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November 15, 2016

Deborah Patterson, Recorder  
Land Court  
Trustees  
3 Pemberton Square, Room 507  
Boston, MA 02108

Counselors at Law

Michael J. Puzo  
Thomas L. Guidi  
Edward Notis-McConarty  
Diane C. Tillotson  
Stephen W. Kidder  
Arthur B. Page  
Joan Garrity Flynn  
Frederic J. Marx  
Nancy B. Gardiner  
Kurt F. Somerville  
Teresa A. Belmonte  
Brian C. Broderick  
Charles Fayerweather  
Nancy E. Dempze  
\*Joseph L. Bierwirth, Jr.  
\*Dennis R. Delaney  
\*Mark B. Elefante  
\*John J. Siciliano

Re: The McLean Hospital Corporation v. Town of Lincoln

Dear Ms. Patterson:

Enclosed for filing please find The McLean Hospital Corporation's complaint pursuant to G.L. c. 240, §14A. The complaint seeks a determination by the court that a group residence proposed by McLean in Lincoln qualifies as an educational use under G.L. c. 40A, §3. As noted in the attached complaint, the Building Inspector made this determination in July; however, the determination was appealed to the Town of Lincoln Zoning Board of Appeals by several area residents represented by Attorney Michael Fee. On November 3, 2016, the Zoning Board voted to overturn the Building Inspector's determination. However, the Board does not intend to file its decision until after its next meeting on December 8, 2016.

McLean has spent considerable funds in preparing the properties in question for its residential group home and has hired staff for the home. In addition, there are potential residents who are in need of the program offered by McLean who are now being forced to wait for admission. For these reasons, McLean seeks to commence this action under G.L. C. 240A, §14A even prior to the filing of the decision by the Zoning Board of Appeals as another month's delay will substantially prejudice McLean in seeking the relief it requires. McLean will notify counsel for those opposing its use and Town Counsel, who also represents the Zoning Board of Appeals, will be notified of this action. McLean will amend its complaint at such time as the Zoning Board of Appeals files its decision with the Town Clerk's office and add the Zoning Board of Appeals and other necessary parties at that time.

Harry F. Lee  
Sarah M. Waelchli  
Emma D. Becker  
†Charles R. Platt  
Ryan P. McManus  
Kevin M. Ellis  
Donna A. Mizrahi  
Nathan N. McConarty  
•Steven L. Mangold

David H. Morse  
Lawrence T. Perera  
George T. Shaw  
Timothy F. Fidgeon  
Michael B. Elefante  
Susan Hughes Banning  
Deborah J. Hall  
R. Robert Woodburn, Jr.  
Raymond H. Young  
Of Counsel

\*Also Admitted in NH  
†Also Admitted in NY  
•Also Admitted in MN & RI



McLean respectfully asks this court to set this matter down for a Case Management Conference as soon as reasonably possible. Although not technically required pursuant to G.L. c. 240, §14A, McLean is also providing notice of this action to the Attorney General's office as the decision of the Zoning Board of Appeals in this matter could severely impact the status of group homes considered "educational" under the Dover Amendment throughout the Commonwealth.

Thank you for your attention to this matter.

Sincerely,

Diane C. Tillotson

DCT/mac  
enclosure

cc: Joel Bard, Esq., Town Counsel  
Maura T. Healey, Esq, Attorney General  
Michael Fee, Esq., Counsel to parties opposing the McLean project

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LAND COURT DEPARTMENT

DOCKET NO. 16 MISC 000694 (KFS)

THE MCLEAN HOSPITAL  
CORPORATION

Plaintiff

v.

TOWN OF LINCOLN AND DANIEL  
WALSH in his capacity as the TOWN  
OF LINCOLN BUILDING  
COMMISSIONER

