



**Town of Reading**  
**16 Lowell Street**  
**Reading, MA 01867**

**Historic District Commission**  
Phone 781-942-6608  
Fax (781) 942-9071  
Website: readingma.gov

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## Legal Notice

This is to serve notice that the **Historic District Commission**, under the authority and requirements of the Town of Reading, General By-Law Section 7.3, "Local Historic District", shall hold a public hearing on the

Certificate of Appropriateness

for **186-190 Summer Avenue, Reading, MA 01867**

Applicant (s): Robert Littleton Jr., acting as agent for Debra A. Shontz-Stackpole

Under the requirements of Sections 7.3.6.1 and 7.3.7.4 the Historic District Commission determined that such application involves:

- The demolition of part of the 186 Summer Avenue structure
- The renovation of the historic house
- The addition of a 5620 square foot Early Childhood Intervention school building

that are subject to review under this by-law.

The Public Hearing will be held on **March 23, 2015, at 7:00 pm** in the Great Room at the Pleasant Street Center, 49 Pleasant Street, Reading, MA. Please direct public inquiry to Jean Delios, Community Service Director/Town Planner, at [wsh@ci.reading.ma.us](mailto:wsh@ci.reading.ma.us). A copy of the application is available for public review at the office of the Town Planner, Community Services Department, Town Hall, 16 Lowell Street Monday-Thursday from 7:30 am to 5:30 pm and Tuesday from 7:30 am to 7:00 pm.

Everett Blodgett, Chairman  
Historic District Commission

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**Please publish this legal notice ad one time on or before March 9, 2015.**

# West Street Historic District Commission



## Application for Certificate (Read instructions before completing form)

FORM 10/2006

### Certificate Requested:

- Appropriateness* – for work described herein
- Hardship* – financial or otherwise described herein and does not conflict substantially with the intent and purposes of the bylaw
- Non-Applicability* – for the reason(s) described below. See guidelines for further info.

### General Information:

Property Address 186 SOMMER AVENUE (HOUSE & BARN)  
Date built (age) 1853  
Owner(s) DEBRA A. SHONTZ-STACKPOLE  
Tel (h) 781.944.8913 (w) \_\_\_\_\_ (fax) \_\_\_\_\_ Email DASHONTZ@COMCAST.NET  
Owner's Address 186 SOMMER AVE. PEABODY MA

Applicant (if not Owner) ROBERT LITTLETON, JR.  
Tel (h) \_\_\_\_\_ (w) 508.478.2631 (fax) \_\_\_\_\_ Email rl.littleton@aol.com  
Applicant's Address \_\_\_\_\_

Applicant's Relationship to Owner AUTHORIZED AGENT FOR 186 SOMMER AVE APPROVALS

Contractor \_\_\_\_\_  
Tel (h) \_\_\_\_\_ (w) \_\_\_\_\_ (fax) \_\_\_\_\_ Email \_\_\_\_\_

Architect MARC A. MAXWELL, AIA MAXWELL ARCHITECTS, LLC  
Tel (h) \_\_\_\_\_ (w) 617.666.9222 (fax) 617.666.4557 Email marc@maxwellarchitects.com

Dates of Anticipated Work: Start \_\_\_\_\_ Completion \_\_\_\_\_

Description of Proposed Work: (attach additional pages as necessary) Please include a description of how the proposed work (if a change or addition) is historically and architecturally compatible with the building and the District as a whole.

RENOVATION OF HISTORIC HOUSE AND ADDITION OF A 5,620 TWO STORY EARLY CHILDHOOD INTERVENTION SCHOOL BUILDING.

PLEASE SEE ATTACHED DESCRIPTION.

**186 Summer Avenue**  
**West Street Historic District Commission**  
**Project Overview January 30, 2015**

Criterion Child Enrichment wishes to renovate the existing historic house and construct an addition to the property located at 186-190 Summer Avenue to provide family education, training and support for children and families in need of such programs. We believe our proposal is in keeping with the Summer Street Historic District Guidelines and is an appropriate response to the existing house and barn, as well as the surrounding neighborhood in design and detailing of the proposed renovation and addition. It is our intention to respect the historic character of the existing house and barn and to be sensitive in our exterior renovation of the period materials and detailing. A survey of the immediate neighborhood, as well as information readily accessible from the Town of Reading Assessors website, suggests that the completed renovation and addition are within the neighborhood norms for lot coverage, height and bulk of new addition and the completed assemblage of buildings.

Over the past months, we have explored many alternatives for the reuse and rehabilitation of the historic house and barn, meeting regularly with the Reading Historical Commission. We propose to renovate the historic Kemp Place (house), stabilize the barn for future use and construct a new two story Early Childhood Intervention school building adjacent to the historic house. We received CPDC (Planning) approval for our project on January 12, 2015. We believe we have an architectural plan that preserves the exterior appearance of the original house and barn and adds the smallest possible sympathetic addition to meet the programmatic needs of Early Childhood Intervention.

The historic house will be used for reception, meeting, gathering and offices uses maintaining the front parlor, main hall, front and rear stair cases and the dining room. We plan to slightly reconfigure the kitchen into separate office/meeting and kitchen spaces. No major changes are planned for the exterior of the main house. We will adhere, to the extent practical, to the Secretary of Interior's Standards for the Treatment of Historic Properties and the associated Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings. Our office is quite familiar with these standards as we have many current and past projects using these guidelines. Significant rehabilitation and repair is required to the exterior of the house including remediation of extensive lead paint and a small amount of asbestos found during a Hazardous Materials survey conducted in early January 2015.

We propose to make changes to the interior of the structure and to install new systems throughout the house, including structural repairs and modifications recommended by our structural engineer, and the addition of central air conditioning, fire protection and contemporary plumbing, electrical, communications and network systems. While interior modifications and repairs to the house and barn are not part of the review of this project under the Reading Historic District Bylaw, this information is provided to give the Commission a complete understanding of the project.<sup>1</sup> We will repair and only selectively replace, deteriorated exterior materials, including the clapboard, wood trim, windows, slate roof and architectural details, including the cupola, brackets, columns and railings, to stabilize and rehabilitate the exterior enclosure systems and appearance. We will make accessibility modifications to the existing entry porch, as well as provide full handicap access to the new construction, including a new accessible ramp to the south porch and an additional short ramp to the main first floor house level with a new one step stoop at the existing front door. We propose to install previously removed gutters and down- spouts to the house and porches.

We will remove the later added breezeway and shed from the main house, neither of which add historic architectural character in keeping with the original house, and to add a two story classroom addition of 5,620 SF between the existing house and barn. The classroom addition will be connected to the historic house by means of a new contemporary breezeway entry vestibule, clearly delineated as new construction from the original. The classroom building will not touch the barn, which we will stabilize, make weather-tight and secure for future renovation and reuse. Our long term plan is that the barn will be renovated for educational storage, playground equipment and education files. Due to the complexity and expense of the initial house restoration and classroom addition project, Criterion will focus on these portions of the project in the first phase and then tackle the barn in a subsequent phase. We are aware that any future exterior work to the barn may require additional approval from the WSHDC.

Our Structural Engineer (Reg Roome of Roome & Guarracino) has visited the site and is confident we can make adequate structural repairs and modifications for our intended use and rehabilitation of the existing house. The Barn is more complicated structurally as it is in less sound structural condition to begin with and inadequately structured for today's building, seismic and floor loading codes and regulations. By locating our

<sup>1</sup> Interior modifications are not part of the review of projects within the Summer Avenue District Historic Commission review and inclusion in the description of the project are not intended to invite review or further discussion of interior alterations with the West Street District Historic Commission or the Reading Historic Commission.

classroom uses in the new addition, we can meet life safety and structural requirements with new construction while preserving the historic structures for less intense uses and life safety code requirements.

Our design intention for the addition is to reference the historic house without trying to replicate it. We believe that when adding new structures to old, the new should use sympathetic materials and patterns but should clearly stand out as distinct from the historic fabric. The entire composition of new and old must blend harmoniously into a complete composition. We are proposing concrete composite clapboard siding with 5" exposure for the classroom addition, to match the house, and double hung simulated divided lite PVC windows that are proportionally similar to the original house but more simple in their trim and detailing. Window trim, corner boards, watertable and fascias will be Azek cellular PVC, in widths similar to the existing house. The school roof will be composite shingles to match the recently reroofed barn, while the historic house slate roof will be repaired and reflashed as necessary. The connector and school entry will be clearly differentiated as new construction, comprised of aluminum storefront with a rear facing flat roof with EDPM membrane roof. The school entry will have a short projecting aluminum canopy. Our architectural design will create a new structure respectful of the historic, while practical and handsome on the property, constructed of modern materials.

The Site Plan for our project has been approved by CPDC and includes a new single curb cut between two existing street trees and the creation of 38 parking spaces in total. The parking is divided between three areas, one in front of the house and school addition, one adjacent to the barn and the largest area at the rear of the site, nearest the Parker School parking lot. Site Engineering has been developed by Jack Sullivan of Sullivan Engineering Group in coordination with the Town Engineer and has also been approved by CPDC. Traditional vertical granite curbing will surround asphalt paving. Walks and the ramp to the primary school entrance will be broom finished concrete. The ramp and stairs to the historic house will be wood with painted wood handrails and guardrails. All ramps and stairs to the house and school will be barrier free to meet the MAAB (Massachusetts Architectural Access Board) Guidelines, required of such facilities, as well as most convenient for parents with strollers, which are Criterion's primary users.

We believe our proposal is in keeping with the surrounding neighborhood in terms of height, mass and bulk of the proposed building in conjunction with the existing historic structures. An analysis of the larger surrounding homes and institutions within the Summer Avenue Historic District identifies similar heights of 2 to 2 ½ stories, as does

the historic house (2 ½ stories) and the addition (2 stories), shed roofs and gable ends. The lot coverage of our proposed project is 7.9% (lot coverage to lot size ratio), which is quite consistent with the larger houses in the district which range from 6% (176 Summer Ave) up to 12% (195 Summer Avenue). There are numerous properties in the District with multiple buildings and connected structures similar to what is proposed for this property.

We are continuing our work as to how to most efficiently and effectively rehabilitate these structures for our new use and improve the energy performance of the existing structure and windows, roof and wall. Hazardous materials remediation, as well as the installation of modern mechanical and fire protection systems always proves to be a complicated engineering and architectural task. Lead paint was found present throughout the historic house, interior and exterior alike. Due to the nature of Criterion's services we must be particularly vigilant in our abatement and remediations of hazardous materials throughout the property.

We respectfully request a Certificate of Appropriateness for our project in keeping with the goals of the West Street District Historic Commission. Criterion has submitted two documents in addition to this memorandum, with its application for a Certificate of Appropriateness, specifically: (1) "Memorandum in Support of Criterion's application, in the alternative, for a Certificate of Hardship," and (2) "Criterion Child Enrichment, Inc.'s Reservation of Rights and Request for a Reasonable Accommodation under the Americans with Disabilities Act. We look forward to working with you to come to that conclusion of this portion of our approvals process.

Respectfully submitted,

Marc A. Maxwell, AIA  
Maxwell Architects, LLC  
Architect for Criterion Early Development, Inc.

**Required Documentation to be Attached:** (see attached instructions) Failure to provide sufficient documentation could delay action upon application.

- Plans/scale drawings
- Existing and proposed site or plot plans
- Existing conditions photographs of structure and areas affected
- Material samples and/or product literature
- Other \_\_\_\_\_

I have read the attached instructions and, to the best of my knowledge, the information contained in this application is accurate and complete. I also give permission for members of the WSHDC to access the property for the purpose of reviewing this application and work done under any certificate issued to me.

Owners Signature(s): \_\_\_\_\_

Date: 2/5/2014

*Pres. C. ... Child Sarah ...*

**PLEASE SUBMIT:**

**- SEVEN (7) COPIES OF COMPLETED APPLICATION**

**- ONE COPY OF REQUEST FOR CERTIFIED ABUTTERS LIST**

**TO THE TOWN PLANNER'S OFFICE, READING TOWN HALL.**

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**FOR COMMISSION USE ONLY**

Application Number: \_\_\_\_\_

Date Received: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

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**LAW OFFICE OF KENNETH N. MARGOLIN, P.C.**

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WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

To: West Street Historic District Commission  
From: Kenneth N. Margolin, Attorney for Criterion Child Enrichment, Inc.  
Date: February 3, 2015  
Re: 186-190 Summer Avenue, Reading, Massachusetts

Criterion Child Enrichment, Inc.'s Memorandum in  
Support of its Application, in the Alternative, for a  
Certificate of Hardship

Criterion Child Enrichment, Inc. ("Criterion") has applied for a Certificate of Appropriateness, to move forward with its planned Early Intervention program for 186-190 Summer Avenue, Reading, Massachusetts. Criterion believes that it meets all requirements for a Certificate of Appropriateness, as set forth in the memorandum and supporting plans submitted by Criterion's architect, Marc A. Maxwell. In the event that, for any reason, this Commission will not grant a Certificate of Appropriateness, Criterion applies in the alternative, for a Certificate of Hardship.

Criterion's application meets all necessary requirements for a Certificate of Hardship, as set forth at §7.3.7.9 of the Town of Reading General Bylaws, specifically that:

... owing to the conditions especially affecting the Building or Structure involved, but not affecting the District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and ... [the] application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this bylaw ....

Criterion cannot operate its program in the existing historic house alone, and due to the structurally unstable condition of the existing barn, cannot utilize the barn for its classrooms and auxiliary offices and other necessary rooms. Criterion must therefore add an addition to the historical house. The existing addition, which is not historical, is too small for Criterion's purposes, and adds no historical character to the structure. The addition must be replaced with a new addition, which, as set forth on Criterion's submitted plans, will respect the integrity of the existing historic house.

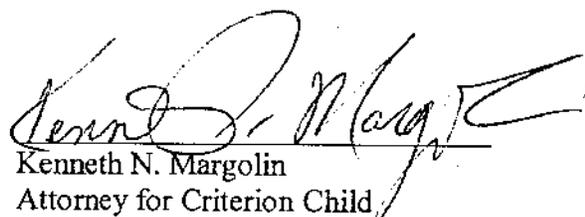
February 2, 2015

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The planned addition is the minimum size necessary to enable Criterion to operate its Early Intervention program in a programmatically sound, and economically feasible manner. The materials proposed for use on the addition, will respect the historical integrity of the existing house and the District, and will allow the addition to be built within the bounds of reasonable economic feasibility. Criterion will provide much needed maintenance to the existing historical house, including the removal of significant amounts of lead paint, and some asbestos, and will not significantly change any of its exterior features, thus serving a key purpose of the Bylaw – to retain historical structures and the historical character of the District. Criterion plans to stabilize the structurally unstable existing historical barn, and revitalize it at some future date for less intensive use than in the house and addition, most likely the storage of files and equipment for the Early Intervention program.

There will be no detriment to the public welfare from Criterion's program. To the contrary, given the shortage of, and the need for, Early Intervention programs in the Greater Reading region, the public welfare will be well served by allowance of Criterion's application. Nothing in Criterion's application substantially derogates from the intent and purpose of the Bylaw, which, as noted at page two of the "Design Guidelines for West Street Local Historic District, "are not meant to prevent change or freeze houses as they are." The Guidelines further acknowledge that houses must be "inevitably adapted to contemporary needs and requirements."

Failure to approve, if necessary, Criterion's application in the alternative for a Certificate of Hardship, will thwart Criterion's mission to serve and educate infants and toddlers with serious developmental disabilities, will deprive the community of a needed resource, and will leave in place on the property, a historic house in need of maintenance, a non-historical addition that is not in good shape, and a deteriorating historic barn. By approving Criterion's application, the Commission enables Criterion to serve the community, improve the property, and respect and maintain the historical character of the District. The Commission is therefore requested, if it does not approve Criterion's application for a Certificate of Appropriateness, to approve its application for a Certificate of Hardship.

  
Kenneth N. Margolin  
Attorney for Criterion Child  
Enrichment, Inc.

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To: West Street Historic District Commission  
From: Kenneth N. Margolin, Attorney for Criterion Child Enrichment, Inc.  
Date: February 3, 2015  
Re: 186-190 Summer Avenue, Reading, Massachusetts

Criterion Child Enrichment, Inc.'s Reservation of Rights  
and Request for a Reasonable Accommodation under  
the Americans with Disabilities Act

I. Reservation of Rights – Dover Amendment, MGL c. 40A, §3

Criterion Child Enrichment, Inc., ("Criterion") submits its application to the West Street Historic District Commission, (the "HDC") for a Certificate of Appropriateness, or, in the alternative, a Certificate of Hardship, subject to this Reservation of Rights.

All presentations and all written submissions by Criterion, to the HDC, will be subject to this Reservation of Rights. No discussion by officials, employees, attorneys, agents, or consultants, employed by Criterion, with members of the HDC, shall constitute a waiver of this Reservation of Rights.

Criterion's plans to use the property at 186-190 Summer Avenue, Reading, Massachusetts (the "property"), for an Early Intervention program for infants and toddlers, ages birth through three years of age.<sup>1</sup> During proceedings before the Town of Reading Community Planning and Development Commission, Town Counsel, J. Raymond Miyares, Esq., correctly determined that Criterion's program is covered by the Dover Amendment, *MGL c. 40A, §3*.

It is Criterion's position that any actions by the HDC with respect to Criterion's property, are constrained by the Dover Amendment. Specifically, the HDC may not impose requirements on Criterion, regarding the property, that are so burdensome as to prevent or significantly harm or limit Criterion's use of the property for its Early Childhood

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<sup>1</sup> Criterion has a signed Purchase & Sales Agreement for its acquisition of the property.

