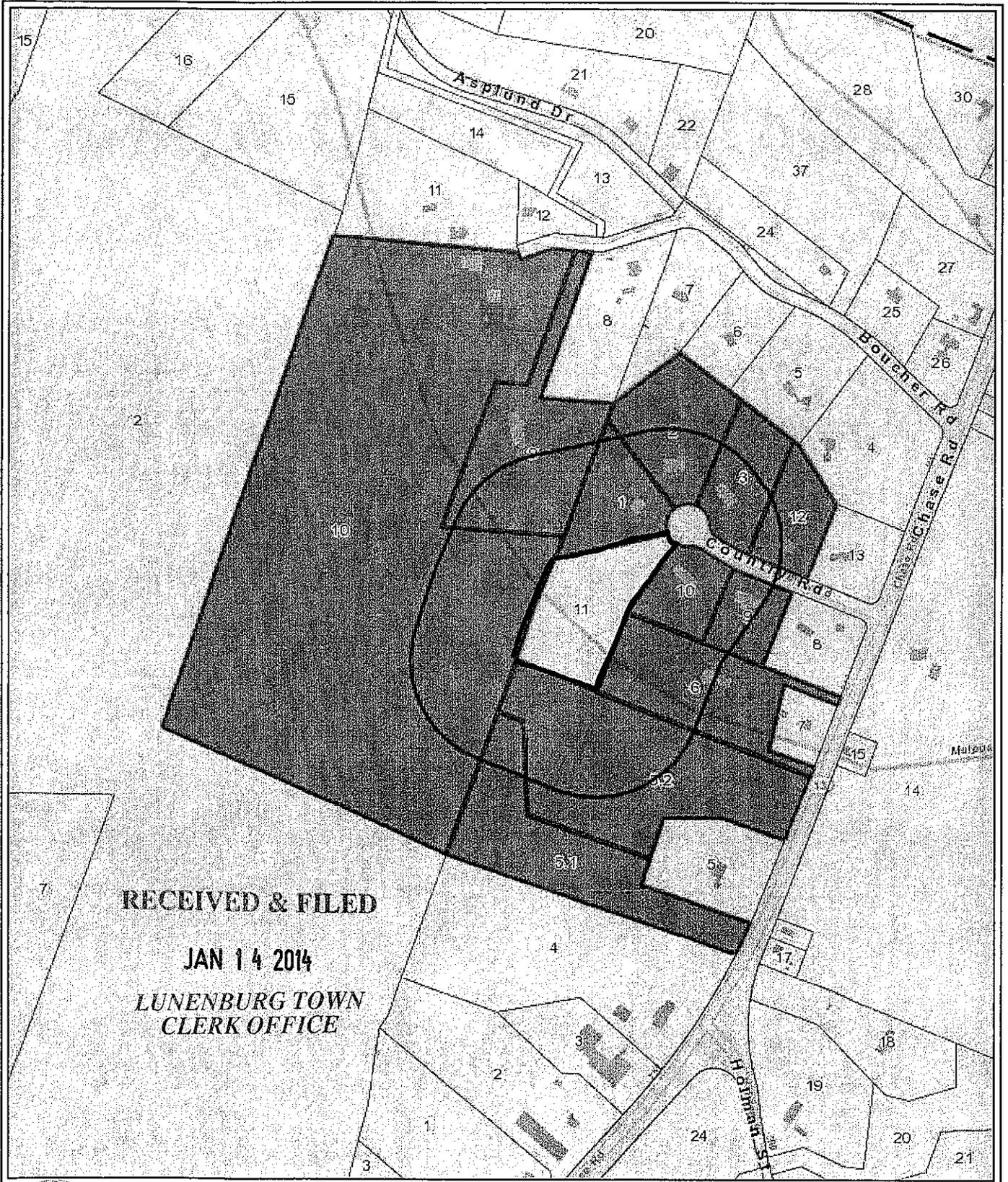
In making this determination, the Board specifically found that the granting of this Special Permit and Dimensional Variation would not contravene the purpose of the Protective Bylaws or the provisions of Chapter 40A of the Massachusetts General Laws.

Voted and executed,

 1/14/2014

Donald F. Bowen, Chairman Date

Lunenburg Zoning Board of Appeals
Special Permit Granting Authority



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41 Country Rd - Map 014, Lot 011
 Lunenburg, MA
 1 Inch = 377 Feet
 September 17, 2013



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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TOWN OF LUNENBURG
 BOARD OF ASSESSORS

Laurie Paquette