Defendants

LAND COURT  
FILED  
2016 NOV 15 PM 3:30

COMPLAINT

This is an action pursuant to G.L. c. 240, §14A in which plaintiff The McLean Hospital Corporation (“McLean”) asks this Court to determine that McLean’s proposed use of the premises at 16-22 Bypass Road, Lincoln, Massachusetts for a residential program implementing a highly structured model of learning behavior through a specialized curriculum known as Dialectical Behavior Therapy (“DBT”) is educational within the meaning of G.L. c. 40A, §3 and the Town of Lincoln zoning bylaw. By letter dated July 8, 2016, defendant Daniel Walsh, the Town of Lincoln Building Commissioner determined that McLean’s use of the premises was educational and exempt from zoning control under both the state statute and the local bylaw. Certain abutters appealed and on November 3, 2016 the Town of Lincoln Zoning Board of Appeals (“ZBA”) voted 4-1 to overturn the Building Commissioner’s determination. Although the vote was taken on November 3, 2016, the ZBA will not sign its decision until its meeting of December 8, 2016. In the meantime, the delay in opening its program has severely prejudiced

McLean, both in terms of its financial investment in the program and also given the needs of the prospective residents whose admission is now delayed.

#### PARTIES

1. Plaintiff The McLean Hospital Corporation is a not-for-profit corporation organized under G.L. c. 180 and having a principal business address of 115 Mill Street, Belmont, Massachusetts. Among McLean's purposes are the operation of a psychiatric hospital in Belmont and programs and facilities engaged in education, science and research supporting mental and emotional health for persons of all ages, including the operation of two chapter 766 approved schools.

2. Defendant Town of Lincoln is a duly organized municipality with a principal address of 16 Lincoln Road, Lincoln, Massachusetts.

3. Defendant Daniel Walsh is the duly appointed Building Commissioner for the Town of Lincoln whose business address is 16 Lincoln Road, Lincoln, Massachusetts.

#### FACTS

4. On or about May 25, 2016, McLean purchased two residential properties at 16-22 Bypass Road in Lincoln, Massachusetts. McLean intends to use these properties for a residential educational program for adolescent boys whose principal diagnosis is Borderline Personality Disorder ("BPD"). McLean's program will utilize the psychoeducational curriculum known as Dialectical Behavior Therapy. The program will be licensed by the Massachusetts Department of Early Education and Care.

5. Prior to purchasing the Bypass Road properties, McLean, through counsel, by letter dated April 22, 2016, wrote to the Building Commissioner, the Director of Land Use and the Administrative Assistant to the Planning Board describing McLean's proposed use of the

property. McLean advised the Town Planning Department and Building Commissioner that the proposed use would be for a transitional living program wherein residents would participate in a highly structured and closely supervised educational therapeutic program offering a comprehensive state of the art curriculum integrating behavioral and cognitive skill building experiences.

6. In its letter of April 22, 2016, McLean requested the Town's concurrence that the proposed use as a group home would be an educational use permitted as of right pursuant to Section 6.1(g) of the Town of Lincoln zoning bylaw and pursuant to G.L. c. 40A, §3.

7. The Planning Department and Building Commissioner consulted Town Counsel concerning the question of whether McLean's proposed use was educational and exempt under the bylaw and state statute and by email dated May 2, 2016, a copy of which is attached hereto as Exhibit A, Town Counsel Joel Bard agreed that the use was educational.

8. The Planning Department also directed McLean to hold an informational meeting with local residents and abutters to explain its proposed program. McLean held a meeting at the premises at 22 Bypass Road on May 18, 2016 and invited all abutters and area residents.

9. From the outset, it was clear that certain abutters and neighbors opposed the McLean's proposed use of the property.

10. At the direction of the Town of Lincoln Planning Department, McLean filed for a site plan review in connection with the proposed use to address landscaping, screening, traffic impacts, drainage and other issues pursuant to the Town of Lincoln's site plan review bylaw. Hearings on McLean's site plan application were held on May 24, 2016, June 28, 2016 and July 26, 2016, on which date the public hearing closed. By decision dated September 13, 2016, the Planning Board approved McLean's site plan as revised subject to certain conditions, including a

condition that McLean apply to the Massachusetts Department of Transportation (“Mass DOT”) for a new curb cut for the Bypass Road property. A copy of the Planning Board’s decision approving McLean’s site plan is attached hereto as Exhibit B

11. During the site plan review process, McLean provided numerous drafts of its landscaping plan, as well as a site circulation plan and a traffic analysis to the Planning Board. At each of the public hearings on the site plan, certain abutters made it clear that they opposed McLean’s proposed plan.

