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**THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS**

November 18, 2015

**Decision of the Zoning Board of Appeals
Denial of Special Permit for dimensional variation**

The petitioner Virginia McNiff, 280 Great Road, Shirley, MA 01464 was seeking a Special Permit for dimensional variation for "Required width through building" and to vary requirement for "Required lot area" to create a buildable lot as outlined in following sections of the Lunenburg Protective Zoning By-law: 8.3.2.1.b)4 and 5.1.2.1.

An appeal for Special permit for dimensional variation was denied to **Virginia McNiff, 280 Great Road, Shirley, MA 01464**. The property, which is the subject of this case, is located at **1381 Massachusetts Avenue, Lunenburg, MA 01462**.

The Board of Appeals of the Town of Lunenburg hereby certifies that request has been denied.

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

To: Virginia McNiff, 280 Great Road, Shirley, MA 01464 affecting the rights of the owner with respect to land located at 1381 Massachusetts Avenue Lunenburg, MA 01462 and recorded Worcester Northern District Registry of Deeds, Book 3711, Page 29, and dated January 31, 2001 and described in plans submitted with the petition. Assessors Map 62, Lot 13.

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

The Board of Appeals calls to the attention of the owner's right to appeal the decision of the Board to Superior Court within twenty days of the decision recorded in the office of the Town Clerk.

DISCUSSION

Raymond Beal, Chairman called the meeting to order and explained the hearing procedure to the audience. Lisa Normandin, Board Secretary read the petition into the public record and read a memo from James Garreffi, Agent, Lunenburg Board of Health. Attorney Peter Knox, 280 Great Road, Shirley was representing the applicant and introduced both Virginia McNiff and her nephew Daniel McNiff.

Mr. Knox outlined the petition to the Board explaining the residential lot was created in 1963 and the applicant purchased the parcel in 2001 with the belief that it was "Buildable". However, it has been determined that the required lot width through the building would not be in compliance with the Protective By-law requirement of 125 feet and the dimensional requirement of lot area. (Section 5.1.2.1.). At that time a "through the lot building width" of 125' was required and the required lot area was 20,000 square feet. The shape of the lot does not meet the zoning requirement in place at the time the lot was created and the 125 feet through the lot requirement was not met as determined by Michael Sauvageau, Building Commissioner in a letter dated May 12, 2006. Attorney Knox explained that the parcel originally exceeded 18 acres and the owner at the time Nicholas Rawchuck sold a 16.4 acre parcel to the Town of Lunenburg for their new school. Mr. Knox believes that the intent at the time was reserve the remaining land for a building lot. Currently the parcel has two existing paved state highway driveway curb cuts and the "sewer tie" in has been installed for the parcel at a cost of \$5000.00 to the applicant for a sewer stub. He contends that the owner has paid taxes for 14 years and there is no other form of relief to the applicant. He also contends that this creates a personal financial hardship to the applicant and explained that when Mr. McNiff passed away, his wife Virginia McNiff was executrix to the estate and was overwhelmed by the amount of land that was owned and not knowing whether or not it the parcels were buildable or not. Attorney Knox feels that the criteria has been met (to grant the request) and it was obvious that lot is buildable in a sense that it does not create problem in relation to its current neighborhood and represents no nuisances of any type or hazards to pedestrians or vehicles. Attorney Knox said that it is his opinion and Ms. McNiff belief that it is fair and equitable for this Board to move forward to make a recommendation that they are allowed to move forward as a buildable lot.

Alfred Gravelle asked that when the lot was created in 1963 did it have the appropriate lot width through building at that time. Mr. Knox indicated it had not. Mr. Gravelle asked that when he received the letter 2006 from the building official with his determination "Why didn't you at that time seek relief considering the letter apprised you of your right to do so"? Attorney Knox said that at that time only a year and half has passed and since Mr. McNiff's death and it was a difficult estate to settle and was several years in probate court and several hearings were held for the heirs to contest. He contends that process went on for a long time; therefore, Ms. McNiff was not able to take the steps to move forward.

Michael Sauvageau, Building Commissioner said that when the lot was created in April 1963 the Town was in the process of changing language in the bylaw and when the Town meeting was held in March one month prior to lot being created, the frontage and lot width requirements had changed. At that time it wasn't apparent to him (Mr. Sauvageau) that the lot lacked 300 square feet in land area and he erred on his decision and could not grandfather the lot under the statute because when created in 1963 you needed 20,000 ft. and 125 feet of frontage. This parcel was created after 29 days after the by-law changed. Mr. Sauvageau went into detail for the Board the zoning changes that were amended on March 2, 1963 and he felt that the important factor here is that there are limited parcels for building and that it would be nice for the Town to get the economic benefit.

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Hans Wentrup asked why it has taken since 2006 to resolve this issue and questioned the issue of financial hardship. Attorney Peter Knox indicated that Mrs. McNiff's workload was overwhelming due to the fact that there were multiple parcels in many surrounding Towns and only has an assistant to help her with the task. Hans Wentrup asked Mr. Knox that if the parcel was deemed a buildable lot what is the intent of the petitioner? Mr. Knox assumed that at the time of purchase the intent was probably to build a house to sell. Hans Wentrup felt that they (the applicant) were asking to Board to reverse a bylaw and did not want to set a precedent. Mr. Knox felt that it was assumed at the time it was a lot approved for building. Paul Doherty asked "When a bylaw changes, when does it take effect"? Raymond Beal indicated that it goes into effect the date it is voted.

