



Town of Dennis

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8 Coolidge Way

ZBA VARIANCE STAFF REVIEW – July 24, 2025

APPLICANT:	Jeffery P Reilly c/o Paul Tardif of Law Offices of Paul R. Tardif
PROJECT ADDRESS:	8 Coolidge Way, Dennis, MA 02638
MAP AND LOT NUMBER:	Map 345 Lot 17 (0.21 acres – 9,230 sf)
APPLICANT ADDRESS:	490 Main Street, Yarmouth Port, MA 02675
CASE NUMBER:	ZVAR-25-4
ZONING:	R-40; OK Historic
HEARING DATE:	July 28, 2025

1. **Project Summary; Request per Zoning Bylaw; Plan Citations**
2. **Plans Specifications; Basic Site Data**
3. **Actions Requiring Findings**
4. **Town Department Comments**
5. **Proposed Conditions**

PROPOSAL	Demolition of a 1.5 story single-family home built in 1946 on a nonconforming lot, to be replaced with a larger 2-story single-family home.
HISTORY	<ul style="list-style-type: none"> • The project was about to be reviewed as a Special Permit per: § 2.4.1.2.C. - Special Provisions for Relocation/Reconstruction of 1 Family Structures Not Located w/n Existing Footprint (C.2) voluntary demolition and reconstruction in a new location... • The project appeared to meet the bulk thresholds with some questions about the driveway and street trees left unresolved. • A Land Court Plan and the Town Assessing records and GIS show the right of way on the small single lane road as 25'. Thus, the applicants and their engineer and architect believed the Coolidge Way to be 25 feet wide and designed accordingly. • During the SP process, Town Engineering noted a 1971 plan showing the Town had taken an easement in the right of way of 40'. • The Attorney for the applicant made a case for not using the 40-foot right of way for setback and lot coverage purposes because it was an easement. • Town Counsel ruled that the setbacks and lot coverage should be from the 40' RoW. • The Applicant is pleading for a hardship due to the Town of Dennis taking an easement in 1971 and the right of way on the taking plan is shown as 40', rather than the 25' as shown on the Land Court Plan and Town Assessing records, and thus impacts the buildability of the lot unknown to the residents.
MGL Variance	<i><u>MGL 40A, Section 10: The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or</u></i>

structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

REQUIRED FINDING #1 SOIL, SHAPE OR TOPOGRAPHY:

- 1) **Circumstances relating to the Soil Conditions:** To make the required finding that a parcel is entitled to a variance due to uniquely poor or inadequate soil conditions, the Board of Appeals must conclude that:
- 2) **Circumstances relating to the Shape:** Massachusetts courts have consistently held that a lot's peculiar or unusual shape, without more, does not give cause to grant a variance.
- 3) **Circumstances relating to the Topography:** Cases that have been decided on topographical constraints follow the same pattern as those discussed previously. Simply avoiding added costs or reducing difficulties associated with development of property with steep slopes or difficult topography does not, without more, provide legal justification for a variance.

REQUIRED FINDING #2 HARDSHIP: Massachusetts's courts have held that the "hardship" "...must relate to the premises for which the variance was sought". Hurley v. Kolligian, (1955).

- a) In addition, the "hardship" must be linked, or be caused by, the land's unique or problematic soil conditions, shape or topography. In other words, based on the evidence presented in Required Finding #1, there is a demonstrated hardship.
- b) The statute requires that the Board of Appeals connect the unique circumstances of the lot (eg its soil conditions, shape or topography) *to the hardship that unique circumstances create.*
- c) "...any other considerations unrelated to the underlying real estate are irrelevant to the board's inquiry into the question of substantial hardship...Since the hardship relates to the land itself, ..." Paulding v. Bruins, 18 Mass. App.Ct. 707, 711, (1984) citing Huntington v. ZBA of Hadley.
- d) One oft-repeated situation is where the petitioner has created the hardship from which she now needs relief. "...well-established principle in our cases prohibiting self-imposed hardships as a basis for obtaining a variance. Adams v. Brolly, 46 Mass. App.Ct. 1, 4 (1998),.
- e) Similarly, Massachusetts courts are not sympathetic to the claim that but for the grant of a variance, the applicant will suffer "economic" or "competitive" hardships. "

REQUIRED FINDING # 3 PUBLIC GOOD: The third Required Finding is the Board's conclusion that the variance can be granted "without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw."