Intervention program, a use protected by the Dover Amendment. While the Dover Amendment applies primarily to zoning bylaws, and the Summer Avenue Historic District and the West Street Historic District Commission were enacted pursuant to the Historic District Act, *MGL c. 40C*, nothing in *c. 40C* suggests that it was intended to abrogate the protections of the Dover Amendment in the context of historic preservation. There is nothing inherently inconsistent between *MGL c. 40C* and *MGL c. 40A, §3*, provided that *c. 40C* is implemented in a manner that does not violate *c. 40A, §3*. When two statutes have potential inconsistencies, “we should endeavor to harmonize the two statutes so that the policies underlying both may be honored. Implied repeal of a statute is disfavored, and we should not impliedly repeal a portion of [the statute at issue] unless it ‘is so repugnant to, and inconsistent with, the later enactment... that both cannot stand.’” *Com. v. Harris*, 443 Mass. 714, 725, (2005)

The *Harris* Court continued, “[a] statute is not to be deemed to repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication.” *Commonwealth v. Hayes*, 372 Mass. 505, 512, 362 N.E.2d 905 (1977), quoting *Colt v. Fradkin*, 361 Mass. 447, 449–450, 281 N.E.2d 213 (1972). Here, we encounter legislative silence on how these two statutes should relate to each other, not ‘express words’ or ‘clear implication’ that [one statute] is to be given priority over [another, creating potential conflict]. As we attempt to harmonize these statutes, it is not for us to determine which of them is more weighty or worthwhile and to allow that statute to dominate. Instead, we must seek to apply them in a manner that, to the greatest extent possible, serves the policies underlying both.” *Com. v. Harris*, supra, at 725-726.

The Historic District Act may be applied consistently with the Dover Amendment, only if the use protection of the Dover Amendment is not effectively destroyed or unduly burdened.

II. Request for Reasonable Accommodation under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

Criterion does not believe that the HDC should need to issue a reasonable accommodation from the rules and/or guidelines of the Historic District, because the HDC should grant Criterion’s application for a Certificate of Appropriateness, or, alternatively, a Certificate of Hardship. In the event, however, that the HDC would not grant to Criterion, a Certificate of Appropriateness or Hardship for the key elements of Criterion’s proposal, then Criterion, on its own behalf, and on behalf of the infants and

toddlers with disabilities, it plans to serve, seeks a reasonable accommodation, under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. (the "ADA").<sup>2</sup>

There is no question that the children served by Criterion at its Early Childhood Intervention program, have disabilities, as defined in the ADA, 42 U.S.C. §12102. A description of the types of disabilities that the large majority of children to be served, have, can be found in the "Affidavit of Robert F. Littleton, Jr.," filed with the CPDC (a copy of Dr. Littleton's Affidavit is attached to this memorandum and labeled "A"). The ADA was enacted to prevent discrimination against individuals on the basis of handicap, and to aid their integration into all public activities. 42 U.S.C. §12101; Executive Order 13217, June 18, 2001, 66 F.R. 33155. The activities of the HDC are "services, programs or activities" as set forth in the ADA, 42 U.S.C. §12132. See *Culverhouse v. City of LA Porte*, 679 Scup. 2d 931, 946 (N.D. Ind. 2009), for a discussion of the comprehensive scope of "services, programs or activities" covered by the law.

The ADA requires that municipalities "make reasonable accommodations in order to provide qualified individuals with an equal opportunity to receive benefits from or to participate in programs run by such entities." *Regal Econ. City. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 45 (2d Cir.), cert. denied, 537 U.S. 813, 123 Sc.D. 74, 154 L.Ed.2d 16 (2002). To establish discrimination under either the ... ADA, plaintiffs have three available theories: (1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation. *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 573 (2d Cir. 2003).

Owing to their disabilities, the children Criterion will serve, are far more limited, *because of their handicaps*, in their access to appropriate educational services, than children without disabilities. Early Intervention programs such as the one Criterion will operate on its Summer Avenue property, are needed by the children it will serve, and are in limited supply in the greater Reading area. If the HDC applies its rules and guidelines in such a manner that Criterion is either unable to make its property work for its planned Early Intervention program, or if the HDC renders construction or renovation of the property so expensive that it is financially unfeasible, then the HDC will have limited children with handicaps, in their access to needed, appropriate educational services. The addition to the historic house, planned by Criterion, was designed to be able to accommodate the special needs of the children it will serve and educate.

Criterion requests that the HDC make the following reasonable accommodation to its rules and guidelines, with respect to Criterion's application:<sup>3</sup>

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<sup>2</sup> Criterion, as a program that exists to provide services to children and adolescents with disabilities, has standing to bring legal action as a result of discrimination that impedes, or attempts to impede, Criterion's clients from access to its services. *Franklin Building Corp. v. City of Ocean City*, 946 F.Supp. 1161, 1166 (D.N.J. 1996); *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1100, fn 2 (3d Cir. 1996).

LAW OFFICE OF KENNETH N. MARGOLIN, P.C.

February 2, 2015

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1. Apply its rules and guidelines so as to allow the addition to the historic house, proposed by Criterion, and to not require a smaller addition or any addition that would not allow Criterion to feasibly and effectively provide Early Intervention education and services.
2. Apply its rules and guidelines so as not to render Criterion's construction or renovation on its property, financially prohibitive, which would have the effect of precluding Criterion from providing needed services to children with disabilities.



Kenneth N. Margolin  
Attorney for Criterion Child  
Enrichment, Inc.

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<sup>1</sup> As mentioned, this request for a reasonable accommodation will not be necessary if the HDC grants, as Criterion believes the HDC should, Criterion's application for a Certificate of Applicability or, in the alternative, Hardship.

## EXHIBIT A

### Supplemental Affidavit of Robert F. Littleton, Jr.

I, Robert F. Littleton, Jr., swear that the following facts are true:

1. I am the President of Criterion Child Enrichment, Inc. Criterion has signed a Purchase and Sales Agreement with the owner of 186-190 Summer Avenue, in Reading, to purchase the property, and plans to operate on the property, an Early Childhood Intervention program.
2. This Affidavit is submitted to supplement my original Affidavit, dated October 7, 2014, in which I explained the educational purpose of Early Intervention programs, including the Early Intervention program Criterion plans to operate at 186-190 Summer Ave., Reading. In this Affidavit, I will answer Town Counsel, J. Raymond Miyares' question regarding the activities that will take place on the Reading property, once Criterion opens the program. Other questions posed by Attorney Miyares, are answered by Criterion's attorney, Kenneth N. Margolin, in his letter, to which this Supplemental Affidavit is attached.
3. My relevant background is described at Attachment 2 to this Supplemental Affidavit.
4. In order to provide a context for the activities that will take place at Criterion's Summer Ave., Reading program, I refer to architectural drawings prepared by Marc A. Maxwell, AIA, showing Criterion's proposed floor plans for the property. The drawings are Attachment 1 to this Supplemental Affidavit.

5. Criterion's early intervention services, and the administrative work essential to those services will take place in the "New 2 Story Addition" (the "addition"), and in the "Existing Renovated Home" (the "main building"), both depicted on Attachment I.
6. Four classrooms are planned for the addition, two on each floor. Six offices and a conference room are planned for the main building, one office and the conference room on the first floor, and five offices on the second floor.
7. In order to understand the nature and purpose of the activities that will take place in the classroom, it is necessary to understand some basic principles of the way infants and toddlers, and infants and toddlers with developmental delay, learn.
8. All infants and toddlers learn by using their five senses, by engaging in activities, by experiencing cause and effect of their actions, by social interactions, by imitation, and repetition. The period covered by Early Intervention services, ages birth to 3, is normally a time of explosive growth of a child's brain cells and brain structure. These years are thus critical to a child's development, and have major implications for a child's school years and beyond.
9. A child with serious developmental delay, learns in a manner similar to "normal" children; i.e., children without developmental delay, but their learning and acquisition of skills is slower, potentially much slower, depending on the nature and extent of the developmental delay.
10. Early Intervention programs were developed out of scientific research, and a recognition that providing specialized activities and interventions to infants and toddlers aged birth to three, with developmental delays, can give them a better chance to benefit to the extent that their abilities and disabilities allow, from their school years. Early

Intervention can provide lifelong benefit by enhancing the skills of a child with developmental delay, during the crucial first three years of life.

11. The brief overview at paragraphs 7 – 10 of this Supplemental Affidavit, is provided so that the reader can understand that the activities that occur with Criterion's infants and toddlers with developmental delays, are not mere "recreation" or "play" (although the right kind of "play" can enhance the skills of Criterion's children). The activities are based upon years of research into the way that children with developmental delays learn, and the types of activities that can best stimulate their physical, cognitive, communication, social, adaptive, and emotional development.

12. Criterion provides early intervention services in the home and at its facilities, as will be the case at its Summer Ave., Reading, program.

13. The children served at the Summer Ave. program, will usually be eighteen months of age or older (i.e., 18 months – 3 years of age).

14. Activities with children, which will usually (with some exceptions, when a parent drops a child off) involve a parent as well as Criterion Early Intervention staff, will take place in the classrooms in the addition. Hours of the program are Monday through Friday, 8:00 a.m. – 4:00 p.m. Staff are free to arrive earlier or leave later, if they wish.

15. Classroom sessions will typically be ninety minutes long. There will be morning sessions, expected to take place between 9:30 a.m. – 11:00 a.m., and afternoon sessions, which are expected to occur between 12:30 p.m. – 2:00 p.m.

16. On most days when the facility is open, two or three of the four classrooms will be in use at the same time during the morning or afternoon sessions.

17. The classroom groups will usually be for eight children per session. As stated earlier in this Supplemental Affidavit, children will be engaged in activities designed to stimulate their cognition, physical, gross and fine motor, communication, social, adaptive, and emotional skills development.

18. While the precise activities to be provided, will vary according to the ages and individual needs of the children in a particular group, the following is a representative description of what will occur in the classrooms during a typical ninety minute group session. During most groups there will be two or three Criterion Early Intervention staff directing the activities during the group sessions:

- (a) A group session is often opened with the toddlers, along with any parents present, in a circle, engaged by the Early Intervention staff, in a song that includes gestures and repetition. The activity is designed to stimulate receptive and expressive communication, by using imitation (the children imitate gestures), and repetition. Participation in a social activity involving interaction with others is also part of the skills acquisition purpose of the activity.
- (b) "Circle time" may be followed by an activity designed to stimulate sensory and motor skills. The toddlers may be engaged, for example, in the use of finger paints to make designs, or various activities on paper.
- (c) For children who require specialized equipment for their skills development, one or more of the classrooms will be equipped with the necessary equipment. For example, for a child requiring encouragement of the development of gross motor skills, equipment to help them navigate stairs may be employed, or sitting equipment that the child pushes using his feet. Swings may be employed, or a

very small trampoline, to aid the child to develop the skill of sensing whole body movements and their effect. Such physical aids are employed only with very close staff supervision.

- (d) An area of the classroom will be set up for the development of fine motor skills, where the children will be engaged in activities such as blocks, building towers, and the like.
- (c) The toddlers will also have the opportunity for imaginative play, with dolls, kitchen sets and other play things.
- (f) Depending on the ages and developmental needs of the children, Criterion Early Intervention staff may direct some or all of the children in the group, in various other activities, for example, activities to help children who need it, in developing early self-care skills.

19. Typically, the Criterion staff working in the classrooms will be certified Early Childhood Intervention teachers. Staff from other disciplines may be in the classrooms as well, depending on the needs of the children in the group. Thus, for example, occupational or physical therapists, speech and language specialists, psychology or social work specialists, may participate – always dictated by the individual needs of children in the group.

20. In addition to being used for the group sessions for the children, classrooms will also be used for parent training sessions. Often, parents who participate in the group sessions, will leave the sessions to spend thirty minutes or more, with Criterion Early Intervention staff in another classroom.

- (a) Parents are shown how to integrate activities relevant to their child's skills development, into the home. Helping parents to engage their children at home, with activities designed to help their child with developmental delays, to develop specific areas in which the child is delayed, is important. The child spends far more time at home than at the Early Intervention center. For a child with developmental delays, engaging the child in targeted activities designed to enhance development, as opposed to random child-oriented activities, can make a significant, positive difference.
- (b) Through group interaction and training from the Criterion Early Intervention personnel, parents are also helped to deal with the difficult physical and emotional stresses that can come with raising a child with developmental delays.

21. By statute, an Early Intervention program exists to serve infants and toddlers ages birth to three, with developmental delays or who are "at risk" for developing developmental delay. According to Department of Public Health statistics for FY 2013, fewer than three (3.0%) percent of infants and toddlers who receive Early Intervention services, are in the "at risk" category, with no diagnosed or observable developmental delay. We would expect a similar level of "at risk" children at the Summer Ave., Reading, program. There are standards for determining when a child is "at risk." Factors may involve the child's own physical situation or history, for example, low birth weight or extended neonatal hospitalization, or the child's family situation, such as evidence of inadequate nutrition or stimulation at home, or parents younger than seventeen years old. The "at risk" status does not rule out observable developmental delay. For many of the children who enter Criterion's program because they are deemed "at risk" for

developmental delay, their developmental delays will evolve to become evident, while they are still receiving early intervention services.

22. Early Intervention program statutes and standards require that Early Intervention services be provided in as "normal" a setting as possible. Thus, as mentioned, many of the services are provided in the home. For the child groups of eight, Criterion tries to include two children from the community who do not have developmental delay and are not at risk for developmental delay. Those children benefit from learning how to interact with "different" children, i.e., children with disabilities. Children with development delay also experience interacting with children without disabilities. Whether or not the goal of 25% of the group consisting of children without developmental delay can be reached for any given group, depends on whether sufficient numbers of parents of children who do not require Early Intervention services in order to develop their early skills, enroll them in Criterion's groups.

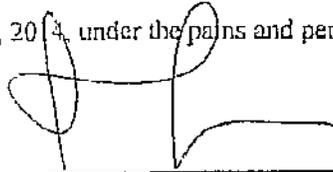
23. When the cause of observable developmental delay has a definitive diagnosis (it is not unusual for there to be serious developmental delay of unknown origin), diagnoses may include conditions such as cerebral palsy, Down Syndrome, birth trauma, and other conditions that may impair a child's development.

24. The offices in the main building will be used by Criterion's Early Intervention staff in order to complete the paperwork and administrative work essential to their provision of Early Intervention services. Staff may complete service plans for individual children, make notes of a session in a child's home, make phone calls to families served, or other care providers, consult with fellow Criterion Early Intervention staff.

25. There will also be three to five full-time staff who will work at the Criterion Summer Ave., Reading program. These will include a Program Director, possibly other managerial personnel, and clerical support staff.
26. One hundred per cent of the office use in the main building, will be for the Summer Ave., Reading program. The offices in the 186 Summer Ave. main building, will not be general offices for other Criterion Child Development, Inc. programs. Their sole use will be to support the Early Intervention educational activities at 186-190 Summer Ave., Reading, Massachusetts.
27. All other portions of the property will be used directly for Early Intervention activities, or to support those activities. The conference room in the main building will be used for staff meetings, staff training, and other meetings related to the work of the program. The playground, as one would expect, will be used to provide outside activities for the children. As with the classroom activities, playground activities will be designed with stimulation of early development of children with developmental delays, in mind.
28. The driveway and parking spaces will be used strictly for the Summer Ave., Reading, program, for parents and staff. It is not a commercial parking lot, nor will it be used for any other purpose.

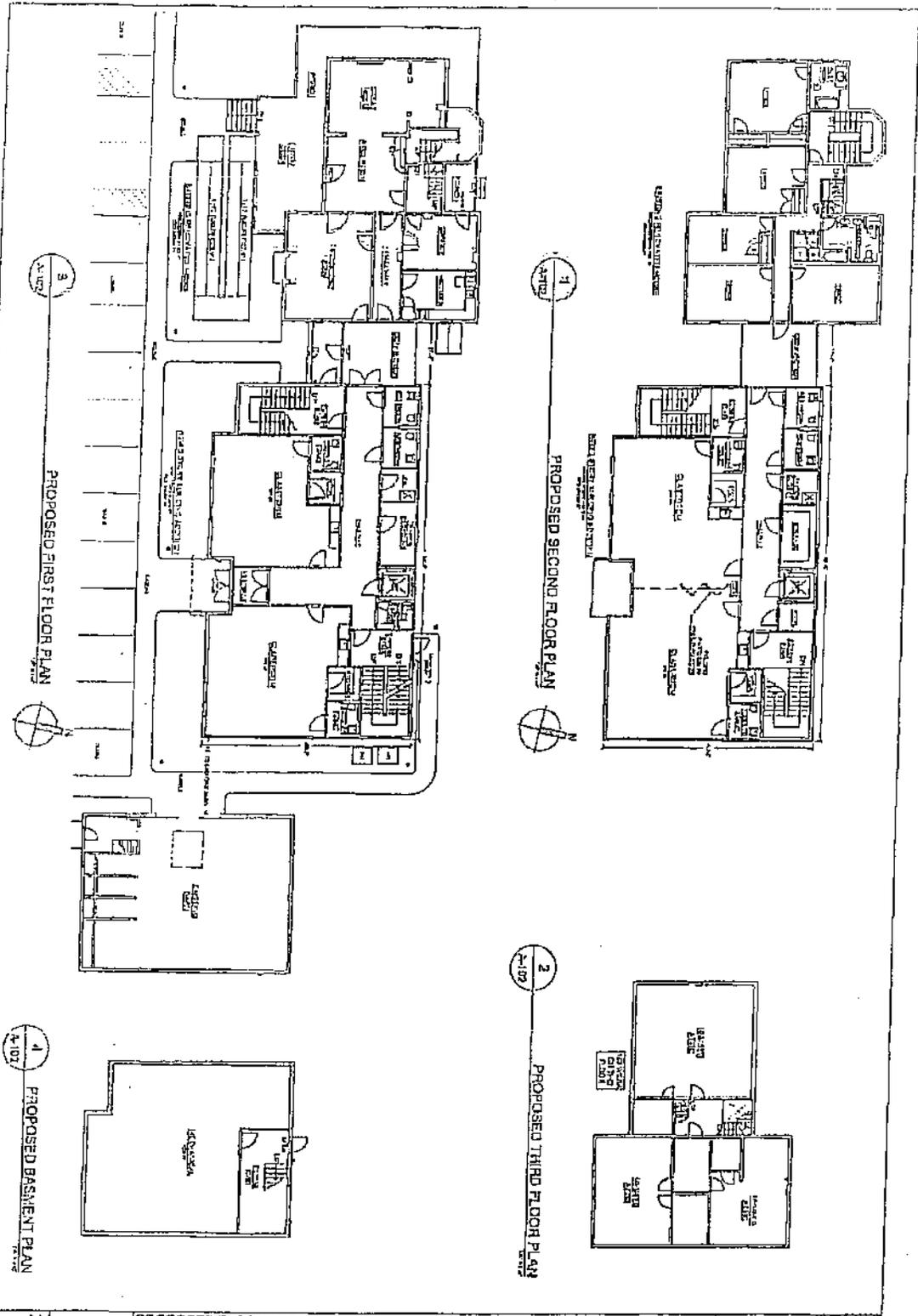
29. All activities that will take place at 186-190 Summer Ave., in Reading, will be Early Intervention activities that are educational, or that directly support, and are essential to, those services.