James Besarkarski said that perhaps the \$5000.00 fee that was paid to the Town was not a "sewer tie-in" fee but a betterment fee. Mr. Sauvageau indicated that it was the betterment fee and a sewer stub, when a property connects to municipal sewer and is installed there is a separate connection fee. Mr. Beal said that it is nine years after the fact and the zoning has changed yet again increasing the lot size from 20,000 to 40,000 square feet. Raymond Beal also noted that the lot size was less than the area required at the time. Raymond Beal said that he is sympathetic about the amount of work that needed to be done (with regard to probate), however, he also pointed out that in the building official's letter indicated that abatement could have been sought for both the betterment and the tax status as a buildable lot.

Donald Bowen felt that the applicant is trying to use the lot in the highest and best use and it seemed apparent that the applicant assumed it was a buildable lot, so why would they (the applicant) apply for abatement at all. Mr. Bowen felt that all that with all the mitigating circumstances surrounding the lot the Board could find it in their power to grant relief.

MOTION

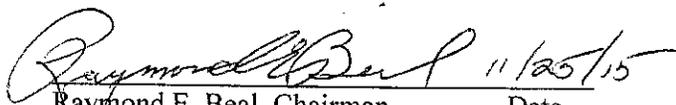
Hans Wentrup made a motion to deny the applicant's application for relief from dimensional variation based on the finding that it is not a buildable lot per the lot size. Paul Doherty seconded the motion.

VOTE

Raymond Beal voted to deny the request for Special Permit for Dimensional variation.
Alfred Gravelle voted to deny the request for Special Permit for Dimensional variation.
Hans Wentrup voted to deny the request for Special Permit for Dimensional variation.
Paul Doherty voted to deny the request for Special Permit for Dimensional variation.

Donald Bowen voted to grant the Special Permit for dimensional variation.

*(The DVD of the entire meeting can be made available upon request)


Raymond E. Beal, Chairman Date 11/25/15
Lunenburg Zoning Board of Appeals

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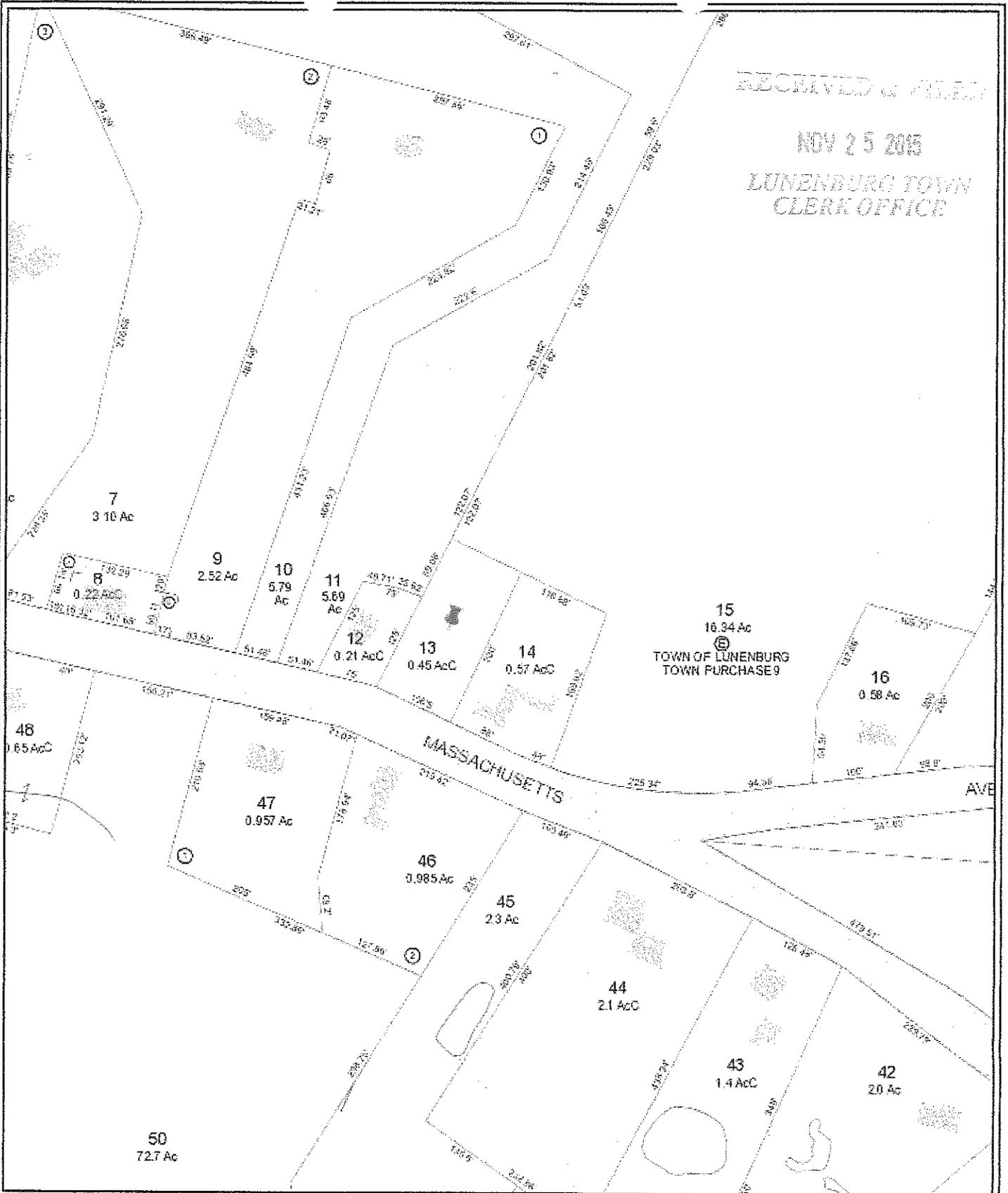
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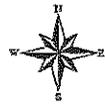
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1381 Mass Ave
Lunenburg, MA
1 Inch = 163 Feet
September 16, 2015



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