

**The Commonwealth of Massachusetts**  
**TOWN OF LENOX**

Filing fee is due with the petition. If hearing expenses exceed this amount the Zoning Board of Appeals will bill the petitioner.

The undersigned hereby petitions the Town of Lenox Zoning Board of Appeals for:

☐ A Special Permit for exception under the provisions of Section \_\_\_\_\_ of the Town of Lenox Zoning By-Law.

☒ A Variance from the following provisions of Section 3.32(4), 6.1.1 of the Town of Lenox Zoning By-Law.

To permit the following use or activity (describe proposed use or activity):

*see attached narrative*

For premises:

Owner of Record Amy Lehman, Trustee Amy S. Lehman Revocable Trust

Address 12 Stone Ledge Rd

Map and Parcel 45-54-11

Zoned as R1A

Deed Reference Book 5428 Page 337

*(This information is available from the Assessor's Office or townoflenox.com in the Property Assessments-Online Database section.)*

Petitioner Kelly A Lynch attorney for owner/petitioner  
*(Your signature here also acknowledges that you agree to pay all hearing expenses relative to this petition.)*

Address (Mailing Address) 68 Main St. P.O. Box 1787, Lenox

Telephone Number 413-637-1300

Email address lynch@lenoxattorney.com

Date 7-25-2022

APPLICATION FOR A VARIANCE TO  
LENOX PLANNING BOARD

Filed Date:

Applicant: Ms. Amy Lehman, Trustee of the Amy S. Lehman Revocable Trust

Submitted by: Jeffrey Lynch, Esq.

Address: 68 Main St., PO Box 1787, Lenox, MA 01240

Phone: 413-637-1300

Email: [Lynch@LenoxAttorney.com](mailto:Lynch@LenoxAttorney.com)

Property: Assessor's Parcel ID # 45-54-11  
12 Stone Ledge Road

Zone: R1A

**VARIANCE APPLICATION**

**ISSUE**

Ms. Amy Lehman, Trustee of the Amy S. Lehman Revocable Trust ("Ms. Lehman"), requests that the Town of Lenox Zoning Board of Appeals issue a Variance under Section 3.3.2 (4) to permit the construction of a single-family home on Assessors' Parcel ID #45-54-11, 12 Stone Ledge Road, Lenox ("the Lot").

The Lot is identified as parcel 11A on a subdivision plan originally approved by the Planning Board on June 23, 2003, being last amended by a plan approved on August 22, 2006 and recorded on November 2, 2006 in the Berkshire Middle District Registry of Deeds in Plat H, #200, as "Plan of Land Showing Revised Lots 8B, 9A, 10A, 11A, 13A, Lot 114A, 15B and Lot 16A, Stone Ledge Subdivision Stone Ledge Road, Lenox, MA, Prepared by Foresight Land Services, Scale 1"= 50', August 22, 2006" (hereinafter the "Subdivision Plan"). The timing of the Stone Ledge subdivision tracked Lenox's decision to terminate the R 40-30-20 zoning district and replace this zone with the R1A zone. The R1A change increased the intensity

regulations to require 1 acre of land and 150 feet of frontage per lot. Consequently, many of the lots in Stone Ledge that were created as conforming lots under the R-40-30-20 zone immediately became non-conforming lots because many of the lots lacked adequate frontage and lot area under the R1A zone. *See Berkshire Middle District Registry of Deeds Plat B, # 183.*

Notwithstanding the zoning change, the Town continued to permit amendments to the subdivision including reconfigurations that perpetuated the existence of non-conforming lots in 2006<sup>1</sup>.

Ms. Lehman purchased her first lot in the Stone Ledge subdivision in 2004. She purchased 10 Stone Ledge Road and built a home. Later in 2006, Ms. Lehman and her husband, Thomas Lehman, purchased the Lot, 12 Stone Ledge Road (Lot 11A on the Subdivision Plan), and Ms. Lehman individually purchased a small parcel behind 10 Stone Ledge Road (Lot 12A on the Subdivision Plan). When Ms. Lehman purchased the Lot, it was a non-conforming lot because it lacked adequate area and frontage but was afforded protections under G.L. ch. 40A section 6, retaining its status as a buildable lot. After the purchase of Lot 12A by Ms. Lehman the Town combined Lots 12 and 12A [on the Subdivision Plan] to a single tax parcel. With the addition of Lot 12A, 10 Stone Ledge Road became a conforming lot because it has 1 acre of land and 150.03 feet of frontage. In contrast, the Town of Lenox took no action relative to the Lot and today the Town continues to assess the Lot as a buildable lot and has since 2006 – *Parcel ID 45-54-11*.