Signed this 3<sup>rd</sup> day of November, 2014, under the pains and penalties of perjury.

A handwritten signature in black ink, appearing to read "Robert F. Littleton, Jr.", written over a horizontal line.

Robert F. Littleton, Jr., Ed.D., President  
Criterion Child Enrichment, Inc.

# EXHIBIT 1 - Supplemental Affidavit



DATE: 1/11/11  
 DRAWN BY: A-102  
 CHECKED BY: [Signature]

PROPOSED FLOOR PLANS  
 CRITERION READING  
 EARLY INTERVENTION  
 188-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867

HATWELL ARCHITECTS, LLC  
 100 KENNEDY AVENUE, SUITE 200  
 READING, MASSACHUSETTS 01867  
 TEL: 978-271-1111  
 FAX: 978-271-1112  
 WWW.HATWELLARCHITECTS.COM

# EXHIBIT 2 - Supplemental Affidavit

## Affidavit of Robert F. Littleton, Jr.

### Summary of Education and Relevant Professional Experience

My educational background includes an M.Ed. from Lesley College, with a major in Severe Special Needs and a minor in Early Childhood Special Education, and an Ed.D. from Boston University, with a major in Special Education.

From 1974 through 1982, I was the Associate Director, and then Director of the Kennedy-Donovan Center for Programs in Early Development, Foxboro, Massachusetts. In addition to serving as the President of Criterion Child Enrichment Inc., I founded, and am the Executive Director of Evergreen Center, Inc., Milford, Massachusetts, a nonprofit corporation providing residential programs and community services for children and adults with developmental disabilities or emotional disturbances. Evergreen Center serves in excess of 260 families in twenty-one locations.

I also founded, and serve as President of BEACON Services, Milford, Massachusetts, a private group of special educators and early childhood professionals experienced in the principals of behavior analysis, and founded and serve as president Human Services Management Corporation, Inc., Milford, Massachusetts, a corporation that provides shared business services, continuing education and management consulting services for nonprofit and proprietary human service providers.

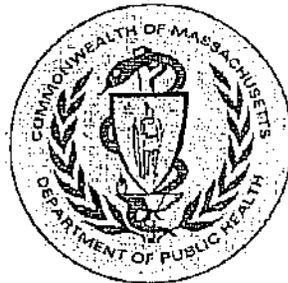
I have presented and written extensively on special education, early childhood intervention and human service management topics.

# EXHIBIT B

Massachusetts Department of Public Health

## Early Intervention Operational Standards

July 2013



**Criteria**

The infant or toddler has, at the time of initial and subsequent eligibility determination:

- A diagnosed neurological, metabolic, or genetic disorder, chromosomal anomaly, medical or other disabling condition with documented expectation of developmental delay, or
- vision loss not corrected by medical intervention or prosthesis, or
- permanent hearing loss of any degree.

**2. INFANTS AND TODDLERS WITH ESTABLISHED DEVELOPMENTAL DELAY(S)**

This category includes infants and toddlers who, during the infancy period, or more commonly in the second year of life, begin to manifest developmental delays, often of unknown etiology.

**Criteria**

- The infant or toddler's development is at least 1.5 standard deviations below the mean, as measured by the *Battelle Developmental Inventory – 2<sup>nd</sup> Ed. (BDI-2)*, in one or more areas of development, including: physical development (includes gross and fine motor),
- cognitive development,
- communication development (includes expressive and receptive),
- social or emotional development, or
- adaptive development.<sup>4</sup>

Infants and toddlers eligible by Established Developmental Delay will be eligible for one year (12 months) from their last evaluation/assessment to determine eligibility up until, but not on their third birthday.

**3. INFANTS AND TODDLERS AT RISK FOR DEVELOPMENTAL DELAY(S)**

This category includes:

1. Infants and toddlers with a history of prenatal, perinatal, neonatal, or early life events suggestive of biological insults to the developing central nervous system which, either singularly or collectively, increase the probability of later atypical development, and
2. Infants and toddlers who are biologically sound but whose early life experience, including maternal and family care, health care, nutrition, opportunities for expression of adaptive behaviors, and patterns of

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<sup>4</sup> For an infant or toddler initially determined eligible by delay utilizing the Michigan Early Intervention Developmental Profile (MEIDP or "Michigan"), the team may continue to utilize this tool to determine eligibility if the infant or toddler was initially determined eligible via the administration of this tool. The infant or toddler would need to demonstrate a 30% delay in one or more areas of development including: physical development (includes gross and fine motor), cognitive development, communication development (includes expressive or receptive), social or emotional development, or adaptive development. Informed clinical opinion may be used if the infant or toddler does not demonstrate a 30% delay. The team must complete a supplemental tool in the area of concern to provide additional information regarding the child's needs.

## Early Intervention Operational Standards

physical and social stimulation are sufficiently limiting to the extent that they impart high probability for delayed development. Infants and toddlers eligible in the Risk for Developmental Delay category will be eligible for one year (12 months) from their last evaluation/assessment to determine eligibility up until, but not on their third birthday.

### Criteria

Four or more of the following risk factors are present:

#### INFANT AND TODDLER RISK FACTORS

Note 1: Risk factors 1-4 apply only to infants and toddlers who are under 18 months chronological age at the time of the evaluation for eligibility.

Note 2: Birth or medical records are available in the Early Intervention record to substantiate risk factors 1-8. Identification of risk factors 9-12 should be determined by parent perception and written documentation for risk factors 9-12 is kept in the Early Intervention record.

1. Birth weight is fewer than 1200 grams (less than 2 pounds 10% ounces).
2. Gestational age is fewer than 32 weeks. Developmental evaluation for eligibility will be based on chronological age, not on adjusted age.
3. NICU admission is more than 5 days.
4. Apgar score is less than 5 @ 5 minutes.
5. Total hospital stay is more than 25 days in 6 months. This does not apply to the birth admission of a premature infant. Subsequent admissions to a hospital or the transfer hospital stay after NICU admission will apply toward this total.
6. Diagnosis of Intrauterine Growth Retardation (IUGR) or Small for Gestational Age (SGA).
7. Weight for age, or weight for height. An infant or toddler meets this risk factor if:
  - weight for age or weight for height is less than the 5<sup>th</sup> percentile or greater than the 95<sup>th</sup> percentile,
  - Weight for age has dropped more than 2 major centiles in 3 months in an infant who is under 12 months of age,
  - weight has dropped more than 2 major centiles in 6 months in a child who is 12 to 36 months of age.

A major centile is defined as the major percentiles (5, 10, 25, 50, 75, 90, 95) on the Physical Growth Chart adopted by the National Center for Health Statistics. The above two measurements should be based on the appropriate growth chart approved by the National Center for Health Statistics.

8. Blood lead levels measures at 5 µg/dl (micrograms per deciliter) or more. An infant or toddler meets this risk factor with a venous (not finger stick) blood lead level of 5 µg/dl (micrograms per deciliter) or more.
9. Child has chronic feeding difficulties. An infant or toddler meets this risk factor if any of the following conditions exist over an extended period of time:
  - severe colic,
  - stressful or extremely conflicted feedings,
  - refusal or inability to eat, or
  - Failure to progress in feeding skills.

Evidence of these conditions should be documented in the Early Intervention record and appropriate outcomes and treatment strategies addressed as determined by the family. Note: if an infant or toddler has been diagnosed as Failure-to-Thrive, he/she is eligible under the category of Established Condition.

10. Insecure attachment/interactional difficulties. An infant or toddler meets this risk factor if he/she appears to have inadequate or disturbed social relationships, depression, or indiscriminate aggressive behavior and the parent perceives this as an issue. Note: In most cases, insecure attachment in infants and toddlers is evidenced by behavior such as persistent failure to initiate or respond to social interactions, fearfulness that does not respond to comforting by caregivers, and indiscriminate sociability.
11. Suspected central nervous system abnormality. Suspected CNS abnormalities may include but are not limited to the following:
  - Infection: meningitis, encephalitis, maternal infection during pregnancy (TORCH infections: toxoplasmosis, other [syphilis and HIV], rubella, CMV, herpes);
  - Trauma: intracranial hemorrhage, subdural hematoma, epidural hematoma;
  - Metabolic: Profound and persistent hypoglycemia, seizures associated with electrolyte imbalance, profound and persistent neonatal hyperbilirubinemia greater than 20 mg/dl (milligrams per deciliter), acidosis;
  - Asphyxia: prolonged or recurring apnea, ALTE (apparent life threatening event), suffocation, hypoxia, meconium aspiration, near-drowning;
  - In utero drug exposure: nicotine, ethanol, THC, cocaine, amphetamine, phenytoin, barbiturates, and other.

This category may also include the following clinical findings:

- Abnormal muscle tone;
- Persistence of multiple signs of less than optimal sensory and motor patterns, including under-reaction or over-reaction to auditory, visual, or tactile input.

12. Multiple trauma or losses. An infant or toddler meets this risk criterion if he/she has experienced a series of traumas or extreme losses that may impact on the care and/or development of the infant or toddler, for example, multiple hospitalizations or multiple placements outside the home.

PARENT RISK FACTORS

NOTE #1 – Regarding children in the care of someone other than the infant's or toddler's birth/biological parent: If the DCF (Department of Children and Families) goal is for the reunification of the parent and child, the following risk factors apply based on the birth/biological parent. The Early Intervention program should work closely with both the birth and foster families of the infant or toddler, whenever possible. If there is no goal for reunification with the child's birth/ biological parents, the risk factors are to be based on the primary caregivers.

NOTE #2 – Determination of risk factors under parent characteristics should be based on parent perception.

NOTE #3 – Maternal characteristics apply as risk factors to fathers if the father is the primary caregiver.

NOTE #4 – Written documentation of parent risk factors is kept in the Early Intervention record.

1. Maternal age of less than 17 years at child's birth or there is a maternal history of 3 or more births before age 20.
2. Maternal education of 10 years or less. A mother meets this risk factor if she has completed 10 years or less of formal education at the time of the eligibility evaluation.
3. Parental chronic illness or disability affecting care-giving ability. This risk factor applies if a parent has a diagnosed chronic illness or a sensory, mental, or developmental disability that is likely to interfere with or adversely affect the infant or toddler's development or have an impact on care-giving abilities. Examples of this risk factor may be affective disorders, schizophrenia, sensory limitations, including visual or hearing limitations, and cognitive limitations.
4. Parent lacking social supports. This risk factor applies if the parent is geographically or socially isolated and in need of emotional support and services.
5. Inadequate food, clothing, or shelter, including homelessness. This risk factor applies if the lack of food, clothing, or a stable housing arrangement causes life stress for the family.
6. Open or confirmed protective service investigation, including a child currently in foster care. *This risk factor applies if the family:*
  - has an open protective service file with the Department of Children and Families, or
  - is in the period of investigation for child abuse or neglect, or

Please send copy and bill to Robert Littleton Jr  
Criterion Child Enrichment  
20 Windom Street  
Somerville, MA 02144

# Maxwell Architects, LLC

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Planning / Programming / Design

MA Project Number: 1401

TO: West Street Historic District Commission  
Town of Reading  
Reading, MA

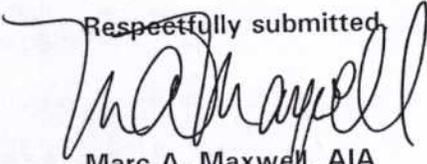
DATE: March 2, 2015

RE: Summer Avenue Historic District Plan Review Submission  
186-190 Summer Avenue  
Criterion Child Enrichment

ENCLOSURES: Stamped and Addressed Envelopes for the Certified Abutters List provided by Joanne M Fitzpatrick of the Reading Assessors Office on February 10, 2015 for Notice of the WSHDC Public Hearing regarding this property.

Please let us know if you require any additional information on this revised submission at this time. Thank you in advance for your assistance on this project.

Respectfully submitted,



Marc A. Maxwell, AIA

Maxwell Architects, LLC

Architect for Criterion Child Development, Inc.

CC: Robert Littleton, Jr., President, Criterion Child Development, Inc.  
John Fernandes, Esq.  
Kenneth Margolin, Esq.

## Legal Notice

This is to serve notice that the **Historic District Commission**, under the authority and requirements of the Town of Reading, General By-Law Section 7.3, "Local Historic District", shall hold a public hearing on the

### Certificate of Appropriateness

for 186 – 190 Summer Avenue, Reading, MA 01867.

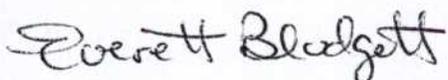
Applicant(s): Robert Littleton, Jr., acting as agent for Debra A. Shontz-Stackpole

Under the requirements of Sections 7.3.6.1 and 7.3.7.4 the Historic District Commission determined that such application involves:

- the demolition of part of the 186 Summer Avenue structure
- the renovation of the historic house
- the addition of a 5620 square foot Early Childhood Intervention school building

that are subject to review under this By-law.

The Public Hearing will be held on March 23, 2015, at 7:00 pm in the Great Room at the Pleasant Street Center, 49 Pleasant Street, Reading, MA. Please direct public inquiry to Jean Delios, Community Service Director/Town Planner, at [wsh@ci.reading.ma.us](mailto:wsh@ci.reading.ma.us).



Everett Blodgett, Chairman

Historic District Commission

*Jim*

TOWN OF READING

REQUEST FOR CERTIFIED ABUTTERS LIST

SUBJECT PROPERTY:

ADDRESS: 186-190 SUMMER AVENUE

Assessors' Map Number: 15 Lot Number: LOTS 294, 295 & 296

APPLICANT/AGENT:

Name: MARC A. MAXWELL AIA ARCHITECT FOR CRITERION CHILD ENRICHMENT ROBERT LITTLETON, JR.

Address: 20 WINDOM ST SOMERVILLE, MA 02144

Telephone: 617.666.9222 Email: marc@maxwellarchitects.com

Board or Commission for which this request is made (check all that are applicable):

Zoning Board of Appeals:

- Variance
- Special Permit
- Appeal

Community Planning and Development Commission:

- Site Plan Review
- Special Permit
- Subdivision

Conservation Commission:

- Request for Determination
- Abbreviated Notice of Resource Area Delineation
- Notice of Intent
- West Street Historic District Commission
- Board of Health
- Other:

Applicant/Agent Signature: *M Maxwell* Date: 2/2/2015

*The Assessors' office may require up to three weeks in order to process and approve this request.*

Authorized Signature: *[Signature]* Date: 2/10/15  
Department of Community Services

**LAW OFFICE OF KENNETH N. MARGOLIN, P.C.**

246 WALNUT STREET, SUITE 101  
NEWTON, MASSACHUSETTS 02460

(617) 641-9600

FAX: (617) 641-9606

WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

February 21, 2015

By Federal Express

Everett Blodgett, Chairman  
West Street Historic District Commission  
16 Lowell Street  
Reading, MA 01867

Re: Criterion Child Enrichment, Inc./186-190 Summer Avenue

Dear Mr. Blodgett:

I represent Criterion Child Enrichment, Inc., with regard to its Early Intervention Program, planned for 186-190 Summer Avenue, Reading. Criterion's architect, Marc A. Maxwell, has previously submitted to the Commission, various plans and photographs, and documents relating to Criterion's application for a Certificate of Appropriateness, or in the alternative, a Certificate of Hardship. Included in the initial submission were two documents from me: (1) Reservation of Rights and Request for Reasonable Accommodation under the Americans with Disabilities Act; and (2) Memorandum in Support of Criterion's Application, in the Alternative, for a Certificate of Hardship.

Enclosed are seven (7) copies of additional documents relating to the legal issues raised by Criterion, in this proceeding. While Criterion's presentation will primarily relate to its architectural plans, which will be presented by Marc Maxwell, we believe the legal issues raised, to be significant. Enclosed are:

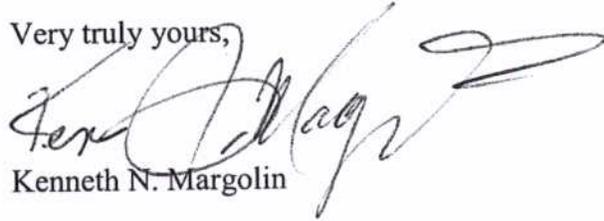
1. Criterion Child Enrichment, Inc.'s Memorandum of Law in Support of its Request for a Reasonable Accommodation under the Americans with Disabilities Act;
2. Affidavit of Robert F. Littleton, Jr. in Support of Criterion Child Enrichment, Inc.'s Request for a Reasonable Accommodation under the Americans with Disabilities Act;
3. Letter by Reading Town Counsel, J. Raymond Miyares, Esq., dated November 7, 2014, discussing the Dover Amendment and the Americans with Disabilities Act, in the context of Criterion's planned Early Intervention program.

