



**City of Marlborough
Zoning Board of Appeals**

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

ZBA Case # 1471-2020

Date: February 1, 2021

Location: 0 Locke Dr. Map 67, Parcels 2 & 2B

**(General Laws Chapter 40A, Section 16)
Grant of Variance(s)**

To: Keith H. Kline, Trustee

Address: 44 Short Street

City: Marlborough, MA 01752

affecting the rights of the owner with respect to land or buildings at:

0 Locke Dr. Map 67, Parcels 2 & 2B

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


Paul Giunta - Chairman


Susan Brown - Secretary

Submitted to the City Clerks' office on February 1, 2021



**City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768**

**Record of Proceeding and Decision
This meeting was recorded on Microsoft Teams**

**Location: 0 (Zero) Locke Dr. Map 67, Parcels 2 & 2B
Zoning District Residence A-2**

**Zoning Board Case # 1471-2020
Applicant: Keith H. Kline, Trustee**

Date of Appeal: Dec. 11, 2020

Meeting Date: January 19, 2021

Zoning relief requested: To construct a single-family dwelling at 0 (Zero) Locke Dr. being Map 67, Parcels 2 & 2B, located in the Residence A-2 zoning district. Proposal does not comply with:

- Chapter 650-41 Table of Lot Area, Yards, and Height of Structures of City Code of Marlborough – The zoning code states that the use requested requires 18,000 sq. ft. vs. the proposed 13,112 sq. ft. of area in an A-2 zoning district.
- Chapter 650-42 - Lot Shape – Unable to fit the required rectangle within the lot lines.

Members present: Meeting in city hall, 3rd floor-Memorial Hall were Board Members: Paul Giunta-Chairman, Thomas Pope and Secretary-Susan Brown
Meeting virtually were Ralph Loftin, Thomas Golden and Robert Levine.

A roll call of being present were yeas: Paul Giunta, Robert Levine, Ralph Loftin, Thomas Golden and Thomas Pope.

Also, present virtually was the applicant: Keith H. Kline, Trustee, 44 Short Street, Marlborough, MA 01752

Notice of the hearing was given by Certified Mail to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Enterprise Weekly, a newspaper of general circulation in Marlborough, MA,

Documents Submitted by the applicant in this Appeal:

- A packet submitted by the applicant:

- The application form, with an Addendum to Variance Application, Dorothea J. Kline Revocable Trust, Locke Dr. (Parcel ID 67-2 & 67-2B),
- A denial letter from the Building Commissioner, dated Dec. 6, 2020
- Plan entitled ZBA Petition Plan, Map 66, Parcels 2 & 2B, Locke Drive, Marlborough, MA, prepared by Sullivan, Connors & Associates, Stamped by Varoujan H. Hagopian, dated Sept. 18, 2018, last revised Nov. 24, 2020.
- Certified list of abutters
- Filing fee of \$130.00

Findings:

1. The property in question is located at 0 (Zero) Locke Dr. being Map 67, Parcels 2 & 2B. Located in Zoning District Residence A-2. (it should be noted that at the rear of the parcels in question is zoned Limited Industrial)
2. This meeting was held virtually on Microsoft Teams.
3. Applicant, Keith Kline appeared virtually.
4. Keith Kline made a presentation in accordance with his narrative entitled: Addendum to Variance Application, Dorothea J. Kline Revocable Trust, Locke Dr. (Parcels ID 67-2 and 67-2B) (in Board's file). John and Dorothea Kline were parents of Keith Kline. They formed the Dorothea J. Kline Revocable Trust. (in Board's file) Some of the highlights in the narrative were:
 - a. 1958, John and Dorothea Kline acquired the Locke Dr. property. This lot was essentially rectangular in shape with an area of approximately 18,450 sq. ft.
 - b. Because of takings for the construction of I-495, the relocation of Locke Dr. and associated takings by the City of Marlborough, the lot now contains 13,157 sq. ft. vs. the minimum required 18,000 sq. ft. for Zoning District Residence A-2.
 - c. 2005, an old Zoning Board of Appeals file (1327-2005) was reviewed by the Board, where John Kline received two variances, for Lot Shape and Lot Area. Due to health issues, the variances lapsed (variances are good for 1 year).
 - d. The lot was rezoned from Limited Industrial to Residence A-2 approximately 2 years prior to the ZBA's grant of the 2005 variances (1327-2005) to John Kline.
5. The applicant, Keith Kline, proposes to construct a single-family home which will meet all current zoning setbacks. Again, the two deviations are Lot Shape and Lot Area. It should be noted that at the rear of the parcels in question, the area is zoned Limited Industrial.
6. **Topography** – the parcels slopes slightly to the rear.
7. The stated **Hardship** by the applicant: When the Kline family acquired Locke Dr. the property had an area of over 18,000 sq. ft. (Zoning District Residence A-2 requires a

minimum of 18,000 sq. ft.) and was essentially rectangular in shape and as such would have met the lot area and lot shape requirements of Chapters 650-41 and 650-42. Thru land takings for the construction of I-495 and the relocation of Locke Dr. thru no fault of their own, they are left with an undersized and oddly shaped lot which is undevelopable and unusable for practical purposes. Without relief, the property is virtually worthless and unusable for its intended and otherwise permitted residential use in a residential district.