12. During the pendency of the site plan review process, by letter dated June 2, 2016, McLean sought a more formal determination concerning its proposed use from Building Commissioner Daniel Walsh. The abutters, through counsel, also wrote to Commissioner Walsh, presenting their position that McLean’s use was not educational under the bylaw or G.L. c. 40A, §3. By letter dated July 8, 2016, a copy of which is attached hereto as Exhibit C, Commissioner Walsh determined that McLean’s use was educational and permitted under the bylaw and G.L. c. 40A, §3.

13. On August 4, 2016, certain abutters and area residents, represented by attorney Michael Fee, appealed the Building Commissioner’s determination that McLean’s use was educational to the Town of Lincoln Zoning Board of Appeals pursuant to G.L. c. 40A, § 8. The ZBA held hearings on September 29, 2016 and October 20, 2016 and closed the public hearing on November 3, 2016. The ZBA heard evidence from those appealing the Commissioner’s decision, from McLean representatives and from members of the public. On November 3, 2016, after closing the public hearing, the ZBA voted to overturn the Building Commissioner’s decision by a vote of 4-1. Although the ZBA voted on November 3, 2016, it is anticipated that the decision will not be signed until the ZBA meets again on December 8, 2016.

14. The only substantive issue determined by the ZBA was whether McLean's proposed use was educational. In essence the ZBA agreed with the abutters that McLean's proposed use was "therapeutic" and not educational.

15. The issue presented to the ZBA and this Court is a question of law and the ZBA's decision and reasoning are entitled to no deference by this Court.

16. On or about October 12, 2016, McLean, through its authorized agent, applied for a building permit for certain interior renovations to 22 Bypass Road in connection with its proposed use. The Building Commissioner refused to accept the application or issue the permit based on the then pending appeal before the ZBA.

17. McLean's proposed use of the property at 16-22 Bypass Road, Lincoln, Massachusetts is educational within the meaning of the Town of Lincoln zoning bylaw and G.L. c. 40A, §3.

18. McLean is entitled to a determination from this Court that such use is educational.

19. McLean is entitled to make interior renovations to the property at 22 Bypass Road without regard to the ZBA decision in this matter. Although McLean understands that such renovations are undertaken at its risk, McLean, like any property owner, is entitled to make interior changes to a residential property assuming those changes meet the requirements of state and local building codes.

20. McLean has hired staff for its proposed program at 16-22 Bypass Road including the director of the program who has relocated from Nevada and several other senior staff who have come from outside Massachusetts.

21. McLean has a number of potential residents who are waiting to be placed in the program.

WHEREFORE, McLean respectfully asks this Court for the following relief:

1. That the court advance this matter for a speedy Case Management Conference, set a firm date for both sides to designate expert witnesses on the issue of whether McLean's proposed use is educational and schedule a trial date as soon as reasonably possible in calendar year 2017; and
2. For such other relief as is just and equitable.

RESPECTFULLY SUBMITTED,

THE MCLEAN HOSPITAL  
CORPORATION

By its Attorney,



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Diane C. Tillotson, BBO #498400  
dtillotson@hembar.com  
HEMENWAY & BARNES LLP  
75 State Street  
Boston, Massachusetts 02109  
(617) 227-7940

Dated: November 15 2016



# Exhibit A

**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

Joel B. Bard, Esq.  
**KOPELMAN AND PAIGE, P.C.**  
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Boston, MA 02110  
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# Exhibit B

TOWN CLERK'S OFFICE  
LINCOLN, MA 01773

2016 SP 13 PM 9:35



**TOWN OF LINCOLN**  
MASSACHUSETTS

16 LINCOLN ROAD, LINCOLN, MA 01773

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**PLANNING BOARD**

(781) 259-2610

Margaret Olson, Chair  
Lynn DeLisi, Vice-Chair  
Richard Rundell  
Gary Taylor  
Steve Gladstone

***NOTICE OF DECISION***

Date: September 13, 2016

In the Matter of: Application for a Site Plan Approval for a residential transitional living program housed in a Single Family Residence, under the Town of Lincoln Zoning By-Law, §6.5 and §17.

Applicant: **McLean Hospital Corporation, 115 Mill Street Belmont, MA 02478**  
Address of Site: 16 & 22 Bypass Road, Parcels 109-15-0 and 109-16-0.  
Owner: McLean Hospital Corporation.