An issue arose in the Spring of 2022 when Ms. Lehman received an offer to purchase the Lot. The Buyer's attorney opined that the Lot was non-conforming under the zoning law and it

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<sup>1</sup> The R1A was created in May 5, 2003. Planning Board approval for Stone Ledge was June 23, 2003, with amendments to the configurations of the subdivision lots in June 2004, and August 2006.

had merged with the adjacent 10 Stone Ledge Road. The Lot, the attorney opined, could not therefore be sold and developed as a building lot. Ms. Lehman disagrees.

The Zoning Board of Appeals is asked to determine whether a merger has occurred. If the Board finds a merger did not occur, then no permits or variances need issue. If, however, the Board determines a merger did occur, then Ms. Lehman requests that a variance issue to affirm the Town of Lenox's conclusion that the Lot – *Tax Parcel 45-54-11* is and continues to be a buildable lot pursuant to the Town of Lenox Zoning Bylaw.

In 2003, the Town made the questionable decision to increase the dimensional requirements for single family homes across large sections of Town. See, *Minimum – Lot Size Regulations Mean Less Housing*, *Forbes*, *Adam A. Millsap*, [HTTPS://Pixabay.com](https://pixabay.com); *To improve Housing Affordability, We Need Better Alignment of Zoning, Taxes, and Subsidies*, *Jenny Schuetz*, *January 2020*, *Policy 2020 Brookings*, [brookings.edu/policy2020](http://brookings.edu/policy2020); *Eliminating Land-Use Barriers to Build More Affordable Homes*, *Gretchen Blankinship*, *Andy Winkler*, *Sept 26, 2019*, *Bipartisan Policy Center*, [bipartisaninfo@bipartisanpolicy.org](mailto:bipartisaninfo@bipartisanpolicy.org). The Amended zoning bylaw adopted on May 23, 2003 ended the previous R40-30-20. The Planning Board approved the Stone Ledge subdivision in June 2003, which established a 12-lot subdivision. Many of those fifteen lots were immediately non-conforming because the zoning change placed Stone Ledge in the R1A zone. Determining whether the Lot remains buildable requires an analysis of the Lot's development pursuant to G.L. ch. 40A Section 6, which states that:

“Any increase in area, frontage, width, yard or depth requirements of a zoning ordinance or bylaw shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, confirmed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage.” *Id.*

By analyzing Section 6's individual elements, the questions that arise are:

1. Does the lot have at least 5,000 square feet and 50 feet of frontage?;
2. Is the lot located in an area zoned for single or two family use?;
3. Did the lot conform to existing zoning when legally created?; and
4. Was the lot separately described and separately held from any adjoining land at the time the more restrictive zoning requirements took effect?

The separate lot protection only applies to vacant land. Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, (1987). Applying Section 6 to the Lot, the Zoning Board must conclude it remains a protected buildable lot notwithstanding its common ownership with 10 Stone Ledge Road. First, only the Lot is vacant land. In 2004-2005, Ms. Lehman built a home on 10 Stone Ledge Road and with the additional purchase of Lot 12A, 10 Stone Ledge became a conforming single-family lot.

1. *Does the Lot have at least 5,000 square feet and 50 feet of frontage?*

**Answer: Yes. The Lot is 26,458 sq. ft. with 123.41 feet of frontage.**

2. *Is the Lot located in an area zoned for single- or two-family use?*

**Answer: Yes. The Lot is located within the R1A Zone.**

3. *Did the Lot conform to existing zoning when legally created?*

**Answer: Yes. When created the Lot met the zoning requirements under the R 40-30-20 zone as evidenced by the Planning Board's endorsement of the Subdivision Plan, and amendments thereto.**

4. *Was the Lot separately described and separately held from any adjoining land at the time the more restrictive zoning requirements took effect?*

**Answer: Yes, as explained below.**

All lots in the Stone Ledge development, were separately described in 2004 when the lots were created by the subdivision approval process. The lots, however, were not separately owned because the creation of the subdivision was contemporaneous with the zoning change. *See also*, G.L. ch. 40A, Section 6 (noting an eight-year protection for lots created under a subdivision plan). On December 28, 2006, when Ms. Lehman purchased the Lot it was conforming based upon the 8 year protection period under G.L. ch. 40A, Section 6, and at that time the Lot was not in common ownership with any adjacent property. The subsequent conveyance of the Lot to Ms. Lehman's trust is not of consequence because at that time, Lot 10 was a conforming lot improved by a single-family home. Plus, G.L. ch. 40A section 6 requires the analysis of common ownership apply from the date the new, more restrictive zoning requirement took effect. In this case, the Lot was not in common ownership with adjacent property.

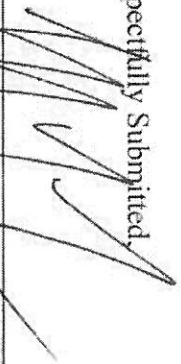
The addition of a single-family home on the Lot will not be detrimental to the neighborhood or the Lenox community. The development and construction of a single-family home meets the expectations of the Town when it approved the development of a 15 [12]-lot subdivision and creation of Stone Ledge Road. The neighboring properties all, at least implicitly, knew 12 Stone Ledge Road would some day be improved with a single-family home. The Lot is already connected for Town water and sewer and other utilities, and the Town of Lenox continues to assess the Lot as a single-family parcel. And Ms. Lehman continues to pay these real estate taxes. The Lot consists of considerable square footage and provides various opportunities for house placement in a manner that furthers the purposes of the Bylaw. The home will be conforming in all ways except frontage and area, but it will complete a beautiful neighborhood. The end result will be a new home in Lenox, which will make it possible for a



family to live in Lenox with its excellent schools and well known amenities and thereby increase the Town's tax base.

Ms. Lehman respectfully requests that the Zoning Board determine that the Lot did not merge with the adjacent property, 10 Stone Ledge Road. In the alternative, Ms. Lehman requests that the Board grant a variance that will permit the development of the Lot for a single-family home. The variance requested is to the frontage and lot area requirements under Table of Dimensional Requirements 6.1.1; *See variance standards pursuant to Town of Lenox Zoning Bylaw section 3.3.2(4).*

Respectfully Submitted,



Jeffrey R. Lynch, Esq. (BBO# 639832)

Jeffrey T. Scrimo, Esq. (BBO# 649864)

Lynch Scrimo Attorneys

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jeff@lenoxattorney.com

## Appendix of Exhibits

1. Town of Lenox Assessors Card for #45-54-11
2. Town of Lenox Assessors Card for #45-54-12
3. Town of Lenox Assessors Map
4. Town of Lenox GIS Map
5. Town Warrant Article Dated May 5, 2003
6. Definitive Plan Stone Ledge Subdivision endorsed June 23, 2003, as recorded in the Berkshire Middle District Registry of Deeds in Book Plat B # 183
7. Plan of Land Showing Revised Lots Stone Ledge Subdivision endorsed June 29, 2004, as recorded in the Berkshire Middle District Registry of Deeds in Plat G, # 301
8. Plan of Land Showing Revised Lots Stone Ledge Subdivision endorsed August 22, 2006, as recorded in the Berkshire Middle District Registry of Deeds in Plat H, # 200.
9. Quitclaim Deed Amy Lehman to Amy Lehman as Trustee of the Amy S. Lehman Revocable Trust, as recorded in the Berkshire Middle District Registry of Deeds in Book 5428, Page 334 (12 Stone Ledge Road, Lot 11A on the Subdivision Plan).
10. Quitclaim Deed of Thomas R. Lehman and Amy Lehman to Amy Lehman as Trustee of the Amy S. Lehman Revocable Trust as recorded in the Berkshire Middle District Registry of Deeds in Book 5428, Page 337. 10 Stone Ledge Road Lots 12 and 12A on the Subdivision Plan
11. Chain of Title for 12 Stone Ledge Road, Lot 11A on the Subdivision Plan
12. Chain of Title for 10 Stone Ledge Road, Lot 12 and 12A on the Subdivision Plan
13. Articles Cited within Narrative on Zoning Regulation impact on affordable housing



