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REFER TO FILE NO.

May 23, 2025

BY FIRST CLASS MAIL AND E-MAIL
cwickson@town.dennis.ma.us

Chris Wickson
Civil Engineer
Town of Dennis Engineering Department
120 Theophilus Smith Road
South Dennis, MA 02660

Re: 8 Coolidge Way, Dennis MA
ZBAS-25.12
ZBA Hearing Date: June 23, 2025

Dear Mr. Wickson:

Please be advised that this office represents Jeffrey P. Reilly and Catherine M. Reilly, the owners of the property at 8 Coolidge Way, Dennis MA (the Property). As you know, the Reillys have applied to the Dennis Zoning Board of Appeals for a Special Permit to raze and replace the existing structure at the Property, and you have conducted an initial review of the project. Based on that review, I understand that you have requested some clarification regarding the lot area of the Property, which is the baseline for determining the lot coverage. I have reviewed the records in the Land Court Division of the Barnstable County Registry of Deeds in order to provide assistance in that regard. I can offer you the following:

The Property is located in the R-40 Zoning District, contains approximately 9,230 square feet, and is denoted as Lots 11 and 12 on Land Court Plan 12333-B (Sheet 2) (See Exhibit A attached). Title to the Property is currently in the name of Jeffrey P. Reilly and Catherine M. Reilly, and the title is derived pursuant to a deed registered in the Land Court Division of the Barnstable County Registry of Deeds as Document 1,050,835 on Certificate of Title No. 181770. The lot is denoted as Parcel 17 on the Dennis Assessor's Map 345. The lots shown on Land Court Plan 12333-B, which is dated 1930, have frontage on a road labeled on such plan as "Way", and is noted to be 25 feet in width.

In 1971, the Town of Dennis registered a document, entitled "Order of Taking of an Easement in Land in Dennis, Barnstable County, Massachusetts, by the Selectmen for Town Way Known as Coolidge Way" in the Land Court Division of the Barnstable County Registry of

Deeds as Document 146,359 (the Easement) (See Exhibit B attached). The Easement specifically refers to the interest to be taken as an “easement” and does not indicate that the fee interest in the land is being taken from landowners. *Malinoski v. D.S. McGrath, Inc.*, 283 Mass. 1, 186 N.E. 225 (1933) (“An order of taking that does not specify whether a fee or an easement is taken is invalid”). In fact, the Easement references that very word on 4 different occasions. As you likely know, an easement is defined by Black’s Law Dictionary as a “right of use over the property of another.” There are a number of indicia which brings me to the conclusion that the Town of Dennis did not intend to take the fee interest in the applicant’s property.

First, if the Town had intended to take, and expand, a parcel of land denoted on Land Court Plans, a new plan would need to be created, with lot numbers. This was never done. In fact, the first amendment to a Land Court Plan which depicts Coolidge Way was filed as Land Court Plan 12333-G on February 19, 1985. That plan shows Coolidge Way as a 25 foot wide way. (See Exhibit C attached). In essence, had the Town of Dennis taken the fee interest in a 40 foot wide parcel, they would have had to prepare a new plan depicting this change.

Second, the taking itself clearly indicates that an easement, and only an easement, was taken in 1971. The language in the document clearly denotes the type of interest being taken at that time. Additionally, had the Town of Dennis taken the fee interest in land of another, it would have had to have paid fair compensation for that taking. In this case, the Easement indicates that no award of damages was provided to any of the land owners affected by the taking.

Finally, the Dennis Tax Assessor’s field card indicates that the Property measures .21 acres, or approximately 9,148 square feet in area, a difference of 82 feet from the Land Court measurements. (See Exhibit D attached). The taking in 1971 indicates that the Town of Dennis’s Easement affected 3,980 square feet. In fact, my client has been paying real estate taxes on the entire parcel square footage since 1971, which is another admission on the part of the Town of Dennis that a taking in fee did not occur.

The applicant has submitted plans and other records indicating that the property contains 9,230 square feet, which I believe to be accurate, and which should not be reduced in any way by the existence of an Easement. Thank you for your assistance.

Very Truly Yours,

Paul R. Tardif
Enc.

cc: Jeffrey and Catherine Reilly
Brian Yergatian
Erik Tolley