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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
VARIANCE**

***Lawrence A. Gordon Trustee, Applicant
Lawrence A. Gordon Trust 2019 Trust, owner
11 Gatewood Drive
Map 211, Parcel 68***

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts 2020)

November 19, 2020

Lawrence A. Gordon, Trustee of the Lawrence A. Gordon 2019 Trust, Applicant, applied to the Board of Appeals for a Variance under Section 7.5.3 and/or MGL 40A, Section 10, from applicable minimum lot area requirement of 4.2.3 of the Zoning By-Law, or a Special Permit, pursuant to Sections 1.4.6 of the Zoning By-Law, and a finding pursuant to MGL Section 40A, Section 6 to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming single-family dwelling to a new single-family dwelling. The property is located at **11 Gatewood Drive**, Needham, MA in the Single Residential A District. A public hearing was held remotely on Zoom Meeting ID Number 810071960660, on Thursday, November 19, 2020 at 7:45p.m.

Documents of Record:

- Application for Hearing, Clerk stamped October 26, 2020.
- Letter from George Giunta, October 26, 2020.
- Architectural Plans prepared by McKay Architects, A1.1, A1.2, A1.3, A2.1, A2.2, A2.3, A2.4, stamped by Michael L. McKay, registered architect, dated October 23, 2020.
- Topographic Site Plan prepared and stamped by VTP Associates, Inc., Professional Land Surveyor, stamped by Joseph R. Porter, professional land surveyor, dated October 21, 2020.
- Memorandum of Support, Exhibit A-G, prepared by George Giunta, dated November 10, 2020.
- Email from Dave Roche, Building Commissioner, dated November 13, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated November 11, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, dated November 18, 2020.
- Email from Fire Chief Dennis Condon, dated October 29, 2020.
- Email from Chief of Police John Schlittler, dated October 29, 2020.
- Email from Tara Gurge, Assistant Public Health Director, dated November 5, 2020.

The Board held this meeting virtually as allowed under “Order Suspending Certain Provisions of the Open Meeting Law G.L. c. 30A, S20.”

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member and Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 8:10 p.m. by reading the public notice. Based on his observation of the site, Mr. Schneider noted that the house on the site had been demolished.

George Giunta, Jr., attorney representing the Applicant, reported that the property was in the SRA District where there is a minimum lot area of one acre. The lot was created by a subdivision plan dated July 21, 1966. The plan was approved and endorsed by Planning Board on October 4 and November 1, 1966, respectively. The plan was recorded with the Registry of Deeds.

The property was conveyed as a separate lot by deed dated December 14, 1972. Both the plan and deed indicated a lot containing a total of **44,127** square feet.

A house was built on the property in 1972 and expanded in 2000 and 2006.

The property was owned by the same property owner until March 2020, when it was purchased by the Applicant. The Applicant demolished the existing structure intending to build a new single-family home. While designing the new structure, the surveyor discovered that the lot did not have the square footage indicated in the subdivision plan or deed. The lot contained only **41,171** square feet instead of the minimum required square feet of **43,560** pursuant to Section 4.2.3. This shortfall of 2,389 square feet rendered the lot non-conforming.

This error appears to arise from a survey error, as the adjacent property was larger by the 2,398 square feet set forth in the original and recorded subdivision plan.

Mr. Giunta is seeking a Variance. This relief is the preferred option over a Special Permit because it would provide more certainty to the property as the issue is associated with lot and not the structure. A Variance would also provide future flexibility allowing any future additions to the structure to proceed if a project otherwise complies with the dimension and density requirements of the Zoning By-Laws.

Mr. Giunta noted that the lot has an irregular, uncommon shape. The adjacent property is irregular as well, but not as pronounced as 11 Gatewood Drive. This irregularity is singular and rare for the SRA District.

Mr. Giunta reasoned that the situation merited the granting of a Variance because it met the necessary conditions:

- the lot’s irregular shape was singular and not generally affecting the lots located in the district;
- the enforcement of the By-Law would render the lot useless and create an economic hardship; and
- the property has had a single resident owner for 48 years and will continue its single-family residential use, congruent with the neighborhood and district allowed under the

By-Law, with no detriment to the public good.

If the Board does not agree to a Variance, Mr. Giunta asked that a Special Permit be considered under MGL 40A, Section 7 where structures that were in existence for over ten years, without notice of a code violation from applicable town offices, shall obtain the status of legally non-conforming structures. The structure meets these criteria as it has been there for 48 years without that notice of code violation.