February 21, 2015

Page 2 of 2

We very much look forward to working with the Historic District Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Margolin", written over the typed name.

Kenneth N. Margolin

KNM/JF

Cc: J. Raymond Miyares, Esq.  
John V. Fernandes, Esq.

LAW OFFICE OF KENNETH N. MARGOLIN, P.C.

246 WALNUT STREET, SUITE 101  
NEWTON, MASSACHUSETTS 02460

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FAX: (617) 641-9606

WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

To: West Street Historic District Commission  
From: Kenneth N. Margolin, Attorney for Criterion Child Enrichment, Inc.  
Date: February 3, 2015  
Re: 186-190 Summer Avenue, Reading, Massachusetts

Criterion Child Enrichment, Inc.'s Memorandum of Law  
in Support of its Request for a Reasonable Accommodation under the  
Americans with Disabilities Act

By letter from me, as Criterion Child Enrichment, Inc.'s ("Criterion") counsel, dated February 3, 2015, Criterion requested that this Historical District Commission ("HDC"), make a reasonable accommodation under the Americans with Disabilities Act ("ADA"), to the HDC's rules and/or guidelines, as applied to Criterion's 186-190 Summer Avenue project. Specifically, Criterion requested that the HDC:

1. Apply its rules and guidelines so as to allow the addition to the historic house, proposed by Criterion, and to not require a smaller addition or any addition that would not allow Criterion to feasibly and effectively provide Early Intervention education and services.
2. Apply its rules and guidelines so as not to render Criterion's construction or renovation on its property, financially prohibitive, which would have the effect of precluding Criterion from providing needed services to children with disabilities.

For the following reasons, The ADA requires that Criterion's request for a reasonable accommodation be granted, should the HDC choose not to grant Criterion a Certificate of Appropriateness or a Certificate of Hardship.

Criterion signed its purchase and sale agreement for 186-190 Summer Avenue, long before the West Street Historic District was expanded to include the property. In addition, Criterion, through its application to the Community Preservation and Development Commission, made its intention to use the property for an Early Intervention program for infants and toddlers with serious disabilities, known to Town of Reading officials, long before the property was subject to this HDC. Before the Bylaw expanding the HDC to portions of Summer Avenue was passed by Town Meeting, Criterion had already expended significant resources toward development of the property for its planned use.

As explained in the Affidavit of Criterion's President, Robert F. Littleton, Jr., Ed.D., in support of Criterion's request for a reasonable accommodation, the infants and toddlers served by Criterion's Early Intervention program will have serious developmental disabilities that will burden various major life functions, including "delays in the development of speech, receptive cognition, balance, mobility, gross and fine motor skills, learning; i.e., the acquisition of new abilities, and behaviors." (Affidavit of Robert F. Littleton, Jr., in Support of Criterion Child Enrichment, Inc.'s Request for a Reasonable Accommodation under the Americans with Disabilities Act" – hereafter referred to as "RFL ADA Affidavit," ¶¶ 5-6).

There is no doubt that the infants and toddlers Criterion will serve, meet the broad definition of "disability" established by the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* The ADA was enacted to prevent discrimination against individuals on the basis of handicap, and to aid their integration into all public activities. 42 U.S.C. §12101; *Executive Order 13217, June 18, 2001, 66 F.R. 33155*. The activities of the Historic District Commission are "services, programs or activities" as set forth in the ADA, 42 U.S.C. §12132. See, *Culvahouse v. City of LaPorte*, 679 F. Supp. 2d 931, 946 (N.D. Ind. 2009), for a discussion of the comprehensive scope of "services, programs or activities" covered by the law. Town Counsel, J. Raymond Miyares, Esq., has acknowledged the ADA's application to activities of the HDC (see letter of Attorney Miyares to Town Manager, Bob LeLacheur, Jr., dated November 7, 2014, page 7). See also, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 728 (1995): Discrimination covered by the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." <sup>1</sup>

The ADA was created to establish "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (*Pathways Psychosocial v. Town of Leonardtown, MD*, 133 F.Supp.2d 772, 780 (D.Md. 2001), and to aid their integration into all public activities. 42 U.S.C. §12101; *Executive Order 13217, June 18, 2001, 66 F.R. 33155*. Under the ADA, there are three types of discrimination that can violate the Act: (1) intentional discrimination based on the handicapped status of the victims of the discrimination; (2) "disparate treatment," i.e., treatment that more negatively impacts individuals with handicaps, because of their handicaps, often termed "disparate impact;" and (3) failure to make a reasonable accommodation. Under a disparate impact theory, there does not need to be evidence of

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<sup>1</sup> Judicial interpretations of the Fair Housing Act and the Americans with Disabilities Act, are essentially the same. (see, for example, *South Middlesex Opportunity Council, Inc.*, 752 F.Supp.2d 85, 114 (D.Mass. 2010), citing, *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 573-74 (2d Cir. 2003). As a result of receipt of federal financial assistance by the Town of Reading, the Rehabilitation Act, 29 U.S.C. §794, *et seq.*, is also implicated.

discriminatory intent – only the negative impact, on the basis of handicap, by a facially neutral act or policy. *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997).

At this stage, Criterion is not alleging intentional discrimination. The HDC, however, cannot "utilize standards, criteria, or methods of administration" that create a disparate impact on individuals with disabilities. *Smith-Berch, Inc. v. Baltimore City*, 68 F.Supp.2d 602, 621 (D.MD 1999); 42 U.S.C. § 12101(b)(1). Disparate impact occurs when facially neutral rules or policies are applied in a way that affect the protected class of persons with disabilities differently from similar groups without disabilities. *Pathways Psychosocial v. Town of Leonardtown, Md.*, supra, at 788. If this HDC was inclined to deny to Criterion a Certificate of Appropriateness or a Certificate of Hardship, particularly with respect to its proposed addition, then the HDC would exclude infants and toddlers with disabilities from the ability to receive an appropriate education in the Town of Reading, and would burden those children, because of their disabilities, more than children of similar ages, without disabilities.

Criterion is not claiming that disparate impact would result simply because of the great need for Early Intervention services in Reading (see, for example, *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9<sup>th</sup> Cir. 1997), for a requirement of more than an allegation of the need for services). Rather, Criterion has put forth specific information demonstrating that a denial of its project would have a greater negative impact on infants and toddlers with disabilities seeking early education, than on infants and toddlers without disabilities.<sup>2</sup>

In his Affidavit, Dr. Littleton, using a reliable source, notes the far greater availability of early education programs in the Greater Reading area, for infants and toddlers without disabilities, than for those with disabilities (RFL ADA Affidavit, ¶12). In addition, Dr. Littleton explains the need for classrooms in Criterion's program, that exceed the minimum regulatory size that could be used to adequately serve infants and toddlers without disabilities (RFL ADA Affidavit, ¶¶ 14 – 16). Finally, Dr. Littleton attests that to force Criterion to utilize smaller classrooms, in order to shrink the size of the addition, would render the program financially unsound (RFL ADA Affidavit, ¶¶ 17 – 18). Dr. Littleton will be available to answer any additional questions that HDC members may have. Given the context of this case – a municipal hearing – as opposed to a Superior or Federal Court trial, the Affidavit of Dr. Littleton provides ample evidence to support the claim of disparate impact if Criterion's application is denied, or if it is allowed with restrictions that unduly impair the clinical or fiscal soundness of Criterion's program.

Thus, if the HDC was inclined to deny or excessively burden Criterion application, the HDC would have to grant Criterion's request for a reasonable accommodation in order to

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<sup>2</sup> Criterion has standing to assert rights under the ADA, both on its own behalf, and on behalf of its students and potential students. *MX Grp., Inc. v. City of Convington*, 293 F.3d 326, 335 (6<sup>th</sup> Cir. 2002); *RHJ Med. Ctr. v. City of DuBois*, 754 F.Supp.2d 723, 735 (W.D. Pa. 2010).

avoid violating the ADA. The accommodation sought by Criterion is reasonable, in that it costs the Town nothing. It is necessary in order to give infants and toddlers with disabilities, equal access to those without disabilities, to early education in the Town of Reading, and to early education services inside 186-190 Summer Avenue. See, for example, *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F3d. 775, 784 (7<sup>th</sup> Cir. 2002), for a good discussion of the elements of a reasonable accommodation. It is no answer to the HDC's obligation to make a reasonable accommodation, to suggest that Criterion go elsewhere. First, as noted at the beginning of this memorandum, Criterion already had rights to its property and had invested significant sums in its project, before this HDC came into being. Moreover, due to the Dover Amendment, *MGL c. 40A, §3*, Criterion has the right to operate its program at 186-190 Summer Ave. – it is the location of Criterion's choice. (see, *ReMed Recovery Care Centers v. Twp. of Willistown, Chester Cnty, PA*, 36 F.Supp.2d 676, 685 (E.D. PA 1999). Criterion's requirement for the size of the addition, for financial integrity, is a relevant factor toward requiring the reasonable accommodation. *Id.* at 685-686.

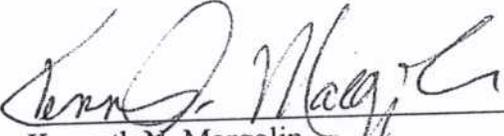
A municipality can refuse to make a reasonable accommodation if the requested accommodation would "fundamentally alter the nature of the services, program, or activity." *28 C.F.R. §35.130(b)(7)*. Granting to Criterion, the reasonable accommodation it requests, would in no way fundamentally alter or undermine the Historic District Bylaw, or the work or purpose of the HDC. The Historic District Bylaw itself, by giving the HDC the ability to grant Certificates of Hardship, recognizes that sometimes special circumstances require flexibility in the application of the HDC policies, rules, and guidelines. A request for a reasonable accommodation can be found to "not cause a fundamental or unreasonable change to the ordinance ... particularly so because the [plaintiffs] were not requesting a change to the ordinance itself, but application of the hardship exception to their case." *Dadian v. Vill. of Wilmette*, 269 F.3d 839 (7<sup>th</sup> Cir. 2001). And, as noted elsewhere in this memorandum, Criterion's structure (which will sit on a large lot, and is well within the building coverage requirements of the Zoning Bylaw) will not be uniquely large within the Historic District.

Criterion is proud of its proposal for an Early Intervention program at 196-190 Summer Avenue, in Reading, and believes that the architectural design is of high quality, and respectful of the existing historic house and the Historic District. It is worth remembering that initially, Criterion planned to demolish the existing historic house, but in deference to requests from some neighbors, decided to keep the historic house intact. Criterion would hope that this HDC sees fit to grant its application for a Certificate of Appropriateness, or, if necessary in the alternative, its application for a Certificate of

February 20, 2015

Page 5 of 5

Hardship. If the Commission was not inclined to grant either of those Certificates, Criterion believes that the Commission is obligated, pursuant to the Americans with Disabilities Act, to grant Criterion's request for a reasonable accommodation.



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Kenneth N. Margolin  
Attorney for Criterion Child  
Enrichment, Inc.

Affidavit of Robert F. Littleton, Jr.  
in Support of Criterion Child Enrichment, Inc.'s Request  
for a Reasonable Accommodation under the Americans with Disabilities Act

I, Robert F. Littleton, Jr., swear that the following facts are true:

A. Introduction

1. I am the President of Criterion Child Development, Inc. Criterion has signed a Purchase and Sales Agreement with the owner of 186-190 Summer Avenue, in Reading, to purchase the property, and plans to operate on the property, an Early Childhood Intervention program.
2. This Affidavit is submitted in support of Criterion's request for a reasonable accommodation of the rules, policies, and guidelines of the Historic District Commission, pursuant to the Americans with Disabilities Act.
3. I have been involved in the field of early childhood education for forty years. A summary of my educational background and relevant professional experience, is attached to this Affidavit as Exhibit A.
4. As I will elaborate at sections C and D of this Affidavit, Criterion provides important services to children with disabilities in the Reading area – appropriate early education and developmental care – that is far more readily available to children without disabilities, than to children with disabilities. The addition to the existing historic house – the addition will house Criterion's four classrooms – has been designed to the minimum size necessary to accommodate the special needs of the children, necessitated by their disabilities, and to allow Criterion to serve sufficient numbers of children in its classrooms, to allow for a fiscally sound and stable program.

B. The nature of disabilities of the children served by Criterion,  
and the services provided by Criterion

5. Eligible children are those whose developmental patterns are atypical, or are at serious risk to become atypical through the influence of certain biological and/or environmental factors.
6. The atypical development patterns, or "development delays" significantly impair the children served by Criterion, in a wide range of essential life skills. These include delays in the development of speech, receptive cognition, balance, mobility, gross and fine motor skills, learning; i.e., the acquisition of new abilities, and behaviors. The large majority of children who are deemed "at risk" for exhibiting significant development delay, will in fact develop them within a year of receiving the "at risk" designation.
7. Criterion's Early Intervention programs, including the planned program in Reading, serve children with serious disabilities that impair major life functions.
8. Early intervention services are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's cognitive, physical and social development. Services are selected in collaboration with families, using an Individualized Family Service Plan. Early Intervention educators, including physical, speech and occupational therapists, and developmental specialists, work with children and their families in home, center and community-based settings.
9. Educational services are provided for academic, recreational and behavioral education needs that may include home visits, parent groups, individual therapies and center-based toddler groups. Services include screening, assessment and individual and small group training.

8. In addition to direct services provided to children, Early Intervention is a training, education and support program for parents and caregivers of eligible children. Within this training, parents and caregivers are taught how to incorporate intervention strategies into their child's daily routines to ensure achievement of developmental outcomes identified in the Individualized Family Service Plan (IFSP).

9. Parent education groups are designed to provide the Early Intervention program an opportunity to inform parents and other interested caregivers about specific topics related to child development such as; early language development, behavior management, feeding issues or sleep problems.

C. The need for Early Intervention programs, and their relatively short supply in contrast to early education and care programs for infants and toddlers without significant disabilities

10. The Individuals with Disabilities Education Act (IDEA), originally known as the Education of All Handicapped Children Act, was enacted by Congress in 1975 to ensure that children with disabilities have the opportunity to receive a free appropriate public education, just as typically developing children do. In the 1986 reauthorization of this law, Congress established Part C of IDEA, the program of early intervention for infants and toddlers with disabilities in recognition of "an urgent and substantial need" to:

enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay;

minimize the need for special education and related services after infants and toddlers with disabilities reach school age;

minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society; and

enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

11. When the final regulations to Part C of IDEA were published in September 2011, U.S. Secretary of Education, Arne Duncan, highlighted the need for early childhood intervention, stating:

As everyone who works in education understands, one of the most important things we can offer children is a high-quality early learning experience that prepares them for kindergarten,” This is true for all children – but it’s especially important for infants and toddlers with disabilities to have access to high-quality early intervention services that prepare them to successfully transition to preschool and kindergarten. The Part C regulations support the Education Department’s commitment to the goal of preparing more children with high needs with a strong foundation for success in school and beyond.

(U.S. Department of Education, Office of Special Education Programs’ (OSEP’s) Part C of the IDEA website: <http://idea.ed.gov/part-c/search/new>).

12. A search on the website of the Massachusetts Department of Early Education and Care ("EEC"), for non-Early Intervention programs licensed by EEC, that accept infants and toddlers, revealed no fewer than 17 such programs in the Early Intervention catchment area (31), that includes Reading, North Reading, Melrose, Stoneham, and Wakefield. Four of the 17 programs are in Reading, three more in North Reading. In that same catchment area 31, there is only a single Early Intervention program – Criterion's, now in Stoneham, and moving to Summer Avenue, Reading.

13. Criterion's Early Intervention program will serve a critical need in Reading and surrounding communities, for infants and toddlers with developmental disabilities, that will be not be provided if Criterion cannot build and operate its program in Reading.

D. The rationale for the size of Criterion's classrooms, necessitating the size of its planned addition

14. The classrooms shown on Criterion's plans range from 525 square feet to 640 square feet in size. Department of Early Education and Care regulations, 606 CMR 7.7, require a minimum of 35 square feet per child in licensed group early education and care programs, making no distinction between children with and without disabilities such as those in the children served by Criterion.

15. In order to maintain a financially sound and stable program, Criterion must be able to accommodate at least 12 students in its classrooms. Responsible planning requires that the program retain some ability to serve additional students in the future. Currently, Criterion generally serves between 7 and 12 students in its classroom groups.

16. Thirty-five square foot per student is inadequate to enable Criterion to serve its children with disabilities. That minimum square footage fails to account for two factors that require extra classroom space: (a) space-consuming specialized equipment that some of Criterion's children must use in the classroom – pictures showing examples of three such pieces of equipment are attached to this Affidavit and labeled "B"; (2) the fact that many of the students are accompanied in the classroom by their parents, so that the parents can interact with their children and learn the specialized techniques employed to help their child's development, so that they can employ them at home.

17. If Criterion was forced to shrink the size of its classrooms, it would have to serve fewer children, reducing the income to Criterion provided by its classroom programs, and unacceptably threatening its financial health.

18. Criterion designed its classrooms proposed for the new addition to the existing historical house, to be the minimum size needed for programmatic quality and fiscal

soundness. The other rooms and spaces within the addition are all necessary components of Criterion's program, as are those planned for the existing historic house. Criterion designed the addition as compactly as possible, consistent with its programmatic needs.

E. Request for a Reasonable Accommodation

19. In order to allow Criterion's infants and toddlers with disabilities, to have access to a vital service within the Town of Reading, this Historic District Commission is requested, to the extent it may be necessary, to interpret and apply its rules, policies, and guidelines in such a manner: (a) to enable Criterion to construct its building as shown on the plans submitted to the Commission; and (b) to refrain from imposing any requirements regarding materials, that would make construction so expensive as to effectively prevent Criterion from building and operating its Early Intervention program at 186-190 Summer Avenue, Reading, Massachusetts.

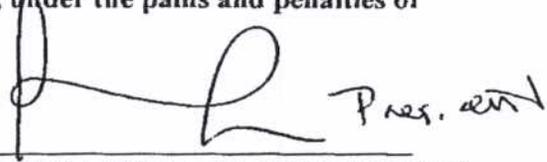
Signed this 18<sup>th</sup> day of February, 2015, under the pains and penalties of perjury.

See next page  
Robert F. Littleton, Jr., Ed.D., President  
Criterion Child Enrichment, Inc.

the plans submitted to the Commission; and (b) to refrain from imposing any requirements regarding materials, that would make construction so expensive as to effectively prevent Criterion from building and operating its Early Intervention program

at 186-190 Summer Avenue, Reading, Massachusetts.

Signed this 18<sup>th</sup> day of February, 2015, under the pains and penalties of perjury.



Robert F. Littleton, Jr., Ed.D., President  
Criterion Child Enrichment, Inc.

### Exhibit A

#### Affidavit of Robert F. Littleton, Jr.

##### Summary of Education and Relevant Professional Experience

My educational background includes an M.Ed. from Lesley College, with a major in Severe Special Needs and a minor in Early Childhood Special Education, and an Ed.D from Boston University, with a major in Special Education.

From 1974 through 1982, I was the Associate Director, and then Director of the Kennedy-Donovan Center for Programs in Early Development, Foxboro, Massachusetts. In addition to serving as the President of Criterion Child Development, Inc., I founded, and am the Executive Director of Evergreen Center, Inc., Milford, Massachusetts, a nonprofit corporation providing residential programs and community services for children and adults with developmental disabilities or emotional disturbances. Evergreen Center serves in excess of 260 families in twenty-one locations.

I also founded, and serve as President of BEACON Services, Milford, Massachusetts, a private group of special educators and early childhood professionals experienced in the principals of behavior analysis. I founded, and serve as president Human Services Management Corporation, Inc., Milford, Massachusetts, a corporation that provides shared business services, continuing education and management consulting services for nonprofit and proprietary human service providers.

I have presented and written extensively on special education, early childhood intervention and human service management topics.

## Exhibit A

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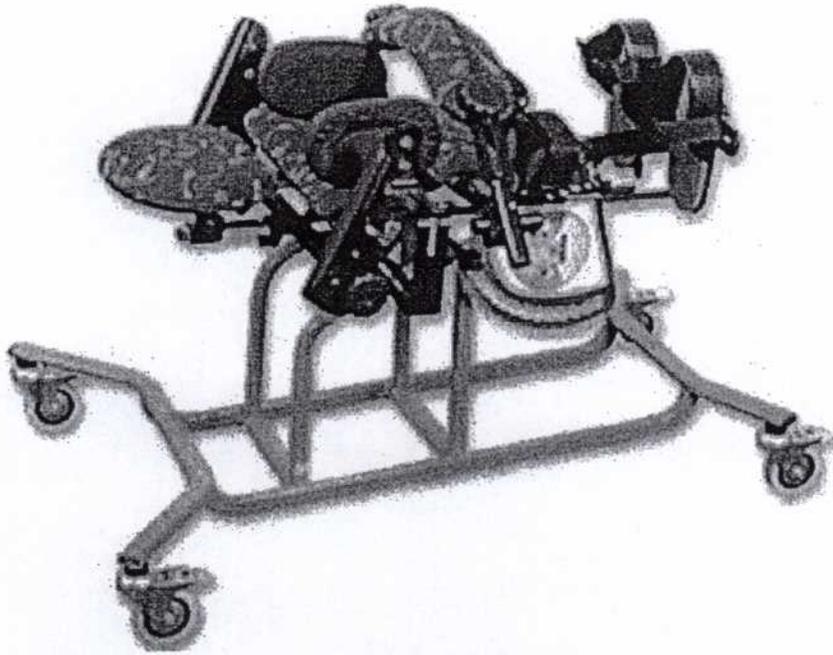
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I have presented and written extensively on special education, early childhood intervention and human service management topics.

B-1



B-2



B-3



J. Raymond Miyares  
Thomas J. Harrington  
Christopher H. Heep  
Donna M. Brewer

Jennie M. Merrill  
Jonathan E. Simpson  
Magdalene K. Carter  
Ivria Glass Fried  
Eric Reustle

November 7, 2014

Bob LeLacheur, Jr.  
Town Manager  
Town of Reading  
16 Lowell Street  
Reading, MA 01867

Re: Criterion Child Enrichment, Inc.  
186 Summer Ave.

Dear Bob:

Criterion Child Enrichment, Inc. is a nonprofit corporation incorporated under Chapter 180 of the *Massachusetts General Laws* and recognized as tax-exempt pursuant to Section 501(c)(3) of the *Internal Revenue Code*. Specifically, the corporation's purposes include:

[the provision of] human services for persons who have been subjected to physical, environmental or social circumstances which have adversely affected their ability to lead normal lives.... The Corporation shall also educate such persons and their families to deal with the problems associated with such circumstances and engage in any other activities necessary for the effective implementation of the above-listed objectives.

As described on its 2013 I.R.S. Form 990, Return of Organization Exempt from Income Tax (the most recent we could obtain), Criterion's major programs include early intervention services for children from birth to age 3, family support services to young parents emphasizing child development and child care services. Of those programs, early intervention services comprised greater than 80% of program revenues and expenses in FY2013, making early intervention Criterion's most significant program by a substantial margin.

Criterion has entered into a Purchase and Sale Agreement for the purchase of the referenced property, where it intends to operate an early intervention program. By letter dated August 6, 2014, Criterion's attorney, Kenneth Margolin, outlined the corporation's concerns with respect to a proposed Bylaw amendment that would place the property, as well as several neighboring properties, into a new Historic District. Mr. Margolin argues

Bob LeLacheur, Jr.  
November 7, 2014  
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that (1) Criterion's proposed use is protected by the Dover Amendment, *M.G.L. c.40A, §3*, and that, as a result, it may not be regulated through creation of a new Historic District; and (2) implementation of the Historic District would constitute a violation of the *Americans with Disabilities Act (ADA)*, 42 *U.S.C. §12101, et seq.*, as it would have a disparate impact on children with disabilities.

Arthur Kreiger, who represents certain proponents of the historic district, provided a response on October 14, 2014, and a supplemental letter on October 30, 2014, arguing that (1) Criterion's proposed use is not protected by the Dover Amendment; (2) Criterion's prospective clients do not qualify for protection under the ADA; and (3) even if the ADA were deemed to be applicable, Criterion has not demonstrated a disparate impact that would violate the ADA. Mr. Margolin provided a supplemental letter on November 5, 2014.

As discussed below, I conclude that Criterion's proposed use is protected under the Dover Amendment, but that the Dover Amendment does not prohibit the creation of a new Historic District, as long as there is legitimate historic-preservation basis for its adoption. I further conclude that the ADA likely does protect certain of Criterion's clients from intentional discrimination or disparate impacts resulting from Town actions, but that implementation of the Historic District alone does not constitute a violation of the ADA. I caution the Town, however, that, in particular circumstances, it may be required to make reasonable accommodations for Criterion's clients, potentially by waiving or modifying requirements imposed pursuant to the Town's Historic District Bylaw.

I. *M.G.L. c.40A, §3*

*M.G.L. c.40A, §3* includes a provision, commonly known as the Dover Amendment, that states, in relevant part:

No zoning ordinance or by-law shall...prohibit, regulate or restrict the use of land or structures...for educational purposes on land owned or leased...by a nonprofit educational corporation.

The amendment thus creates three distinct elements that must be present for its protection to apply: first, the organization in question must be a nonprofit educational corporation; second, the proposed use must be primarily educational; and third, the challenged provision must be a zoning bylaw.

A. Nonprofit Educational Corporation

Criterion is incorporated as a nonprofit corporation pursuant to *M.G.L. c.180*. I conclude that this is sufficient for Criterion to qualify as a nonprofit corporation within the meaning of the Dover Amendment.

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November 7, 2014  
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Mr. Kreiger suggested in his October 30 letter that Criterion is not, in fact, a nonprofit corporation, and stated that his clients reserve the right to challenge Criterion's nonprofit status. Mr. Kreiger points to certain transactions between Criterion and a related for-profit corporation,<sup>1</sup> Human Services Management Corporation, Inc. (HSMC), that are reported on Criterion's annual tax returns and audited financial statements. The transactions in question appear to be based on a contract entered into between HSMC and Criterion in 1990 and to have been consistently reported in Criterion's annual filings.

Related-party transactions and the conflicts of interest that may potentially arise therefrom are not, in and of themselves, prohibited. Criterion has a long history of reporting the transactions cited by Mr. Kreiger, and there is no evidence that any action has been taken against Criterion by any oversight agency. I therefore conclude that the mere existence of these transactions is not a sufficient basis for denying Dover Amendment protection to Criterion.

With respect to whether Criterion is a nonprofit educational corporation, the Dover Amendment requires only that the corporation's articles of incorporation authorize it to engage in educational activities. *Gardner-Athol Area Mental Health Ass'n, Inc. v. Zoning Bd. of Appeals of Gardner*, 401 Mass. 12, 15 (1987). There is no requirement that education be a primary or dominant activity of the corporation. *Id.* Rather, a corporation will be considered to be educational where its articles of incorporation allow it to engage in some educational activity. *Id.*

As described above, Criterion's articles of incorporation permit the corporation to "educate [clients] and their families to deal with the problems associated with such circumstances and engage in any other activities necessary for the effective implementation of the above-listed objectives." By the express terms of its articles of incorporation, therefore, Criterion may engage in educational activities and must be considered a nonprofit educational corporation.

#### B. Educational Use

The Supreme Judicial Court has held that, in order to be protected as an educational use under the Dover Amendment, "a landowner must demonstrate that its use of land will have as its primary purpose a goal that can reasonably be described as educationally significant." *Regis Coll. v. Town of Weston*, 462 Mass. 280, 291 (2012). This requires an

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<sup>1</sup> Robert Littleton, Jr., serves as a director and officer of Criterion and is also the sole officer, director and stockholder of HSMC. Although Mr. Kreiger has not specified the legal basis of his challenge, transactions such as these may implicate federal and state laws affecting nonprofit status including laws related to conflicts of interest (See *M.G.L. c.180, §6*), excess benefit transactions (See *I.R.C. §4958*), and the prohibitions against private inurement and private benefit for public charities (See *I.R.C. §501(c)(3)* and *26 C.F.R. 1.501-(c)(3)-1(d)(1)(ii)*).

Bob LeLacheur, Jr.  
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analysis of the nature of activities to be conducted on a property and the significance of educational activities relative to non-educational activities.

Massachusetts courts have "long recognized 'education' as a 'broad and comprehensive term.'" *Fitchburg Hous. Auth'y. v. Bd. Of Zoning Appeals of Fitchburg*, 380 Mass. 869, 874 (1980), quoting *Mt. Hermon Boys' School v. Gill*, 145 Mass. 139, 146 (1887). In *Mt. Hermon*, the Supreme Judicial Court took the view that "[e]ducation may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all..." In *Whitinsville Retirement Society, Inc.*, 394 Mass. 757, 760 (1985), the Supreme Judicial Court added the caveat that "educational purposes" ought to be interpreted in light of the "plain meaning" of the statutory term.

In *Whitinsville*, a nursing home without any formal instructional program was found not to be an educational use for the purposes of the Dover Amendment because the education that the residents acquire informally amongst themselves was insufficient to qualify. *Id.* On the other hand, a school for emotionally disturbed children, which included residential facilities, was deemed to be entitled to Dover Amendment protection in *Harbor Schools, Inc. v. Bd. of Appeals of Haverhill*, 5 Mass.App.Ct. 600 (1977). Similarly, a halfway house for mentally disturbed adults was found to be an educational use in *Fitchburg Hous. Auth'y, supra*, 380 Mass. at 874. But see *Kurz v. Bd. of Appeals of North Reading*, 341 Mass. 110, 113 (1960) (a school for dance was not entitled to Dover Amendment protection).

As described in Mr. Margolin's November 5 letter and the accompanying Supplemental Affidavit of Robert F. Littleton, Jr., Criterion will provide group sessions for children and parents in which staff will engage them in activities targeted at developing skill acquisition to facilitate learning. Although some of the skills taught involve motor skills or other areas that are not traditionally deemed to be educational, the goal of all of Criterion's activities is to assist children in developing their ability to learn. In addition, classes will be offered for parents in which they learn how to engage their children at home to stimulate learning. Staff will also be based at the Summer Ave. property, who will travel to provide in-home services similar to those provided on site.

Considering the broad scope of educational uses covered by the Dover Amendment, the purposes underlying the early intervention services provided by Criterion and the significance of these activities, as compared to any non-educational activities that are expected to occur at the property, I conclude that Criterion's proposed use of the Summer Ave. property will be primarily educational.

### C. Zoning Bylaw

The Dover Amendment provides that no zoning bylaw may prohibit, regulate or restrict the use of land or structures for educational purposes on land owned by a nonprofit educational corporation. *M.G.L. c.40A, §3*. The Town's Historic District Bylaw is not a

Bob LeLacheur, Jr.  
November 7, 2014  
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zoning bylaw, however, but rather a general bylaw. Mr. Margolin nevertheless has argued that the proposed Historic District is impermissible because it would prohibit or regulate a protected Dover Amendment use. As noted below, I am not persuaded that it would be impossible for Criterion to carry on its educational use in compliance with the requirements of the Town's Historic District Bylaw, as long as the Town provides reasonable accommodations as required by the ADA. However, even if the Bylaw had the effect of preventing Criterion's proposed educational use, it would not necessarily follow that it would be in violation of the Dover Amendment. Specifically, the Dover Amendment, by its terms, applies only to zoning bylaws.

To be sure, municipalities may not use back door methods to avoid the protections created by the Dover Amendment. *See, e.g., Newbury Junior Coll. v. Town of Brookline*, 19 Mass.App.Ct. 197, 205 (1985), relied on by Mr. Margolin in his August 6 letter. In *Newbury Junior College*, the Appeals Court ruled that the Town could not deny a license for a dormitory on the basis of generalized considerations regarding the effect of the dormitory on the surrounding community. 19 Mass.App.Ct. at 205-07. The Court recognized that the Town could deny the use on the basis of factors properly considered pursuant to the relevant licensing statute, but found that the considerations actually utilized by the board were beyond the scope of the licensing statute and were instead the type of factors typically used in determining zoning matters. *Id.*

*Newbury Junior College* stands for the proposition that traditional land use considerations may not be employed under another statutory scheme to achieve what a municipality may not do through its zoning bylaw. It should not be interpreted to mean that a Town is prohibited from regulating activities under a Historic District Bylaw, as long as the criteria employed in such regulation are those properly within the historic preservation purview of the Bylaw. Accordingly, I conclude that the creation and regulation of a Historic District in accordance with the relevant statutory requirements provided in *M.G.L. c.40C* would not violate the Dover Amendment.

## II. Americans with Disabilities Act

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. Public entities include counties, cities and towns, 42 U.S.C. §12131(A). Legislation by municipalities may constitute services or programs and enforcement of bylaws or ordinances qualifies as an activity within the meaning of Title II. *See A Helping Hand, LLC v. Baltimore County, Md.*, 515 F.3d 356, 361, fn. 2 (4th Cir. 2008) (citing decisions from the Second, Fourth, Seventh and Ninth Circuits for the proposition that local zoning requirements are subject to Title II).

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A person is a "qualified individual with a disability" under the ADA if s/he has a mental or physical impairment that substantially limits a major life activity. 42 U.S.C. §12101(2). The term "mental or physical impairment" includes learning disabilities. 28 C.F.R. §35.104. The term "major life activity" includes caring for oneself, learning, reading, concentrating, thinking, communicating and working. 42 U.S.C. §12102(2). Considering the population served by Criterion, it is reasonable to assume that at least some of Criterion's clients are qualified individuals under the ADA.

The case law under the ADA has recognized three distinct theories under which a claim of discrimination against qualified individuals may be brought: disparate treatment, disparate impact and failure to provide reasonable accommodations. *A Helping Hand*, *supra*, 515 F.3d at 362. Each theory is considered below.

A. Disparate Treatment

As Mr. Margolin has correctly pointed out, disparate treatment of handicapped individuals is prohibited by the ADA. Under the ADA, disparate treatment is interpreted to mean intentional discrimination and occurs whenever a disabled person is treated differently from others because of a disability. *Id.* The federal courts have not been shy about ruling that local enactments constituted intentional discrimination where there is evidence of local opposition to a facility serving handicapped individuals. For example, in *A Helping Hand*, residents opposed a methadone clinic on grounds that clients were regarded as criminals and undesirable. Based on this, and on a local councilman's active participation in the opposition to the facility, the Court found that a zoning ordinance amounted to intentional discrimination and resulted in disparate treatment of the clients of the clinic. *Id.*

Discriminatory intent has been found where evidence showed that a town's insistence on a special permit was based on private biases and was "unsubstantiated by factors properly cognizable in a zoning proceeding." *City of Cleburne, TX v. Cleburne Living Center*, 473 U.S. 432, 448 (1985) (neighbors opposed a home for the mentally disabled), and where government officials acted solely in reliance on public distaste for certain activities following a meeting in which the only discussion presented was community opposition. *Marks v. City of Chesapeake*, 883 F.2d 308, 311-12 (4th Cir. 1989) (residents opposed a fortune telling business as being contrary to Christian values)<sup>2</sup>.