**Town of LENOX - Fiscal Year 2022**

426A/2021

3:20 pm SEQ #: 2.896

tables

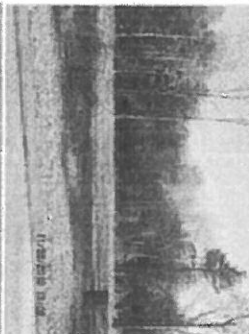
**EXHIBIT**

LEHMAN AMY LEHMAN AMY S REV TRUST TRUSTEE 7251 S W 40TH COURT MIAMI, FL 33143													CURRENT OWNER		PARCEL ID 4554.11		LOCATION 12 STONE LEDGE RD		CLASS 1000		CLASS%		DESCRIPTION		BNID		BN		CARD			
TRANSFER HISTORY LEHMAN AMY LEHMAN THOMAS R													DOS 08/29/2014 F 12/29/2006 T		SALE PRICE 5428.337 246,000.00 3702.420		PRM NO SS00-13 SS07 SS05-12		PRM DT 12/31/2006 12/31/2005 12/31/2003		TY 20 20 20		DESC SpideSldw SpideSldw SpideSldw		AMOUNT 04/21/2007 06/18/2005 06/22/2004		INSP ER SL ER		BY 100 100 100		1 of 1 100 100 100	
CD	TI	ACCFUN	NBRD	INT1	INT2	ADJ BASE	SAF	INT3	LPI	VC	CREDIT AMT	ADJ VALUE																				
100	S		27.0067	1.00	VB	1.00	A	1.00				161.750																				

[illegible]

ASSESSED	CURRENT	PREVIOUS
LAND	167,033	148,400
BUILDING	0	0
DETACHED	0	0
OTHER	0	0
TOTAL	167,030	148,400

PHOTO 11/27/2013

TY	QTY.	COND.	DIMINOTE	VB	UNITS	ADJ PRICE	RCHLD	PHOTO	14272015		
											
BLDG COMMENTS											
BUILDING	CD	ADJ	EESC								
MODEL											
STYLE											
QUALITY											
FRAME											
MEASURE LIST REVIEW											
YEAR BLT	SIZE ADJ										
NET AREA	DETAIL ADJ										
SALRCGN	OVERALL										
CAPACITY	UNITS	ADJ									
ELEMENT	CD	DESCRIPTION	ADJ	\$	BAT	I	DESCRIPTION	UNITS	VB	ADJPRICE	RCHN
TOTAL RCHN											
CONDITION FLEM											
CO											

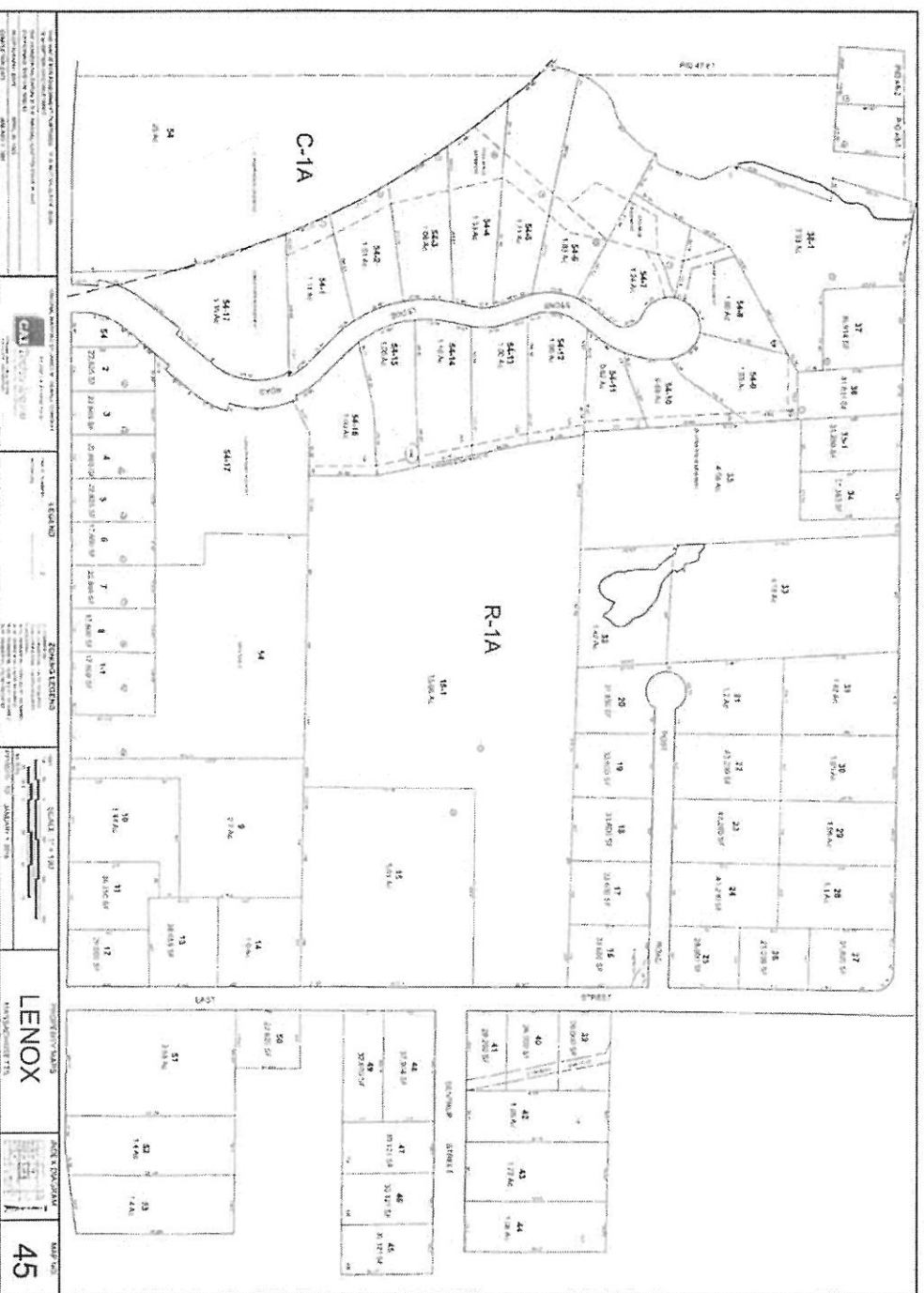
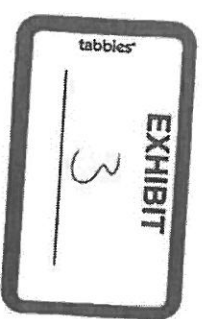
EFF YRAGE	COND	FUNC	ECCH	DEPR	RCRND	% GD
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Key: 3384