- a) "The test of the statute is general; the effect of a variance on the intent or purpose of the ordinance must be determined by appraising the effect on the entire neighborhood affected...We do not think, however, that it can be concluded that the specific hurt here found to at least five residential properties is not a substantial derogation of purpose. The balancing of public advantage against the hurt to individuals which is inevitable with zoning is appropriately done in connection with the enactment or amendment of the ordinance or by-laws... It is of limited operation in determining whether a proposed variance meets the rigid statutory conditions." Cary v. Board of Appeals of Worcester, 340 Mass. 748, 753 (1960).

PROJECT SUMMARY	<ul style="list-style-type: none"> • Demolition of a 1.5 story single-family home built in 1946 on a nonconforming lot, to be replaced with a larger 2-story single-family home.
SITE PLAN	<p>Site Plan of 8 Coolidge Way Dennis, Massachusetts prepared for Jeffery P. Reilly, 232 Ward Street Hingham, MA 02018. Prepared by BSC Group, 349 Main Street-Route 28, West Yarmouth, Massachusetts 02673. Plan consisting of 1 sheet with existing and proposed conditions and Septic System. Plan dated March 28, 2025 by Kieran Healy.</p>

BUILDING PLANS	Plan of 8 Coolidge Way Dennis, MA prepared for Jeff & Cathy Reilly by ERT Architects, 299 White's Path South Yarmouth, Massachusetts, 02664. Plans consisting of 3 sheets with Lower Level, Main Level & Foundation plan, Upper Level & Roof Plan, and Right, Front, Rear & Left Elevation Plans. No date or stamp
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1.3.2 Plans and Specifications

REQUIREMENTS	PROVIDED ON PLAN
CERTIFIED PLOT PLAN INCLUDING	
LOCUS MAP	Yes
PERIMETER DIMENSIONS, INCLUDING FRONTAGE	Yes
AREA OF LOT	9,230 sf
NAMES OF STREETS	Yes
NAMES OF ABUTTING PROPERTY OWNERS	Yes
DISTANCES EXISTING AND PROPOSED STRUCTURES TO PROPERTY LINES	Yes
PROPOSED ADDITONS/ALTERATIONS OF EXISTING BLDGS W/ SETBACKS	Yes
PROXIMITY OF WETLANDS	0
EXISTING AND PROPOSED TOPOGRAPHYAND/OR OTHER LAND ISSUES	Yes
DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE PROPOSED CONDITIONS	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE EXISTING CONDITIONS	Yes

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	50'	100'	100'
Front Setback	25'	17.5'	24.5'
Right Side Setback	15'	47.6'	27.2'
Left Side Setback	15'	12.6'	14.8'
Rear Setback	25'	22.7'	32.5'
Lot Area	40,000	9,230 sf	9,230 sf
Lot Width	100'	100'	100'
Non-conforming floor space within Setbacks	0sf	228sf	0sf
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			<0
Cumulative footprint size of all structures	1384	1162	1364
Cumulative lot coverage (footprint) percent for all	15%	12.6%	13.8%
Cumulative floor space of all structures (F.A.R.)	30		
Cumulative floor space to lot area % all structures	30%		N/A

§ **MGL 40A, Section 10: Variance**

Variance Request based on:	FINDING
Soil conditions	
Shape of the lot	Shape is different, unknown to the applicant, due to the 40' easement taken in 1971.
Topography	
Showing substantial hardship, financial or otherwise	

TOWN DEPARTMENTS COMMENTS:

- **PLANNING:**

- The proposal is to demolish the existing 1.5 story single-family home built in 1946 and build a larger 2-story single-family home.
- The new single-family dwelling would be compliant with setbacks, height and lot coverage relative to the 25' Right of Way shown on Land Court and Assessors Plans.
- Site Plan does not clearly mark the proposed relocated driveway or several existing street trees in the front of the house. It appears that at least one of the street trees will be removed to relocate the new driveway which presumably follows the contour line directly out of the new garage.
- The proposal is larger than the existing house, but removes setback violations and is under the bulk thresholds if the 25' Right of Way is used.
- The existing house to be demolished is over 75 years old, therefore the proposed demolition must be referred to the Historic Commission per the Demolition Delay General Bylaw (§61-3).
- The predicament the applicant is in, is understandable and it is entirely believable that they, and likely others on the street, had no idea the Town had taken a 40' easement in 1971 since the Land Court Plan and Town Assessors show a 25' RoW. Furthermore, it is not clear why the Town took a 40' easement on this street, which it appears will never be utilized. However, the Attorney should make a stronger case for a Hardship at the public hearing than what has been submitted.