Clearly, there exists at least some local opposition to Criterion's proposed activities; and some of the proponents of the Historic District may be seeking to prohibit Criterion entirely from operating on the Summer Ave. property, rather than pursuing a genuine historic preservation objective. In determining whether the Historic District should be

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<sup>2</sup> *Marks* is a civil rights case rather than an ADA case. The same analysis is applicable here, however, as courts analyzing ADA cases frequently look to civil rights cases for precedent in analyzing disparate treatment and disparate impact claims. *See Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003).

Bob LeLacheur, Jr.  
November 7, 2014  
Page 7 of 8

created, however, the Town Meeting should consider only factors relevant to the merits of the District, such as whether the affected buildings are of historical or architectural significance within the community. See M.G.L. c.40C, §3.

B. Disparate Impact

Under a disparate impact theory, a plaintiff must show: "(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or policies." *Reg'l Econ. Comty. v. City of Middletown*, 294 F.3d 35, 52-53 (2nd Cir. 2002), quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997) ("For example, a handicapped person might challenge a zoning law that prohibits elevators in residential dwellings. That neutral law might have a disproportionate impact on such a plaintiff and others with similar disabilities, depriving them of an equal opportunity to use and enjoy dwellings there.").

In order to prevail in a claim of disparate impact, a plaintiff must prove actual discriminatory effect and cannot rely on inference. *Gamble*, 104 F.3d at 306. In *Gamble*, for example, the Court rejected the plaintiff's claim of discriminatory impact where the plaintiff argued only that there was a "great need" for the services it proposed to provide and failed to provide concrete evidence that the claimed discriminatory effect occurred or was significant. *Id.*

Thus far, Criterion has offered no evidence of any discriminatory effect that the proposed Historic District would have on its clients who are qualified individuals. Rather, it has merely advanced arguments similar to those that were rejected in *Gamble*. Indeed, it is unclear what evidence Criterion could even possibly produce to show that the creation of the Historic District by itself would have a significantly adverse or disproportionate impact on its operations.

C. Reasonable Accommodations

Municipalities are required to reasonably accommodate disabled persons by modifying policies, practices or services when necessary. *Dadian v. Wilmette*, 269 F.3d 831, 838 (7th Cir. 2001). 28 C.F.R. §35.130(b)(7) states:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

"Whether a particular accommodation is reasonable is highly fact-specific, and determined on a case-by-case basis by balancing the cost to the defendant and the benefit to

Bob LeLacheur, Jr.  
November 7, 2014  
Page 8 of 8

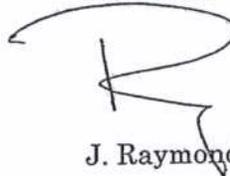
the plaintiff.” 269 F.3d at 838. In general, however, it involves a balance of the benefit to the qualified individual and the harm to the public purpose for which the regulation or practice was adopted in the first place. With respect to the benefit to the individual, the Court of Appeals in *Dadian* stated that, “[w]hether the requested accommodation is necessary requires a ‘showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.’” *Id.*, quoting *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995). With respect to the public purpose of the regulation or practice, the focus should be on “whether waiver of the rule in the particular case at hand would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change.” *Washington v. Indiana High Sch. Athletic Ass’n, Inc.*, 181 F.3d 840, 850 (7th Cir. 1999).

If the Historic District is adopted and Criterion’s proposed construction activity at the Summer Ave. property is deemed not to comply with its requirements, then Criterion will be entitled to request a reasonable accommodation, in the form of a modification or waiver of the restrictions imposed in the District. Criterion would be entitled to such a reasonable accommodation if its request would not affect a fundamental and unreasonable change to the Historic District.

This does not mean, however, that the Town is prohibited by the ADA from creating the Historic District at all or from imposing appropriate historic preservation requirements on the Summer Ave. property. Rather, if Criterion’s clients who are qualified individuals require a waiver from a specific requirement in a specific circumstance, they may, upon an appropriate showing, be entitled to such a waiver.

If you have any questions or concerns regarding these matters, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Raymond Miyares', written over a large, stylized, handwritten letter 'R'.

J. Raymond Miyares

# Maxwell Architects, LLC

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Planning / Programming / Design

MA Project Number: 1401

TO: West Street Historic District Commission  
Town of Reading  
Reading, MA

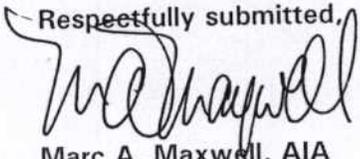
DATE: February 9, 2015

RE: Summer Avenue Historic District Plan Review Submission  
186-190 Summer Avenue  
Criterion Child Enrichment

ENCLOSURES: Seven copies of each of the following:  
WSHDC Application for Certificate of Appropriateness  
Reservation of Rights and Request for Reasonable Accommodation under  
the Americans with Disabilities Act  
Memorandum in Support of its Application, in the Alternative, for a  
Certificate of Hardship  
Architectural Drawings 19 pages prepared by Maxwell Architects, LLC,  
dated January 20, 2015  
Photographs of the existing property 3 pages prepared by Maxwell  
Architects, LLC  
One copy of the Request for Certified Abutters List

Please let us know if you require any additional information on this revised submission at this time. Thank you in advance for your assistance on this project.

Respectfully submitted,



Marc A. Maxwell, AIA

Maxwell Architects, LLC

Architect for Criterion Child Development, Inc.

CC: Robert Littleton, Jr., President, Criterion Child Development, Inc.  
John Fernandes, Esq.  
Kenneth Margolin, Esq.



**TOWN OF READING  
16 LOWELL STREET  
READING, MA 01867-2693**

**BOARD OF ASSESSORS  
TEL.: 781-942-9027  
FAX: 781-942-9037**

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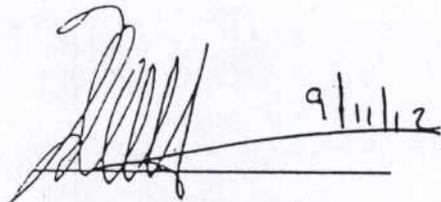
September 11, 2012

To whom it may concern;

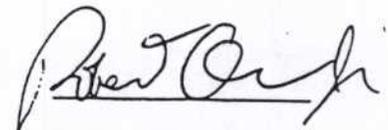
In an effort to streamline our business practices and a desire to decrease turnaround time for taxpayers and other municipal departments, please be advised that effective this date, we the Board of Assessors for the Town of Reading hereby delegate to the Town Appraiser or Acting Town Appraiser of the assessing department signatory authority of all certified abutter's lists as compiled by the department.

Sincerely,

Reading Board of Assessors

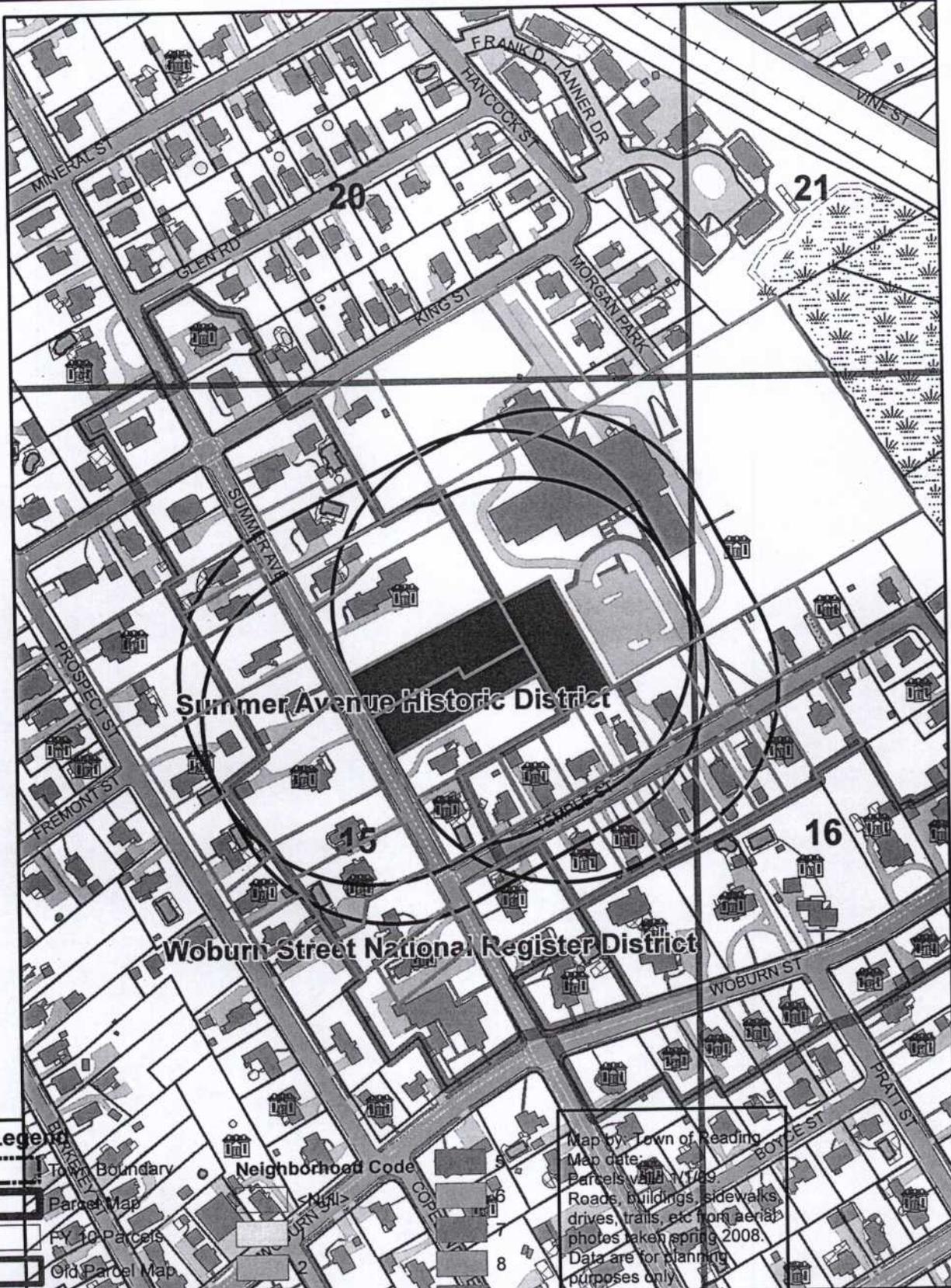
  
Fred McGrane, Chairman

  
Ralph Colorusso

  
Robert Quinn, Jr.

VPS

# READING ASSESSING MAP



**Legend**

- Town Boundary
- Parcel Map
- FY 10 Parcels
- Old Parcel Map
- FY 09 Parcels
- Town Owned Land

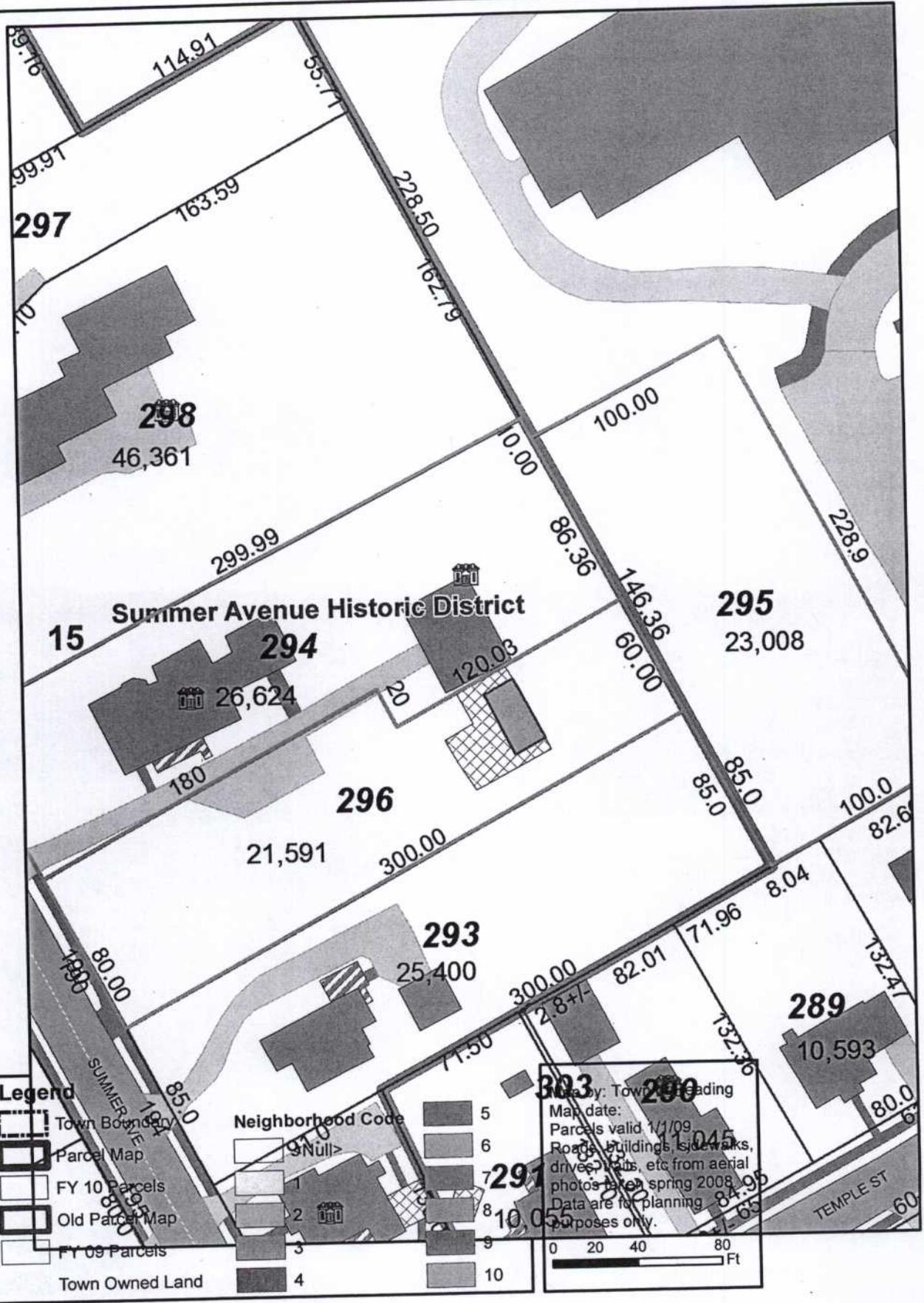
**Neighborhood Code**

	1		5
	2		6
	3		7
	4		8
			9
			10

Map by: Town of Reading  
 Map date:   
 Parcels with 1/1/09  
 Roads, buildings, sidewalks,  
 drives, trails, etc from aerial  
 photos taken spring 2008.  
 Data are for planning  
 purposes only.

0 80 160 320  
 Ft

# READING ASSESSING MAP



**Legend**

- Town Boundary
- Parcel Map
- FY 10 Parcels
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**Neighborhood Code**

9 Null	5
1	6
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Prepared by: Town of Reading  
 Map date: 1/1/09  
 Parcels valid 1/1/09  
 Roads, buildings, sidewalks,  
 drives, etc from aerial  
 photos taken spring 2008, 09  
 Data are for planning  
 purposes only.

0 20 40 80 Ft



FOR READING BOARD OF ASSESSORS

VICTOR P. SANTANIello, APPRAISER

  
PATRICIA A. SULLIVAN, ASSISTANT APPRAISER



FOR READING BOARD OF ASSESSORS

VICTOR P. SANTANIELLO, APPRAISER

*Patricia A. Sullivan*  
PATRICIA A. SULLIVAN, ASSISTANT APPRAISER

# Maxwell Architects, LLC

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Planning / Programming / Design

MA Project Number: 1401

TO: West Street Historic District Commission  
Town of Reading  
Reading, MA

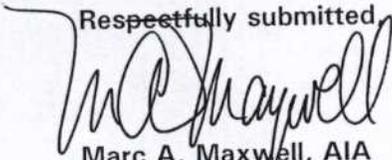
DATE: February 9, 2015

RE: Summer Avenue Historic District Plan Review Submission  
186-190 Summer Avenue  
Criterion Child Enrichment

ENCLOSURES: Seven copies of each of the following:  
WSHDC Application for Certificate of Appropriateness  
Reservation of Rights and Request for Reasonable Accommodation under  
the Americans with Disabilities Act  
Memorandum in Support of its Application, in the Alternative, for a  
Certificate of Hardship  
Architectural Drawings 19 pages prepared by Maxwell Architects, LLC,  
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Photographs of the existing property 3 pages prepared by Maxwell  
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One copy of the Request for Certified Abutters List

Please let us know if you require any additional information on this revised submission at this time. Thank you in advance for your assistance on this project.

Respectfully submitted



Marc A. Maxwell, AIA

Maxwell Architects, LLC

Architect for Criterion Child Development, Inc.

CC: Robert Littleton, Jr., President, Criterion Child Development, Inc.  
John Fernandes, Esq.  
Kenneth Margolin, Esq.

---

20 Windom Street  
Somerville, Massachusetts 02144  
(617) 666-9222  
(617) 666-4557 FAX  
marc@maxwellarchitects.com

RECEIVED BUILDING DEPARTMENT

FEB 10 2015

OFFICE OF THE CLERK

# West Street Historic District Commission



## Application for Certificate (Read instructions before completing form)

FEB 10 2015

### Certificate Requested:

- Appropriateness* – for work described herein  
 *Hardship* – financial or otherwise described herein and does not conflict substantially with the intent and purposes of the bylaw  
 *Non-Applicability* – for the reason(s) described below. See guidelines for further info.

### General Information:

Property Address 186 SOMMER AVENUE (HOUSE & BARN)  
Date built (age) 1853  
Owner(s) DEBRA A. SHONTZ-STACKPOLE  
Tel (h) 781.944.8913 (w) \_\_\_\_\_ (fax) \_\_\_\_\_ Email DASHONTZ@COMCAST.NET  
Owner's Address 186 SOMMER AVE. PEABODY MA

Applicant (if not Owner) ROBERT LITTLETON, JR.  
Tel (h) \_\_\_\_\_ (w) 508.478.2631 (fax) \_\_\_\_\_ Email rlittleton@aol.com  
Applicant's Address \_\_\_\_\_  
Applicant's Relationship to Owner AUTHORIZED AGENT FOR 186 SOMMER AVE APPROVALS

Contractor \_\_\_\_\_  
Tel (h) \_\_\_\_\_ (w) \_\_\_\_\_ (fax) \_\_\_\_\_ Email \_\_\_\_\_

Architect MARC A. MAXWELL, AIA MAXWELL ARCHITECTS, LLC  
Tel (h) \_\_\_\_\_ (w) 617.666.9222 (fax) 617.666.4557 Email marc@maxwellarchitects.com

Dates of Anticipated Work: Start \_\_\_\_\_ Completion \_\_\_\_\_

Description of Proposed Work: (attach additional pages as necessary) Please include a description of how the proposed work (if a change or addition) is historically and architecturally compatible with the building and the District as a whole.

RENOVATION OF HISTORIC HOUSE AND ADDITION OF A 5,620 TWO STORY EARLY CHILDHOOD INTERVENTION SCHOOL BUILDING.

PLEASE SEE ATTACHED DESCRIPTION.

We propose to make changes to the interior of the structure and to install new systems throughout the house, including structural repairs and modifications recommended by our structural engineer, and the addition of central air conditioning, fire protection and contemporary plumbing, electrical, communications and network systems. While interior modifications and repairs to the house and barn are not part of the review of this project under the Reading Historic District Bylaw, this information is provided to give the Commission a complete understanding of the project.<sup>1</sup> We will repair and only selectively replace, deteriorated exterior materials, including the clapboard, wood trim, windows, slate roof and architectural details, including the cupola, brackets, columns and railings, to stabilize and rehabilitate the exterior enclosure systems and appearance. We will make accessibility modifications to the existing entry porch, as well as provide full handicap access to the new construction, including a new accessible ramp to the south porch and an additional short ramp to the main first floor house level with a new one step stoop at the existing front door. We propose to install previously removed gutters and down- spouts to the house and porches.

We will remove the later added breezeway and shed from the main house, neither of which add historic architectural character in keeping with the original house, and to add a two story classroom addition of 5,620 SF between the existing house and barn. The classroom addition will be connected to the historic house by means of a new contemporary breezeway entry vestibule, clearly delineated as new construction from the original. The classroom building will not touch the barn, which we will stabilize, make weather-tight and secure for future renovation and reuse. Our long term plan is that the barn will be renovated for educational storage, playground equipment and education files. Due to the complexity and expense of the initial house restoration and classroom addition project, Criterion will focus on these portions of the project in the first phase and then tackle the barn in a subsequent phase. We are aware that any future exterior work to the barn may require additional approval from the WSHDC.

Our Structural Engineer (Reg Roome of Roome & Guarracino) has visited the site and is confident we can make adequate structural repairs and modifications for our intended use and rehabilitation of the existing house. The Barn is more complicated structurally as it is in less sound structural condition to begin with and inadequately structured for today's building, seismic and floor loading codes and regulations. By locating our

<sup>1</sup> Interior modifications are not part of the review of projects within the Summer Avenue District Historic Commission review and inclusion in the description of the project are not intended to invite review or further discussion of interior alterations with the West Street District Historic Commission or the Reading Historic Commission.

the historic house (2 ½ stories) and the addition (2 stories), shed roofs and gable ends. The lot coverage of our proposed project is 7.9% (lot coverage to lot size ratio), which is quite consistent with the larger houses in the district which range from 6% (176 Summer Ave) up to 12% (195 Summer Avenue). There are numerous properties in the District with multiple buildings and connected structures similar to what is proposed for this property.

We are continuing our work as to how to most efficiently and effectively rehabilitate these structures for our new use and improve the energy performance of the existing structure and windows, roof and wall. Hazardous materials remediation, as well as the installation of modern mechanical and fire protection systems always proves to be a complicated engineering and architectural task. Lead paint was found present throughout the historic house, interior and exterior alike. Due to the nature of Criterion's services we must be particularly vigilant in our abatement and remediations of hazardous materials throughout the property.

We respectfully request a Certificate of Appropriateness for our project in keeping with the goals of the West Street District Historic Commission. Criterion has submitted two documents in addition to this memorandum, with its application for a Certificate of Appropriateness, specifically: (1) "Memorandum in Support of Criterion's application, in the alternative, for a Certificate of Hardship," and (2) "Criterion Child Enrichment, Inc.'s Reservation of Rights and Request for a Reasonable Accommodation under the Americans with Disabilities Act. We look forward to working with you to come to that conclusion of this portion of our approvals process.

Respectfully submitted,

Marc A. Maxwell, AIA  
Maxwell Architects, LLC  
Architect for Criterion Early Development, Inc.

**LAW OFFICE OF KENNETH N. MARGOLIN, P.C.**

246 WALNUT STREET, SUITE 101  
NEWTON, MASSACHUSETTS 02460

(617) 641-9600

FAX: (617) 641-9606

WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

To: West Street Historic District Commission  
From: Kenneth N. Margolin, Attorney for Criterion Child Enrichment, Inc.  
Date: February 3, 2015  
Re: 186-190 Summer Avenue, Reading, Massachusetts

Criterion Child Enrichment, Inc.'s Memorandum in  
Support of its Application, in the Alternative, for a  
Certificate of Hardship

Criterion Child Enrichment, Inc. ("Criterion") has applied for a Certificate of Appropriateness, to move forward with its planned Early Intervention program for 186-190 Summer Avenue, Reading, Massachusetts. Criterion believes that it meets all requirements for a Certificate of Appropriateness, as set forth in the memorandum and supporting plans submitted by Criterion's architect, Marc A. Maxwell. In the event that, for any reason, this Commission will not grant a Certificate of Appropriateness, Criterion applies in the alternative, for a Certificate of Hardship.

Criterion's application meets all necessary requirements for a Certificate of Hardship, as set forth at §7.3.7.9 of the Town of Reading General Bylaws, specifically that:

... owing to the conditions especially affecting the Building or Structure involved, but not affecting the District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and ... [the] application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this bylaw ....

Criterion cannot operate its program in the existing historic house alone, and due to the structurally unstable condition of the existing barn, cannot utilize the barn for its classrooms and auxiliary offices and other necessary rooms. Criterion must therefore add an addition to the historical house. The existing addition, which is not historical, is too small for Criterion's purposes, and adds no historical character to the structure. The addition must be replaced with a new addition, which, as set forth on Criterion's submitted plans, will respect the integrity of the existing historic house.

LAW OFFICE OF KENNETH N. MARGOLIN, P.C.

246 WALNUT STREET, SUITE 101  
NEWTON, MASSACHUSETTS 02460

(617) 641-9600

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WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

To: West Street Historic District Commission  
From: Kenneth N. Margolin, Attorney for Criterion Child Enrichment, Inc.  
Date: February 3, 2015  
Re: 186-190 Summer Avenue, Reading, Massachusetts

Criterion Child Enrichment, Inc.'s Reservation of Rights  
and Request for a Reasonable Accommodation under  
the Americans with Disabilities Act

I. Reservation of Rights – Dover Amendment, MGL c. 40A, §3

Criterion Child Enrichment, Inc., ("Criterion") submits its application to the West Street Historic District Commission, (the "HDC") for a Certificate of Appropriateness, or, in the alternative, a Certificate of Hardship, subject to this Reservation of Rights.

All presentations and all written submissions by Criterion, to the HDC, will be subject to this Reservation of Rights. No discussion by officials, employees, attorneys, agents, or consultants, employed by Criterion, with members of the HDC, shall constitute a waiver of this Reservation of Rights.

Criterion's plans to use the property at 186-190 Summer Avenue, Reading, Massachusetts (the "property"), for an Early Intervention program for infants and toddlers, ages birth through three years of age.<sup>1</sup> During proceedings before the Town of Reading Community Planning and Development Commission, Town Counsel, J. Raymond Miyares, Esq., correctly determined that Criterion's program is covered by the Dover Amendment, *MGL c. 40A, §3*.

It is Criterion's position that any actions by the HDC with respect to Criterion's property, are constrained by the Dover Amendment. Specifically, the HDC may not impose requirements on Criterion, regarding the property, that are so burdensome as to prevent or significantly harm or limit Criterion's use of the property for its Early Childhood

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<sup>1</sup> Criterion has a signed Purchase & Sales Agreement for its acquisition of the property.

toddlers with disabilities, it plans to serve, seeks a reasonable accommodation, under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. (the "ADA").<sup>2</sup>

There is no question that the children served by Criterion at its Early Childhood Intervention program, have disabilities, as defined in the ADA, 42 U.S.C. §12102. A description of the types of disabilities that the large majority of children to be served, have, can be found in the "Affidavit of Robert F. Littleton, Jr.," filed with the CPDC (a copy of Dr. Littleton's Affidavit is attached to this memorandum and labeled "A"). The ADA was enacted to prevent discrimination against individuals on the basis of handicap, and to aid their integration into all public activities. 42 U.S.C. §12101; Executive Order 13217, June 18, 2001, 66 F.R. 33155. The activities of the HDC are "services, programs or activities" as set forth in the ADA, 42 U.S.C. §12132. See *Culverhouse v. City of LA Porte*, 679 Scup. 2d 931, 946 (N.D. Ind. 2009), for a discussion of the comprehensive scope of "services, programs or activities" covered by the law.

The ADA requires that municipalities "make reasonable accommodations in order to provide qualified individuals with an equal opportunity to receive benefits from or to participate in programs run by such entities." *Regal Econ. City. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 45 (2d Cir.), cert. denied, 537 U.S. 813, 123 S.Ct. 74, 154 L.Ed.2d 16 (2002). To establish discrimination under either the ... ADA, plaintiffs have three available theories: (1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation. *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 573 (2d Cir. 2003).

Owing to their disabilities, the children Criterion will serve, are far more limited, because of their handicaps, in their access to appropriate educational services, than children without disabilities. Early Intervention programs such as the one Criterion will operate on its Summer Avenue property, are needed by the children it will serve, and are in limited supply in the greater Reading area. If the HDC applies its rules and guidelines in such a manner that Criterion is either unable to make its property work for its planned Early Intervention program, or if the HDC renders construction or renovation of the property so expensive that it is financially unfeasible, then the HDC will have limited children with handicaps, in their access to needed, appropriate educational services. The addition to the historic house, planned by Criterion, was designed to be able to accommodate the special needs of the children it will serve and educate.

Criterion requests that the HDC make the following reasonable accommodation to its rules and guidelines, with respect to Criterion's application:<sup>3</sup>

---

<sup>2</sup> Criterion, as a program that exists to provide services to children and adolescents with disabilities, has standing to bring legal action as a result of discrimination that impedes, or attempts to impede, Criterion's clients from access to its services. *Franklin Building Corp. v. City of Ocean City*, 946 F.Supp. 1161, 1166 (D.N.J. 1966); *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1100, fn 2 (3d Cir. 1996).

## EXHIBIT A

### Supplemental Affidavit of Robert F. Littleton, Jr.

I, Robert F. Littleton, Jr., swear that the following facts are true:

1. I am the President of Criterion Child Enrichment, Inc. Criterion has signed a Purchase and Sales Agreement with the owner of 186-190 Summer Avenue, in Reading, to purchase the property, and plans to operate on the property, an Early Childhood Intervention program.
2. This Affidavit is submitted to supplement my original Affidavit, dated October 7, 2014, in which I explained the educational purpose of Early Intervention programs, including the Early Intervention program Criterion plans to operate at 186-190 Summer Ave., Reading. In this Affidavit, I will answer Town Counsel, J. Raymond Miyares' question regarding the activities that will take place on the Reading property, once Criterion opens the program. Other questions posed by Attorney Miyares, are answered by Criterion's attorney, Kenneth N. Margolin, in his letter, to which this Supplemental Affidavit is attached.
3. My relevant background is described at Attachment 2 to this Supplemental Affidavit.
4. In order to provide a context for the activities that will take place at Criterion's Summer Ave., Reading program, I refer to architectural drawings prepared by Marc A. Maxwell, AIA, showing Criterion's proposed floor plans for the property. The drawings are Attachment 1 to this Supplemental Affidavit.

Intervention can provide lifelong benefit by enhancing the skills of a child with developmental delay, during the crucial first three years of life.

11. The brief overview at paragraphs 7 – 10 of this Supplemental Affidavit, is provided so that the reader can understand that the activities that occur with Criterion's infants and toddlers with developmental delays, are not mere "recreation" or "play" (although the right kind of "play" can enhance the skills of Criterion's children). The activities are based upon years of research into the way that children with developmental delays learn, and the types of activities that can best stimulate their physical, cognitive, communication, social, adaptive, and emotional development.

12. Criterion provides early intervention services in the home and at its facilities, as will be the case at its Summer Ave., Reading, program.

13. The children served at the Summer Ave. program, will usually be eighteen months of age or older (i.e., 18 months – 3 years of age).

14. Activities with children, which will usually (with some exceptions, when a parent drops a child off) involve a parent as well as Criterion Early Intervention staff, will take place in the classrooms in the addition. Hours of the program are Monday through Friday, 8:00 a.m. – 4:00 p.m. Staff are free to arrive earlier or leave later, if they wish.

15. Classroom sessions will typically be ninety minutes long. There will be morning sessions, expected to take place between 9:30 a.m. – 11:00 a.m., and afternoon sessions, which are expected to occur between 12:30 p.m. – 2:00 p.m.

16. On most days when the facility is open, two or three of the four classrooms will be in use at the same time during the morning or afternoon sessions.

very small trampoline, to aid the child to develop the skill of sensing whole body movements and their effect. Such physical aids are employed only with very close staff supervision.

- (d) An area of the classroom will be set up for the development of fine motor skills, where the children will be engaged in activities such as blocks, building towers, and the like.
- (e) The toddlers will also have the opportunity for imaginative play, with dolls, kitchen sets and other play things.
- (f) Depending on the ages and developmental needs of the children, Criterion Early Intervention staff may direct some or all of the children in the group, in various other activities, for example, activities to help children who need it, in developing early self-care skills.

19. Typically, the Criterion staff working in the classrooms will be certified Early Childhood Intervention teachers. Staff from other disciplines may be in the classrooms as well, depending on the needs of the children in the group. Thus, for example, occupational or physical therapists, speech and language specialists, psychology or social work specialists, may participate – always dictated by the individual needs of children in the group.

20. In addition to being used for the group sessions for the children, classrooms will also be used for parent training sessions. Often, parents who participate in the group sessions, will leave the sessions to spend thirty minutes or more, with Criterion Early Intervention staff in another classroom.

developmental delay, their developmental delays will evolve to become evident, while they are still receiving early intervention services.

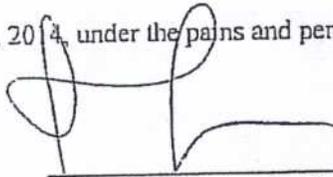
22. Early Intervention program statutes and standards require that Early Intervention services be provided in as "normal" a setting as possible. Thus, as mentioned, many of the services are provided in the home. For the child groups of eight, Criterion tries to include two children from the community who do not have developmental delay and are not at risk for developmental delay. Those children benefit from learning how to interact with "different" children, i.e., children with disabilities. Children with development delay also experience interacting with children without disabilities. Whether or not the goal of 25% of the group consisting of children without developmental delay can be reached for any given group, depends on whether sufficient numbers of parents of children who do not require Early Intervention services in order to develop their early skills, enroll them in Criterion's groups.

23. When the cause of observable developmental delay has a definitive diagnosis (it is not unusual for there to be serious developmental delay of unknown origin), diagnoses may include conditions such as cerebral palsy, Down Syndrome, birth trauma, and other conditions that may impair a child's development.

24. The offices in the main building will be used by Criterion's Early Intervention staff in order to complete the paperwork and administrative work essential to their provision of Early Intervention services. Staff may complete service plans for individual children, make notes of a session in a child's home, make phone calls to families served, or other care providers, consult with fellow Criterion Early Intervention staff.

29. All activities that will take place at 186-190 Summer Ave., in Reading, will be Early Intervention activities that are educational, or that directly support, and are essential to, those services.

Signed this 3<sup>rd</sup> day of November, 2014, under the pains and penalties of perjury.



Robert F. Littleton, Jr., Ed.D., President  
Criterion Child Enrichment, Inc.

# EXHIBIT 2 - Supplemental Affidavit

## Affidavit of Robert F. Littleton, Jr.

### Summary of Education and Relevant Professional Experience

My educational background includes an M.Ed. from Lesley College, with a major in Severe Special Needs and a minor in Early Childhood Special Education, and an Ed.D. from Boston University, with a major in Special Education.

From 1974 through 1982, I was the Associate Director, and then Director of the Kennedy-Donovan Center for Programs in Early Development, Foxboro, Massachusetts. In addition to serving as the President of Criterion Child Enrichment Inc., I founded, and am the Executive Director of Evergreen Center, Inc., Milford, Massachusetts, a nonprofit corporation providing residential programs and community services for children and adults with developmental disabilities or emotional disturbances. Evergreen Center serves in excess of 260 families in twenty-one locations.

I also founded, and serve as President of BEACON Services, Milford, Massachusetts, a private group of special educators and early childhood professionals experienced in the principals of behavior analysis, and founded and serve as president Human Services Management Corporation, Inc., Milford, Massachusetts, a corporation that provides shared business services, continuing education and management consulting services for nonprofit and proprietary human service providers.

I have presented and written extensively on special education, early childhood intervention and human service management topics.

Criteria

The infant or toddler has, at the time of initial and subsequent eligibility determination:

- A diagnosed neurological, metabolic, or genetic disorder, chromosomal anomaly, medical or other disabling condition with documented expectation of developmental delay, or
- vision loss not corrected by medical intervention or prosthesis, or
- permanent hearing loss of any degree.