Town of LENOX - Fiscal Year 2022

CURRENT OWNER				PARCEL ID		LOCATION		CLASS CLASS%				DESCRIPTION			
LEHMAN AMY				46-64-12		10 STONE LIDGE RD		1010		100		SINGLE FAMILY			
LEHMAN AMY A REV TRU TRUSTEE				TRANSFER HISTORY		DOS		PMT NO		TY		DESC			
7951 S W 4TH COURT				LEHMAN AMY		08/28/2014 F		13-2-61		3 Rmtr / Atrr		2,500			
MIAMI FL 33143				11/22/2004 P		225,000 3101-234		SS008-13		20 SpdrtsSubst		SS008-13			
								12/31/2005		20 SpdrtsSubst		521,000			
								12/31/2005		1 New Cnstrl		102/22/2005 CMB			
								12/31/2005		20 SpdrtsSubst		100 100			
												100 100			
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**EXHIBIT**

4

0.68 Ac

5292

82.74

54-11  
0.62 Ac

0.62 Ac

-6  
Ac

E413

1.00 Ac

STONE

54-13

1.00 Ac

54-14

1.10 AC

25. OPEN SPACE EASEMENT  
134.75'

134.75

EXHIBIT

5

design and engineering costs associated with the Root Reservoir Project; and to see if such appropriation will be provided by authorizing the Treasurer, with the approval of the Selectmen, to borrow a sum of money, under the authority of Chapter 44, Section 8 of the General Laws, and to issue bonds or notes of the Town there for payable in accordance with the provisions of Chapter 44 (while it is anticipated that payments of principal and interest will be made from water revenues, such bonds or notes shall be general obligations of the Town); that all sums received from the Federal and State government for such project be applied to the costs of said project and the amount to be borrowed reduced correspondingly.

ARTICLE 17.

A motion was made to call the questions. A 2/3 vote was needed to end the discussion. It failed  
113 yes      65 no

Discussion continued until the Moderator called for a vote on the article.

Voted to amend the Zoning By-Laws of the Town of Lenox, Massachusetts by amending the R-40-30-20 district to read R-1A. The Town Moderator declared a 2/3 vote Pursuant to Article 19 as approved at the May 1, 1998 Annual Town Meeting.

ARTICLE 18.

Voted to amend the Zoning By-Laws of the Town of Lenox, Massachusetts by replacing Section 14 with a new Section 14, a copy of which is on file with the Town Clerk. The Town Moderator declared a 2/3 vote Pursuant to Article 19 as approved at the May 1, 1998 Annual Town Meeting.

It was voted unanimously to adjourn the meeting at 9:45 p.m. and to reconvene on Monday, May 5<sup>th</sup>, 2003 in the Lenox Town Hall for the purpose of voting for Town Officers.

Attest:

*Marie C. Colvin*

Marie C. Colvin  
Town Clerk