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July 8th, 2021

Town of Oak Bluffs
Zoning Board of Appeals
Via Hand Delivery

RE: 4 Morgan Avenue & 7 Highland Avenue
Title Memorandum

This memorandum clarifies the title to 4 Morgan Avenue and 7 Highland Avenue in Oak Bluffs. It also addresses the expansion, by way of Zoning Board of Authority special permit, of a non-conforming use onto an adjacent lot. Please see referenced deeds, plans, and Assessors Maps.

7 Highland Avenue is owned by Eric Pope Van Allen and Carma Lee Van Allen, both as individuals, pursuant to a deed dated March 20, 2008 and recorded at the Dukes County Registry of Deeds in Book 1146, Page 594. The description in the deed includes the rectangular lot shown on Assessors Map 3 as lot 119. See the first half of the description in the deed. The description also includes a triangular lot immediately to the east of, and adjacent to the first lot. See the second half of the description. The triangular lot is shown on Assessors Map 3 as the southerly portion of lot 131. The two lots are described in detail in the deed as 245, 246, 247, 248, 249, and the open space right next to those lots on the plan of Vineyard Highlands recorded with the Registry of Deeds in Plan Book 6, Page 10.

This legal description of 7 Highland Avenue is consistent throughout the chain of title all the way back to the first deed out of the developer of the neighborhood. See the deed from The Highlands Property Trust, dated August 10, 1954, recorded at the Registry of Deeds in Book 226, Page 452. The description in this first deed is identical to that in the current deed, including both the rectangular lot and the triangular lot. Both the rectangular lot and the triangular lot are owned by Eric Pope Van Allen and Carma Lee Van Allen.

The Oak Bluffs Assessors have incorrectly assessed the triangular lot, the southerly portion of lot 131 on Assessors Map 3, to the East Chop Association. As a deed reference, the Assessor refers to Book 368, Page 532. That deed, dated August 30, 1979, from the developer The Highlands Property Trust to the East Chop Association, is a sweeping deed that includes all

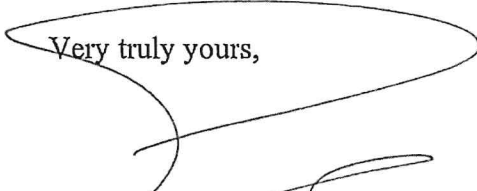
property owned by The Highlands Property Trust in Oak Bluffs that had not been previously conveyed by the developer. As outlined above, the triangular lot had been previously conveyed in 1954 to the predecessors in title to the current owners. Again, the triangular lot is correctly assessed to Eric Pope Van Allen and Carma Van Allen.

4 Morgan Avenue is owned by the Shearer Cottage Realty Trust. See the deeds in Book 1559, Page 408 and in Book 315, Page 235. Eric Van Allen is the current trustee.

The Oak Bluffs Zoning By-Laws (the "By-Laws") and Massachusetts state law both permit the expansion of a non-conforming use onto an adjacent lot. Section 3.5.5 of the By-Laws states that a pre-existing use may be "changed, moved or extended" after a finding that such change, move, or extension is not substantially more detrimental to the neighborhood than the existing non-conforming use. Nothing elsewhere in the By-Laws prohibits the expansion of a non-conforming use onto an adjacent lot. Furthermore, the state law governing zoning by laws, Massachusetts General Laws, Chapter 40A, also permits the extension of a non-conforming use after a finding that the extension is not substantially more detrimental to the neighborhood than the existing non-conforming use. Changing a non-conforming use by extending it onto an adjacent lot is the type of matter squarely within the purview of the Oak Bluffs Zoning Board, who may after fact-finding, deliberation, and neighborhood input, approve such an expansion. In conclusion, the Oak Bluffs Zoning Board is empowered by both the local zoning by-laws and the state enabling legislation to permit the expansion of a non-conforming use onto an adjacent lot.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,



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