From the Law Office of Terrence P. Morris, Esq.

Memorandum

To: Zoning Board of Appeals

From: Terrence P. Morris, Esq.

Cc: Josh Chase, Assistant Town Planner

Date: November 29, 2017

Re: 10 Waushakum Ave

Please accept this memorandum along with supporting documentation in conjunction with the application for zoning relief from the Zoning Board of Appeals filed herewith. We are confident that upon review of the material, the Board will be able to find that the removal and reconstruction of the single-family home shall not be more detrimental than the existing nonconforming structure to the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to the site. In support of that position we offer the following analysis of the six criteria set forth in the Zoning By-law.

9.3.2 Criteria 1 – "Community needs served by the proposal"

Statement: No objective observer can conclude that this 1940s era 200 sf mobile home with 136 sf addition, is going to attract Ashland's aging population or younger first-time homebuyers. Its removal from the housing stock and replacement with a modest-sized home by today's Ashland standards is far more in keeping with the Town's vision statement. The worthwhile goal of creating a full range of housing does not envision the segregation of neighborhoods by size or age of home any more than it would by income. The introduction of a 1,537 sf home is entirely consistent with the average size of homes in the neighborhood at 1,373 sf and furthers the goal of a diversified housing stock in the community. As a result it is reasonable for the Board to find that the reconstruction of the home shall not be substantially more detrimental to the neighborhood than retaining the existing nonconforming structure as part of the community housing stock.

9.3.2 Criteria 2 – "Traffic flow and safety including parking and loading"

Statement: Section 5.1.6 of the Zoning By-law requires two spaces for a single family home without regard to the size of the home or the number of occupants. Both the architectural site plan and the proposed conditions plan eliminate the current condition where the required parking is located within ten (10) feet of the front setback in contravention of section 5.1.3 of the zoning by-law. The improved site plan for the new home will provide compliant parking with one of the spaces being garaged and further the objective of improved safety and aesthetics of concern to the neighborhood. Accordingly, there is sufficient evidence for the Board to find that the change or extension of the structure shall not be substantially more detrimental than the existing nonconforming structure with regard to the safety of traffic flow and parking.

9.3.2 Criteria 3 – "Adequacy of utilities and other public services"

Statement: The Locus is currently served by existing Town sewer and water supply. The existing home can accommodate two adult persons in residence. The proposed new home has been designed to accommodate a conventional family of four with two adults and two minor children. It is a fact that Ashland draws water from several wells and has historically relied on the MWRA only for sewage disposal. While there were severe water shortages in 2007 and 2013, they were a result of climactic conditions not usage. As reported in the Boston Globe on December 8, 2013, "*Lower than normal rainfall has led to lower water levels in Ashland's wells this year.*" In 2013 the National Oceanic and Atmospheric Administration put the total rainfall in the area as 10 inches below normal. According to the DPW Director water levels in 2013 were similar to 2007, which is why the Town sought the temporary connection. In seeking the emergency connection to the MWRA that year, the Town requested access to an average of 200,000 gallons of water per day with the peak of amount of 750,000 gallons. Despite this capacity the town manager stated that there was no guarantee that Ashland will have to tap into the MWRA supply. The Town's response to both of these situations underscored the root causes of the shortage in addition to rainfall. Changes were made in the water system: the Town switched the type of water pump it used, making it easier to control the rate at which water is drawn from the wells, which ultimately helped conserve some water. There were also efforts to fix water leaks. None of these causes or responses stemmed from new construction or any increase in the number of persons residing in town. There is no likelihood that the proposed construction of a new single-family home (that is clearly below the average size for new construction of single-family homes in Ashland) would have any negative impact on the water supply, a supply that has a peak demand of 750,000 gallons per day.

