EXHIBIT 8

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PLANNING BOARD
GRAFTON, MA

August 8, 2019

By Electronic Mail to Bergerr@grafton-ma.gov

Robert Berger,
Building Commissioner
Town of Grafton
Municipal Center
30 Providence Road
Grafton, MA 01519

Re: Zoning Opinion in Support of Special Permit Application
168 Worcester Street, Grafton, Massachusetts (the "Property")

Dear Mr. Berger:

I am writing to you in your role as the Inspector of Building and the person charged with the enforcement of the Town of Grafton Zoning By-law (the "Zoning By-law) to request your support of the pending application for a special permit to allow the operation of a retail store (Tony's Pet Oasis) in less than 5,000 square feet of area at the Property. I represent Cheryl Haire, the Personal Representative of the Estate of Gloria Walsh, the owner of 168 Worcester Road.

The Property is located in the Industrial Zoning district in the Town of Grafton and consists of: (i) a vacant commercial space – to be occupied by Tony's Pet Oasis; and (ii) four residential units. Dimensional requirements applicable to the Industrial zone include a 40,000 square feet minimum lot area. The Property has a total area of approximately 16,553 square feet.

Pursuant to Section 3.2.3.1 of the Zoning By-law, a retail use is <u>not</u> permitted in the Industrial zone without a Special Permit. Multi-family residential uses are prohibited in the Industrial zone.

The prohibition of multi-family residential uses and the failure of the Property to meet the minimum lot size requirement in the Industrial zone means that the Property is characterized as a pre-existing non-conforming lot and structure (pursuant to Section 3.4.1.4 of the Zoning By-law) and a pre-existing non-conforming use (pursuant to Section 3.4.3) and therefore enjoys certain

zoning protections by virtue of its "grandfathered" status under Massachusetts General Laws Chapter 40A, Section 6, and Section 3.4.3.5 of the Zoning By-law.

The grandfathering protection of M.G.L. c. 40A, s. 6 extend to those Property nonconformities that remain unchanged or unaltered.

In the present situation, no change or modification is being proposed to the residential portion of the Property (the existing non-conforming residential use), nor is any physical change being proposed to the existing non-conforming structure. The sole change proposed by the pending special permit application is the occupancy of the vacant existing commercial unit by a retail pet store – a use that is specifically allowed, pursuant to a special permit (see Section 3.2.3.1 of the Zoning By-law).

The existing non-conforming multi-family residential use is privileged to remain as-is, pursuant to Section 3.4.3 of the Zoning By-law ("Any lawful existing use of a structure or land which does not conform to the provisions of this By-law may continue").

The Massachusetts courts confirmed the right of existing non-conforming uses to remain in the case of Blasco v. Board of Appeals of Winchendon, 31 Mass. App. Ct. 32 (1991). In Blasco, the Appeals Court determined that the protections afforded by c. 40A, s. 6 "prescribes the minimum of tolerance that must be accorded to nonconforming uses…" Specifically, the Appeals Court found that local regulations shall not apply to "structures or uses lawfully in existence…" Although the facts in Blasco were different than in the present situation – the Blasco applicant sought a change in use that would have converted a non-conforming gravel removal operation to a nonconforming demolition landfill – the underlying point is clear: a pre-existing non-conforming use is entitled to remain as long as no change to that use is proposed.

The use of the Property for commercial purposes is not non-conforming in that it is permitted within the Industrial zone provided that it meets the requirements of the Zoning By-law. Those requirements include the off-street parking provisions at Section 4.2 of the Zoning By-law. This application for a special permit now before the Planning Board must be evaluated on its own merits, based on the special permit criteria set forth in the Zoning By-law, but excluding any consideration related to the pre-existing non-conforming residential use, which, in accordance with the Blasco decision, is privileged to remain as-is.

The addition of this retail use will add parking to the Property thereby meeting the requirements of the Zoning By-law for this commercial use and actually improving the on-site conditions for this non-conforming structure.

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For all of the above reasons, I urge you to interpret the Zoning By-law to recognize the protection afforded the existing non-conforming multi-family residential use on the Property (which is not changing) and to recommend approval of the requested special permit for the proposed retail use. Please contact me with any questions about my opinion. Thank you for your consideration.

Very truly yours,

Todd Rodman

TR/bp
cc: Estate of Gloria Walsh