Comments received were:

- The Building Commissioner made no comment.
- The Engineering Department had no comment or objection.
- The Planning Board had no comment.
- The Fire Department had no comment.
- The Police had no comment.
- The Health Department requested that an upgraded septic system design with sufficient capacity to support a seven to eight-bedroom home be submitted and that the Applicant apply on-line for a Demolition Review with the supporting reports.

Morgan Blum, 57 Gatewood Drive, was supportive of the project and wanted to see the large excavated and vacant lot replaced with a new home.

Mr. Goldman agreed that the lot was irregular in shape and rare for the SRA District. He was sympathetic to issuing a Variance. He thought it would be a detriment and a hardship if construction were not allowed.

Mr. Friedenbergs was also sympathetic. He questioned why the Applicant did not seek relief under Section 1.4.7.3 which would allow the reconstruction of a single-family where the use is permitted for legally non-conforming lots, as of right, without a special permit or finding by the Board. Mr. Giunta responded that a Variance is the preferred option and that it would provide clear guidance to the Building Commissioner.

Mr. Schneider thought this was a terrible situation. He stated that he is generally reticent about granting Variances, but in this case, he thought a Variance would offer the best solution to fix the problem. He was concerned about granting a Special Permit since the structure had been voluntarily demolished and this may have resulted in the loss of the legal non-conforming status.

Mr. Tamkin found granting a Special Permit to fix this case problematic. He was concerned about the property rendered useless and the resulting hardship. He was reluctant about granting Variances but was supportive of a Variance under the right situation. He felt a Variance was appropriate for this situation.

Mr. Goldman moved to grant a Variance under Section 7.5.3 of the By-Law for the property located at 11 Gatewood Drive to be considered a buildable lot, containing no less than 41,171 square feet as indicated in the *Topographic Site Plan* prepared by VTP Associates, Inc., dated October 21, 2020. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:45 p.m.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The property is comprised of 41,171 square feet and was created from a subdivision plan dated July 21, 1966, duly executed by the Planning Board and recorded at the Norfolk Registry of Deeds and is situated in a Single Residential A Zoning District.
2. The property does not contain the minimum of 43,560 square feet required for all lots in the SRA District because it was reduced in size due to apparent error in implementation of said 1966 Subdivision Plan. As a result of this error, the property is an undersized lot in violation of the minimum lot size of Section 4.2.3 despite the construction of a single-family home thereon and usage by one family in excess of 40 years.
3. The Applicant has proposed construction of a new single-family home on this non-conforming lot and seeks zoning relief in the form of Variance in order to build a new home under Chapter 40A, Section 10 and section 7.5.3 of the By-Laws.
4. The Applicant also sought, in the alternative, a special permit based upon the provisions of MGL Chapter 40A Section 7 and section 7.2 of the By-Laws.
5. The only neighbor in attendance spoke in favor of seeing a new single-family home built on the premises.
6. The property features a highly irregular shape, not found generally within the SRA Zoning District, and therefore, there exists circumstances relating to the shape of the property that especially affects the property but does not generally other lots in the zoning district in which it is located.
7. A Variance under Section 7.5.3 of the By-Law for the property would be appropriate under the circumstance in that the shape of this land is irregular and not like other lots in the zoning district, a literal enforcing of the by-laws would involve substantial hardship, and may be granted without substantial detriment to the public good.

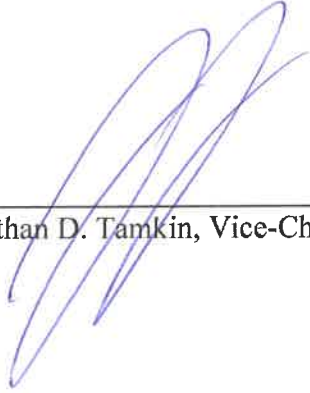
Decision:

On the basis of the evidence presented at the hearing, following due and open deliberation, upon motion duly made and seconded, the Board by a unanimous vote, approves the Applicant's request for a Variance under Section 7.5.3 of the By-Law for the Property located at 11 Gatewood Drive, Needham, MA, such that the Property shall be considered a buildable lot.

SIGNATORY PAGE – 11 GATEWOOD DRIVE


Jon D. Schneider, Chair

SIGNATORY PAGE – 11 GATEWOOD DRIVE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 11 GATEWOOD DRIVE



Howard S. Goldman, Member