9.3.2 Criteria 4 – "Neighborhood character and social structures"

Statement: The current zoning classification as Commercial Highway (CH) makes it a challenge to establish an objective consensus on what constitutes neighborhood character. As an illustration, at the southerly end of the street as it approaches Route 126 the commercial nature of the CH district intrudes into the neighborhood with the sterile commercial building at 5 Waushakum and the de-facto parking lot that serves as streetscape for 8 Waushakum, immediately adjacent to the subject site.

There is a certain incongruity between the existing zoning and what exists on the ground. Look no further than at a minimum lot size requirement of 30,000 sf and a minimum frontage of 150 feet that none of the homes in the neighborhood meet. This is a neighborhood that was laid out 100 years ago largely as 4,500 sf lots. Even with the subsequent merger of lots, there is a disparity with the underlying zoning.

Most zoning by-laws or ordinances define neighborhood character by regulating the spatial relationship of buildings to the land on which they are situated using standard dimensional controls such as setbacks, lot coverage, open space, height (in feet/stories) and floor area ratio (FAR) that are variable according to the zoning district. FAR is often a useful tool in regulating the size or volume of a building. In the Ashland Zoning By-law, we find in section 4.1.2 Dimensional note #3, a blanket cap on single and two family homes of 4,500 square feet without distinction as to lot size or zoning district. This limitation, such as it is, is further expanded by allowing 3 stories and 35 feet in height for single family homes. Since the predominance of a single-family homes by their very nature/use define the neighborhood social structure, the reconstruction of the proposed single family home does nothing to alter to the social structure of the neighborhood.

To the extent that the physical character of the neighborhood can be defined by compliance with the zoning by-law's dimensional standards, the proposed single family home meets those standards. It eliminates both of the nonconforming front (21') and side (8.3') setbacks. At 26 feet in height it is well below the 35' maximum allowed. With a design that accommodates a second level within the roof line, the building reads as a 1.5-story structure on the street, which is consistent with the bungalow-style architecture characteristic in the neighborhood. With 20% building coverage and 60% open space it exceeds the standards in the Special Residential Regulations set forth in Section 7.0 of the By-law. While not a dimensional standard in the by-law, the house size of 1537 sf is only 12% larger than the average single family home (1373 sf) in the neighborhood.

In summary the reconstruction of the single family home cures certain nonconformities and, despite the lot size and frontage insufficiencies it shares with the entire neighborhood, renders the property compliant with all current setback, yard, building coverage, open space and building height standards. Based on these facts, it is reasonable for the Board to find that the reconstruction of the home shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

9.3.2 Criteria 5 – "Impacts on the natural environment"

Statement: The Locus currently has no engineered drainage system to control storm-water runoff from its impervious surfaces. There is an undeniable beneficial impact on the natural environment to be achieved through the installation of a subsurface drainage system. As part of the building permit design process the applicant proposes to install a storm-tech system to actually control and reduce the current volume and rate of run-off from the site. The system will include roof leader tie-ins of the gutters and downspout to the underground retention chambers and catch basins with 4-foot sumps located in the driveway to capture/control sediments and potential pollutants. In light of these facts, there is sufficient evidence for the Board to find that the change or extension of the structure shall not be substantially more detrimental than the existing nonconforming structure.

9.3.2 Criteria 6 – "Potential fiscal impact, including impact on town services, tax base and employment"

Statement: The impact of a single home, albeit larger than the current home, is no more than fiscally neutral in the absence of hard evidence to the contrary. It is undisputed that the new home will pay more in taxes than the current property and thereby expand the tax base. The increase in the number of residents in the home from 4 to 2 in no way increases the frequency of trash collection or snow removal or other municipal services. The house will be built according to current building standards which should reduce the likelihood of a fire hazard that is more likely presented by the existing structure that is, in part, more than 75 years old. These facts demonstrate that there is sufficient evidence for the Board to find that the reconstruction of the proposed single family dwelling shall not be substantially more detrimental in its potential impact on the fiscal condition, tax base or town services than the existing nonconforming structure to the neighborhood.