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**BACKGROUND**

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1. A request for a Determination of Minor Change to an approved site plan was heard by the Board on May 24, 2016. At this meeting, the Board determined that the changes were not minor and that a public hearing for site plan review was required.
2. A public hearing on this application was properly advertised, abutters were properly notified, and the hearing was opened on June 28, 2016, continued until July 26, 2016 and closed on July 26, 2016.

3. At the public hearings, the Planning Board received information from the applicant, the applicant's various professionals, Town Counsel, abutters, and abutters' attorney. This input, along with application materials, served as the basis of the Board's findings.

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SUBMISSIONS

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Materials submitted as part of this application included the following:

1. Planning Board Application Cover Form and Site Plan Application dated May 16, 2016.
2. Letter from Attorney Michael Fee dated May 19, 2016.
3. Letter from Diane Tillotson, attorney for McLean to Daniel Walsh, Building Commissioner dated June 2, 2016.
4. Letter from Lincoln Board of Health dated June 21, 2016.
5. Letter from Haley Aldrich dated June 24, 2016 re: wetland evaluation.
6. Letter from Thomas Gumbart, Lincoln Conservation Director dated June 27, 2016.
7. Letter from MDM Transportation Consultants, Inc, dated June 27, 2016.
8. Letter from Daniel Walsh, Building Commissioner dated July 8, 2016.
9. Westcott Site Services Stormwater Report dated July 21, 2016.
10. Site Plan of 16 & 22 Bypass Road prepared by Westcott Site Services dated May 10, 2015 and revised through July 21, 2016 designated sheet C-1.
11. E-mail from Act. Lt. Tim Neuffell, Fire Inspector/Fire Investigator dated July 22, 2016.
12. E-mail from Chief of Police, Kevin Kennedy dated July 25, 2016.
13. Screening Planting Plan by Holly Garden Design dated September 8, 2016.
14. Specification sheet for 17KW Kohler Generator.
15. D-Series LED Bollard specification sheet by Lithonia Lighting.
16. Certified Abutters list.
17. Letter from Diane Tillotson, dated July 28, 2016 extending the time by which the Planning Board must act on the site plan until September 16, 2016.
18. Memorandum from Diane Tillotson regarding McLean Landscape Plan dated September 8, 2016.
19. Landscape Plan for 12 Bypass Road, Sheet L-1 by Leonard Design Associates dated September 1, 2016.
20. Letter from Leonard Design Associates dated September 12, 2016.
21. Handicap Access Plan for 22 Bypass Road dated September 12, 2016.

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FINDINGS

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1. In accordance with the Zoning Bylaw Section 6, the Planning Board finds the proposal is subject to site plan review approval.
2. In accordance with the Zoning Bylaw Section 17.3, the Planning Board finds that the application is complete except as noted in the conditions below, that the imposition of reasonable conditions will ensure the project will conform to the standards and criteria described in Section 17.4, and that the project complies with the requirements of the Zoning Bylaw for the purposes of this application.

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DECISION

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On September 13, 2016 the Planning Board, by a 4-0 vote, granted site plan approval, subject to certain conditions, which will be described below and in the text of the motion.

Standard Conditions:

1. The project shall conform to the final plans and materials as represented above and presented during the public hearing as well as all applicable state and local building, life safety, and sanitary codes.
2. The landscaping plan and future landscaping shall NOT contain plantings of non-native invasive species. The Applicant shall consult the Massachusetts Prohibited Plant List effective January 1, 2006 (available in the Conservation Department or on line at [www.lincolntown.org](http://www.lincolntown.org)). Landscaping shall be maintained as approved unless modified by the Board and shall be fully installed according to the following schedule: If the Certificate of Occupancy is issued after November 1, the last day of the following June.
3. Unless otherwise noted in this Decision, the deviations listed below may be considered de minimis at the sole discretion of the Planning Director and therefore not requiring further review or approval by the Planning Board:
  - a) Changes in the footprint of structures of two feet or less.
  - b) Changes in the footprint of patios, stone walls, and decks of two feet or less.
  - c) Changes to the location of generators and HVAC equipment of two feet or less.
  - d) Removal of windows.
  - e) Changes in the style of windows or doors.
  - f) Changes in the location of windows, skylights, or doors of two feet or less.