8. The Board questioned whether the two parcels (Parcels 2 and Lot 2B) would have to be combined legally to create one lot. The applicant stated that considering both lots are under common ownership, he believes they would be considered one lot. As a condition, if variances were granted, the Board would like to make sure it is legally one lot. The Board stated that prior to the issuance of a building permit, the applicant shall go before the city's Planning Board to combine Parcels 2 and 2B into one lot and the new plan shall be submitted to the Building Dept. and the Zoning Board of Appeals. Said new plan shall be recorded at the Registry of Deeds.
9. There were no questions from the audience.
10. There was no one speaking in opposition to the petition.
11. Speaking in favor of the petition was Cheryl Kline (wife of Keith Kline, applicant) 44 Short St. Marlborough, MA
12. A motion was made by Paul Giunta and seconded by Thomas Pope to close the public portion of the hearing. A vote was taken 5-0 to close the public portion of the hearing. Paul Giunta-yea, Thomas Pope-yea, Ralph Loftin-yea, Thomas Golden-yea and Robert Levine-yea.
13. After much discussion, a motion was made by Robert Levine and seconded by Thomas Golden to grant the two requested variances as follows:
 - Chapter 650-41 Table of Lot Area, Yards, and Height of Structures of City Code of Marlborough – The zoning code states that the use requested requires a minimum of 18,000 sq. ft. vs. the proposed 13,112 sq. ft. of area in an A-2 zoning district.
 - A motion was made by Ralph Loftin and seconded by Robert Levine to grant a variance for Lot Area. The Board voted 5-0 to grant the variance, with Paul Giunta, Ralph Loftin, Robert Levine, Thomas Pope and Thomas Golden voting in the affirmative.
 - Chapter 650-42 - Lot Shape – Unable to fit the required rectangle within the lot lines.
 - A motion was made by Robert Levine and seconded by Ralph Loftin to grant a variance for Lot Shape. The Board vote 5-0 to grant the variance.

with Paul Giunta, Ralph Loftin, Robert Levine, Thomas Pope and Thomas Golden voting in the affirmative.

Decision

Based on the above findings and the plan presented entitled: ZBA Petition Plan Map 67, Parcels 2 and 2B Locke Dr., Marlborough, MA, Prepared by: Sullivan, Connors & Associates, Stamped by: Varoujan H. Hagopian, Dated: 9/18/2018, Last revised: Nov. 24, 2020 the Board finds that thru land takings for the construction of I-495 and the relocation of Locke Dr. thru no fault of their own, the applicant is left with an undersized and oddly shaped lot which is undevelopable and unusable for practical purposes. Without relief, the property is virtually worthless and unusable for its intended and otherwise permitted residential use in a residential district. In constructing a proposed house which will meet all other zoning setbacks, except for Lot Shape and Lot Area, it will not be a detriment to the public because there are many other residential homes in the area.

The Board voted 5-0 to grant zoning relief (variances) for:

- Chapter 650-41 Table of Lot Area, Yards, and Height of Structures of City Code of Marlborough – The zoning code states that the use requested requires 18,000 sq. ft. vs. the proposed 13,112 sq. ft. of area in an A-2 zoning district.
- Chapter 650-42 - Lot Shape – Unable to fit the required rectangle within the lot lines.

with the following **conditions**:

1. Prior to the issuance of a Building Permit, the applicant shall go before the city's Planning Board to combine Parcels 2 and 2B into one lot and record the stamped plan with the registry of Deeds. A copy of the stamped plan should be provided to the Building Dept. and to the Zoning Board of Appeals for their files.
2. These two variances for Lot Shape and Lot Area are only for a proposed single-family home. All other zoning requirements, i.e. zoning setback requirements, lot coverage, height will conform according to criteria listed for Zoning District Residence A-2.
3. Prior to the issuance of a Building Permit, the applicant at their expense shall record these zoning reliefs (variances) in the Middlesex South District Registry of Deeds after the City Clerk has certified that the 20-day appeal period has elapsed with no appeal having been filed and before the applicant shall apply to the Building Dept. for a building permit.

End of Conditions

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (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 city clerk that twenty days (20) have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal 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 fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

No Special Permit, or any extension, modification or renewal thereof, can take effect until a copy of the decision, bearing the certification of the city clerk is recorded in the registry of deeds. The fee for recording or registering shall be paid by the owner or applicant. Special Permit will lapse within two years of grant of such Special Permit.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul Giunta".

Paul Giunta – Chairman
Zoning Board of Appeals



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Zoning Board of Appeals
140 Main Street
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ZBA Case # 1471-2020

Applicant: Dorothea J. Kline Revocable Trust

Location: 0 Locke Dr. Map 67, Parcels 2 & 2B

VOTE OF THE BOARD
Signature Sheet

IN FAVOR

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

IN OPPOSITION

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine