

From: Joel Bard [<mailto:JBard@k-plaw.com>]
Sent: Monday, May 02, 2016 2:29 PM
To: Jennifer Burney
Cc: Higgins, Timothy S.; Daniel Walsh; Katherine D. Laughman
Subject: RE: McLean - Bypass Road letter to town with attachment

Hello Jennifer

I have reviewed the April 22, 2016 letter to you and other Town officials from attorney Diane Tillotson on behalf of McLean Hospital Corporation describing the proposed use of the property at 16-22 Bypass Road for an “educational therapeutic program.” The second page of the letter describes the program and staffing in greater detail. Your notes, based on that letter and your meeting with McLean representatives, state, “This would serve a maximum of 12 clients ages 15-21 that would live in a home environment and participate in structured, closely supervised educational therapeutic program. The residence would operate under 24 hours 7 days a week. Staff would work in 8 hours shifts with 2 overnight staff. A total of 13 jobs will be created.”

Attorney Tillotson states their belief that the program qualifies under section 6.1(g) of the Town’s Zoning Bylaw as a use entitled to a use exemption under G.L. c.40A, s.3 (known as the Dover Amendment to the Zoning Act). It is my opinion as well that the proposed use is protected by the Dover Amendment. The courts, in addition to exempting “traditional” educational uses under the Dover Amendment, also routinely approve non-traditional uses. “A proposed use of land or structures may have an educational purpose notwithstanding that it serves nontraditional communities of learners in a manner tailored to their individual needs and capabilities.” Regis College v. Town of Weston, 462 Mass. 280 (2012), citing Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 870 (1980).

“In determining whether this test is met, courts have customarily required only a demonstration that the articles of organization permit it to engage in educational activities.” Gardner-Athol Area Mental Health Association, Inc. v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12 (1987). The proposed educational activities must merely “be within the corporate purposes of the nonprofit corporation” to qualify for the exemption. *Id.* at 16. See also, Commissioner of Code Inspection of Worcester v. Worcester Dynamy, Inc., 11 Mass. App. Ct. 97 (1980).

Applying these standards, exempt non-traditional educational uses have been found by the courts to include among the following:

- Residential group home for the elderly, mentally ill, see Campbell v. City Council of Lynn, 415 Mass. 772, (1993);
- Residential programs for mentally handicapped, providing education in daily living activities, see Fitchburg, 380 Mass. at 869 (1980); Gardner-Athol Area Mental Health Association, Inc., 401 Mass. at 12 (1987);
- Residential group home for children with educational and psychological disorders, see Harbor Schools, Inc. v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600 (1977);

- Residential group home for single mothers, see Brockton Coalition for Homeless v. Tonis, 2004 WL 810296 (Mass. Super. Mar. 5, 2004); and
- Educational services “to homeless families, single mothers, persons with AIDS and other physical disabilities such as deafness and blindness, and persons recovering from addictive habits.” See Congregation of Sisters of St. Joseph of Boston v. Town of Framingham, 1994 WL 16193868 (Mass. Land Ct. Mar. 31, 1994).

Based on the above, it is my opinion that the proposed use would qualify as an educational use under the Dover Amendment.

Joel

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