- **NATURAL RESOURCES:** Project is not within Conservation jurisdiction.

- **HEALTH:** Property not located in ESA. Existing system must be abandoned. Test holes completed on 9/24/2024. (Taken from 5-19 SP ZBA Staff Report) no new comments.

- **ENGINEERING:**

- The project as presented will alter greater than 500sf of ground, and is therefore required to meet the intent of the Town of Dennis Stormwater By-Law.
- Construction period linear erosion and sedimentation controls should be provided at a clearly defined limit of work as close as practical to contain the area of disturbance. These controls should be installed and maintained until all work is completed and new vegetation stabilized.
- As grading is being performed at the site, the applicant should consider an additional vegetated swale or low area along the base of the new slope, upgradient of the south property line, to slow the velocity of runoff and maximize infiltration prior to reaching the rear property boundary.
- All disturbed areas of the site should be stabilized and re-vegetated as soon as practical, especially on newly graded slopes, or in areas close to the property boundary. Bare earth should not be left exposed for extended periods of time. Additional erosion and sedimentation controls should be provided during construction, as site conditions warrant, to contain sediment and runoff within the work limits.
- The plan provides drywells for subsurface infiltration of collected roof runoff.
- Any existing screening to abutting properties should be maintained to the extents practical. Additional screening along the side and rear property lines should be considered in locations where existing vegetation is removed as part of the project.
- The plan shows a new driveway sloping downward from the garage to the road layout. To maintain compliance with the Stormwater By-Law, runoff from the drive surface within the property boundary will need to be contained and infiltrated on-site. If the drive is to be paved or hardened, this can be accomplished by constructing a low point on the property side of the road layout line to route runoff to adjacent natural areas for infiltration, or

installing a structural system designed to collect and infiltrate the runoff. If the driveway will be constructed of a pervious stone, infiltration through the surface will likely occur to the extents where runoff is contained on-site.

- As the existing driveway will be modified, a Road Opening Permit will be required.
- The plan does not indicate if the existing driveway will remain, or if the surface will be removed and the area restored. If the intent is to discontinue use of the existing driveway, the area along the southern property line should be restored to provide a minimum 10ft. vegetated buffer per Section 2.3.4.1.b of the Zoning By-Law.
- During construction, the existing driveway should be utilized as a stabilized entrance for parking of construction vehicles and storage of material. No parking of construction vehicles in a manner which will impede vehicle or pedestrian travel should be permitted on Coolidge Way.
- The contractor shall be responsible for returning the surface of Coolidge Way to pre-construction conditions upon completion of the project.

<p>POSSIBLE CONDITIONS IF <u>APPROVED</u></p>	<ol style="list-style-type: none"> 1. The lot owners shall apply for all required permits and will comply with the intent of the Dennis Stormwater By-law, all requirements of the Dennis Conservation Commission and Board of Health and any other permits that are required. 2. Construction shall not commence before 7:00 am nor continue after 7:00 pm Monday through Friday and shall not commence before 7:00 am nor continue after 5:00 pm on Saturdays. No construction shall occur on Sundays. 3. The addition shall not generate new light, noise, litter, odor or other sources of nuisance. Any new lighting shall be restricted to downward-shielded motion sensitive security lighting that is “Dark-Sky” compliant. 4. Failure to comply with all conditions in the Board of Health Permit shall be deemed cause to revoke the ZBA Special Permit. 5. Disturbed areas should be stabilized and revegetated as soon as practical following construction to minimize erosion. Additional screening should be provided in areas where vegetation is removed or the grade is altered. 6. The contractor shall be responsible for maintaining the road in a condition free of accumulated sediment during construction and all appropriate drainage and erosion control measures as suggested by town engineering comments shall be implemented. 7. Construction vehicles shall not park in or block the road. 8. The proposed demolition must be referred to the Historic Commission per the Demolition Delay General Bylaw (§61-3). This Special Permit shall not be valid and a Building Permit shall not be issued until such time as the Historic Commission either votes that the building is not preferably preserved or the demolition delay expires. If the Historic Commission votes that the original house built in 1899 is preferably preserved, the applicant shall work with the Historic Commission and the Town Planner to explore alternatives to the proposed demolition.
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