- g) Changes in the size of windows, skylights, or doors of two feet or less in any dimension.
- h) Changes to materials to those of essentially the same characteristic.
- i) Changes in the location of specific plantings of two feet or less.
- j) The addition of plantings not originally specified in the approved site plan.

Dimensional changes may not result in an increase in floor area of more than 2%. Successive dimensional changes may not accumulate to exceed the 2% limitation of increased floor area.

Deviations that violate any of the dimensional controls in the Zoning Bylaw such as setbacks, height, number of stories, lot width or lot coverage are not allowed. The Planning Board does not have authority within Site Plan Review to waive dimensional controls.

- 4. Any approved generator shall be exercised only between 10:00am and 4:00pm, Monday through Friday.

Special Conditions:

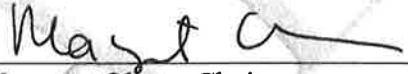
- 1. Applicant shall file an application (the "Application") with the Massachusetts Department of Transportation ("MassDOT"), or such appropriate entity, for a new curb cut from Bypass Road to the property located at 16 & 22 Bypass Road within 90 days of this Notice of Decision and shall conscientiously pursue such Application with all due diligence until MassDOT (or other entity) has either approved or rejected the Application. In the event that the Application is denied by MassDOT, evidence of denial shall be submitted to the Planning Department within 7 days of such denial.
- 2. In the event that MassDOT approves the Application then McLean shall come back to the Planning Board within 30 days of such approval with a revised site plan, ("Revised Plan") detailing the new curb cut and driveway extension to Bypass Road for review and approval. Such Revised Plan shall also show any proposed changes to the Landscape Plan. In the event that the Planning Board approves the Revised Plan (and changes to the Landscape Plan, if any), McLean shall begin construction within ninety (90) days of such Planning Board approval.
- 3. In the event, the Planning Board does not approve the Revised Plan, the approved plan entitled "Site Plan of 16 & 22 Bypass Road" prepared by Westcott Site Services, dated May 10, 2015 and revised through July 21, 2016 designated sheet C-1, shall remain in full force and effect.
- 4. Applicant shall provide landscaping and vegetative screening as discussed at the July 26, 2016 session of the public hearing and, as agreed by all parties at that meeting, and as further modified through subsequent informal discussions. The final plan is shown on a plan by Holly Garden Design for 16 & 22 Bypass Road, Lincoln dated 09/13/2016, ("Landscape Plan"). Said landscaping and vegetative screening shall be maintained by




McLean at all times, including replacing failing plantings, whether by McLean landscaping staff or outside landscapers hired by McLean.


The Motion passed (4-0). Vote to approve:  
Opposed: None

LINCOLN PLANNING BOARD

  
\_\_\_\_\_  
Margaret Olson, Chair

  
\_\_\_\_\_  
Lynn DeLisi, Vice-Chair

  
\_\_\_\_\_  
Richard Rundell

Gary Taylor  
  
\_\_\_\_\_  
Steve Gladstone

Cc: Building Inspector  
Board of Selectmen  
Planning Department  
Applicant  
Town Clerk

*This decision shall be recorded with the South Middlesex Registry of Deeds. The approved site plan listed in this decision becomes part of the public record by which the Building Inspector issues a building permit to the property owner. Actual approved site plans are on file and may be viewed at the Planning Board office for the Town of Lincoln. No building permit can be issued for a property subject to the bylaw until the Building Inspector has received evidence that this decision has been recorded with the Registry of Deeds. Compliance with the approved site plans will be determined by the Building Inspector in consultation with Planning Board staff, prior to issuing the property's Certificate of Occupancy.*

I hereby certify that twenty days have elapsed after the decision was filed on \_\_\_\_\_ and that no appeal has been filed and if such appeal has been filed that it has been dismissed or denied.

\_\_\_\_\_  
Signature of Town Clerk

Date:

# Exhibit C



**TOWN OF LINCOLN**  
MIDDLESEX COUNTY MASSACHUSETTS

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TOWN OFFICES  
BUILDING DEPARTMENT  
16 Lincoln Road  
Lincoln, MA 01773  
Phone: 781-259-2613  
Fax: 781-259-8729  
walshd@lincolntown.org

**Daniel P. Walsh, Building Commissioner**

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July 8, 2016

Diane C. Tillotson, Esq.  
Hemenway & Barnes LLP  
75 State Street  
Boston, MA 02109-1466

Michael C. Fee, Esq.  
Pierce & Mandell, P.C.  
11 Beacon Street, Suite 800  
Boston, MA 02108

Re: 16-22 Bypass Road, Lincoln, Massachusetts

Dear Ms. Tillotson and Mr. Fee:

This is in response to Ms. Tillotson's June 2, 2016 request for determinations about a proposed use of 16 and 22 Bypass Road in Lincoln MA (the Property) and Mr. Fee's response to the substance of Ms. Tillotson's request in behalf of a specified grouping of property owners in proximity to the Property. The request describes McLean Hospital Corporation's (McLean) intended use of the Property and asks whether it is exempt from zoning by way of Massachusetts General Law (MGL) 40A, §3, and if the proposed use is considered residential for the purpose of the Town's Zoning By-law dimensional requirements. Mr. Fee provides additional facts about McLean's proposed use and argues their proposed use of the Property does not fit §3 of MGL 40A as education is not the primary purpose, and the use is non-residential for purposes of the Town's Zoning By-law dimensional requirements.

According to the Town's Zoning By-law, the Property is located in the R-1, Single Family Residential District and Section 6.1 of the Zoning By-law, Uses Permitted includes subsection (g) which provides for "religious or educational uses governed by M.G.L. c 40A, s.3".

McLean's use and MGL 40A, §3:

The Town's Zoning By-law through Section 6.1 (g) allow uses governed by §3 of MGL 40A as opposed to McLean's use being exempt from zoning. McLean's purposed use of the Property is termed in the June 2, 2016 letter authored by Ms. Tillotson as "a transitional living program" for young adults and it describes the program objectives

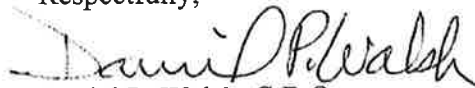
which include the attendees acquiring a full repertoire of life management skills. The letter further says that Massachusetts case law supports McLean's use as educational for the purposes of §3 of MGL 40A and that the program will be licensed by the Department of Early Education and Care under 606 CMR 3.00. Mr. Fee contends McLean's use more closely resembles an in-patient psychiatric medical unit and no Massachusetts court has found the use consistent with an educational use benefitting from §3 of MGL 40A.

Given the complexity around determining educational uses on properties zoned residential, Massachusetts courts have been defining "education" uses that align with §3 of MGL 40A. Ms. Tillotson and Mr. Fee give contrary arguments as to what the common law has considered as factors having merit when determining whether a use is considered educational enjoying §3 of MGL 40A. In the one hand Ms. Tillotson asserts the courts support a broad interpretation of education which includes a group home use such as the one proposed. In the converse, Mr. Fee calling attention to the intended treatment functions maintains that the educational component is not the primary use of the property. The fact that both have cited the same Supreme Judicial Court case to support their respective points of view highlights that the issue is murky. Deciding what the cornerstone factors to consider when determining if, in this case of a non-profit corporation, provides proper services to consider it an educational use for the purpose of §3 of MGL 40A is not well-defined. As such Town Counsel has provided the Building Department guidance in this matter. All things having been considered, I conclude that sufficient information has been provided to determine the proposed use of the Property does fit Section 6.1 (g) of the Zoning By-law.

Dimensional requirements to the McLean use:

This too is not always seen as black or white and the complexity has been subject to judicial interpretation. McLean's proposed use has multiple objectives which include residential along with therapeutic and educational functions. One clear fact is that up to twelve young adults will be residing in a residential structure for several months at a time. Understood is the Courts have favored disability classes in a way which requires the town to treat housing intended for folks with disabilities similar to those without. Although the Town's by-law includes Section 19.1 (e) which affords §3 of MGL 40A uses a process to request exemption from dimensional regulations, the Building Department has also been advised by Town Counsel that McLean's use as represented by Ms. Tillotson benefits from federal and state anti-discrimination law considerations. As such treating McLean's use of the Property must be viewed as residential for the purpose of this dimensional difference in the Zoning Bylaw.

Respectfully,



Daniel P. Walsh, C.B.O.  
Building Commissioner