2. INFANTS AND TODDLERS WITH ESTABLISHED DEVELOPMENTAL DELAY(S)

This category includes infants and toddlers who, during the infancy period, or more commonly in the second year of life, begin to manifest developmental delays, often of unknown etiology.

Criteria

- The infant or toddler's development is at least 1.5 standard deviations below the mean, as measured by the *Battelle Developmental Inventory – 2<sup>nd</sup> Ed. (BDI-2)*, in one or more areas of development, including: physical development (includes gross and fine motor),
- cognitive development,
- communication development (includes expressive and receptive),
- social or emotional development, or
- adaptive development.<sup>4</sup>

Infants and toddlers eligible by Established Developmental Delay will be eligible for one year (12 months) from their last evaluation/assessment to determine eligibility up until, but not on their third birthday.

3. INFANTS AND TODDLERS AT RISK FOR DEVELOPMENTAL DELAY(S)

This category includes:

1. infants and toddlers with a history of prenatal, perinatal, neonatal, or early life events suggestive of biological insults to the developing central nervous system which, either singularly or collectively, increase the probability of later atypical development, and
2. infants and toddlers who are biologically sound but whose early life experience, including maternal and family care, health care, nutrition, opportunities for expression of adaptive behaviors, and patterns of

---

<sup>4</sup> For an infant or toddler initially determined eligible by delay utilizing the Michigan Early Intervention Developmental Profile (MEIDP or "Michigan"), the team may continue to utilize this tool to determine eligibility if the infant or toddler was initially determined eligible via the administration of this tool. The infant or toddler would need to demonstrate a 30% delay in one or more areas of development including: physical development (includes gross and fine motor), cognitive development, communication development (includes expressive or receptive), social or emotional development, or adaptive development. Informed clinical opinion may be used if the infant or toddler does not demonstrate a 30% delay. The team must complete a supplemental tool in the area of concern to provide additional information regarding the child's needs.

8. Blood lead levels measures at 5 µg/dl (micrograms per deciliter) or more. An infant or toddler meets this risk factor with a venous (not finger stick) blood lead level of 5 µg/dl (micrograms per deciliter) or more.
9. Child has chronic feeding difficulties. An infant or toddler meets this risk factor if any of the following conditions exist over an extended period of time:
  - severe colic,
  - stressful or extremely conflicted feedings,
  - refusal or inability to eat, or
  - Failure to progress in feeding skills.

Evidence of these conditions should be documented in the Early Intervention record and appropriate outcomes and treatment strategies addressed as determined by the family. Note: If an infant or toddler has been diagnosed as Failure-to-Thrive, he/she is eligible under the category of Established Condition.

10. Insecure attachment/interactional difficulties. An infant or toddler meets this risk factor if he/she appears to have inadequate or disturbed social relationships, depression, or indiscriminate aggressive behavior and the parent perceives this as an issue. Note: In most cases, insecure attachment in infants and toddlers is evidenced by behavior such as persistent failure to initiate or respond to social interactions, fearfulness that does not respond to comforting by caregivers, and indiscriminate sociability.
11. Suspected central nervous system abnormality. Suspected CNS abnormalities may include but are not limited to the following:
  - Infection: meningitis, encephalitis, maternal infection during pregnancy (TORCH infections: toxoplasmosis, other [syphilis and HIV], rubella, CMV, herpes);
  - Trauma: intracranial hemorrhage, subdural hematoma, epidural hematoma;
  - Metabolic: Profound and persistent hypoglycemia, seizures associated with electrolyte imbalance, profound and persistent neonatal hyperbilirubinemia greater than 20 mg/dl [milligrams per deciliter], acidosis;
  - Asphyxia: prolonged or recurring apnea, ALTE [apparent life threatening event], suffocation, hypoxia, meconium aspiration, near-drowning;
  - In utero drug exposure: nicotine, ethanol, THC, cocaine, amphetamine, phenytoin, barbiturates, and other.

This category may also include the following clinical findings:

- Abnormal muscle tone;
- Persistence of multiple signs of less than optimal sensory and motor patterns, including under-reaction or over-reaction to auditory, visual, or tactile input.

- has had its file closed by DCF in the last 3 months.
- 7. Substance abuse or dependency in the home. This risk factor applies if the parent's use of substance is having or may have an adverse effect on the infant or toddler's development.
- 8. Domestic violence in the home. This risk factor applies if domestic violence is having or may have an adverse effect on the infant or toddler's emotional development. This category may include physical, sexual, or emotional abuse.

#### 4. CLINICAL JUDGMENT

##### Criteria

The infant or toddler has questionable quality of developmental skills and functioning based on the informed clinical opinion of a multidisciplinary team.

A child found eligible in the category of clinical judgment may receive services for up to 6 months. For services to continue after this period, eligibility must be determined based on Established Condition, Established Delay, or Infant and Toddler/Parent Risk Factors.

Programs are required to adhere to the following procedures when utilizing the eligibility category of Clinical Judgment:

1. Document the qualitative or quantitative concerns that are atypical.
2. Complete a supplemental tool in the area of concern.
3. Provide the family with written notice of the evaluation/assessment results.

#### C. FINDING OF INELIGIBILITY

If, based on the evaluation, the infant or toddler does not meet the eligibility criteria, the parent will be provided with the following to meet the requirements of written notice:

1. the written narrative of the evaluation reflecting the finding that the infant or toddler does not meet eligibility criteria,
2. a copy of the family rights notice, and
3. an explanation of the parent's right to dispute the eligibility determination by requesting a due process hearing, mediation or filing a formal administrative complaint.





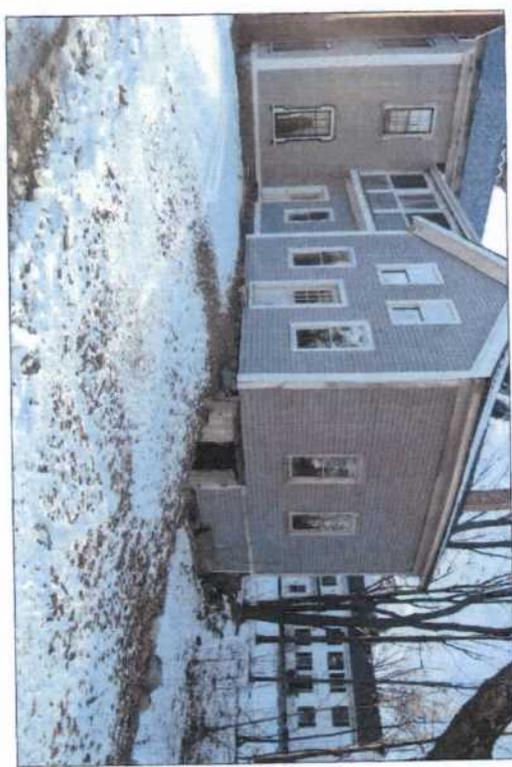
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A-902

EAST BARN ELEVATION  
NOT TO SCALE



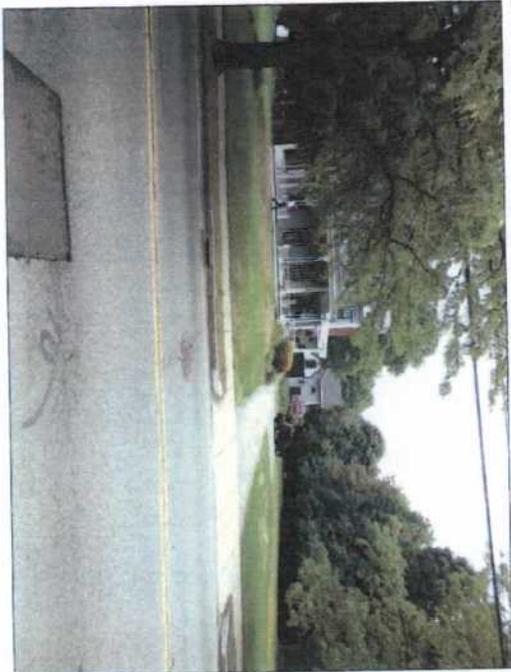
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A-902

EAST SHED ELEVATION  
NOT TO SCALE



3  
A-902

SOUTH EXTERIOR ELEVATION  
NOT TO SCALE



4  
A-902

STREET ELEVATION  
NOT TO SCALE

EXISTING PHOTOGRAPHS  
CRITERION CHILD ENRICHMENT  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMMING / DESIGN  
1401  
A-902  
NOT TO SCALE  
DATE: 08/20/13



1  
A-903

SIDING & EAVE DETAIL  
NOT TO SCALE



2  
A-903

NORTH PORCH  
NOT TO SCALE



3  
A-903

NORTH SIDING & TRIM DETAIL  
NOT TO SCALE



4  
A-903

ROOF CONDITION  
NOT TO SCALE



5  
A-903

EAST BARN ELEVATION  
NOT TO SCALE

A-903  
NOT TO SCALE  
02/20/2018

EXISTING PHOTOGRAPHS  
CRITERION CHILD ENRICHMENT  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

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PLANNING / PROGRAMMING / DESIGN  
© Maxwell Architects, LLC  
186 Summer Avenue  
Reading, MA 01867  
978-666-1111  
www.maxwellarchitects.com

**RESTORATION, RENOVATION & ADDITION  
CRITERION CHILD ENRICHMENT  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867**



**ZONING ANALYSIS**

**ARCHITECT**  
Maxwell Architects, LLC  
186-190 Summer Avenue  
Reading, MA 01867  
781-352-1234  
www.maxwellarchitects.com

**STRUCTURAL ENGINEER**  
Maxwell Architects, LLC  
186-190 Summer Avenue  
Reading, MA 01867  
781-352-1234  
www.maxwellarchitects.com

**MEP ENGINEER**  
Maxwell Architects, LLC  
186-190 Summer Avenue  
Reading, MA 01867  
781-352-1234  
www.maxwellarchitects.com

**CIVIL ENGINEER**  
Maxwell Architects, LLC  
186-190 Summer Avenue  
Reading, MA 01867  
781-352-1234  
www.maxwellarchitects.com

**Construction Type: S6**  
Use Group: I-4

**CHURCH: E-1.5 (Single Family)**  
Minimum Lot Size: 18,000 SF  
Existing Lot Size: 71,428 SF (existing)  
Proposed Gross Square Footage: 5,200 SF  
Proposed Addition Gross Square Footage: 6,600 SF  
Proposed Gross Square Footage: 11,800 SF

**Medium Plot: S4**  
Existing Plot: 0.27 (existing)  
Proposed Plot: 0.27 (existing)  
Medium Lot Coverage: 25%

**Medium Plot: X**  
Existing Plot: 0.27 (existing)  
Proposed Plot: 0.27 (existing)  
Medium Plot Coverage: 25%

**Medium Plot: 2B**  
Existing Plot: 0.27 (existing)  
Proposed Plot: 0.27 (existing)  
Medium Plot Coverage: 25%

**Medium Plot: 1B**  
Existing Plot: 0.27 (existing)  
Proposed Plot: 0.27 (existing)  
Medium Plot Coverage: 25%

**Medium Plot: 1C**  
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Medium Plot Coverage: 25%

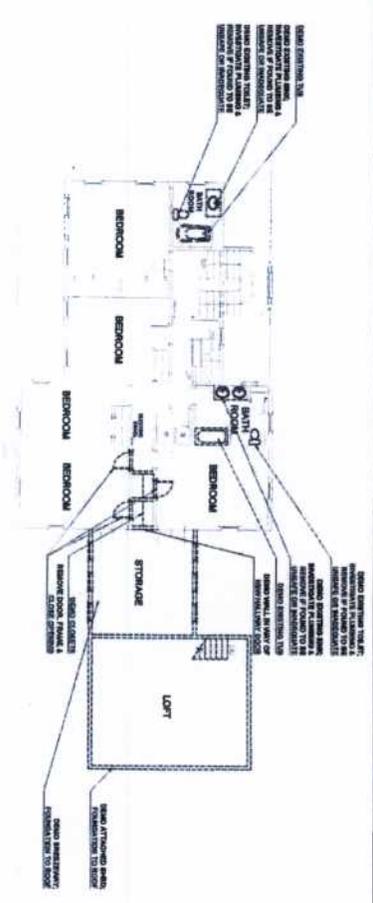


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A-001  
LOCUS PLAN  
MAX

**TITLE PAGE**  
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RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

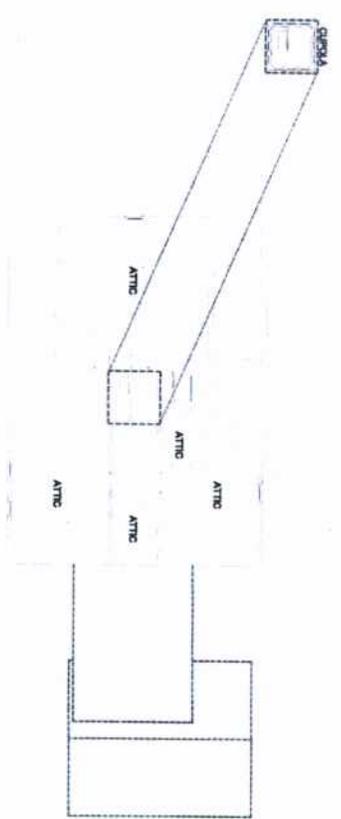
**MAXWELL ARCHITECTS, LLC**  
PLANNING / PROGRAMMING / DESIGN





1  
AD102

SECOND FLOOR DEMOLITION PLAN  
1/2" = 1'-0"



2  
AD102

THIRD FLOOR DEMOLITION PLAN  
1/2" = 1'-0"



BARN  
LOFT

SECOND & THIRD FLOOR DEMOLITION PLAN  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

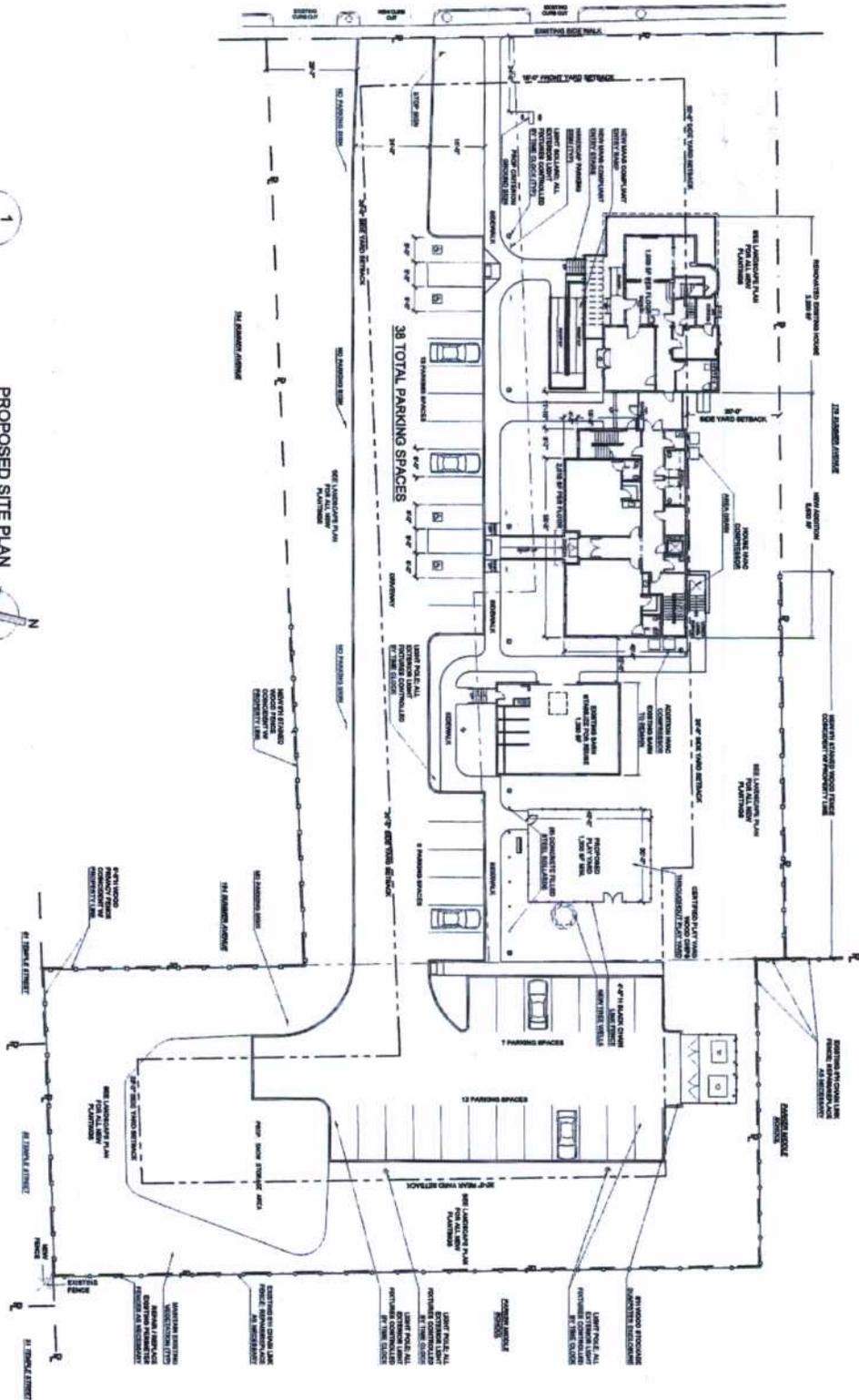
MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMING / DESIGN

Project Name: CRITERION CHILD ENRICHMENT  
Project Address: 186-190 SUMMER AVENUE, READING, MA 01867  
Project No: AD102  
Date: 07/20/2015

AD102  
07/20/2015

SUMMER AVENUE

1  
A-101  
PROPOSED SITE PLAN  
N

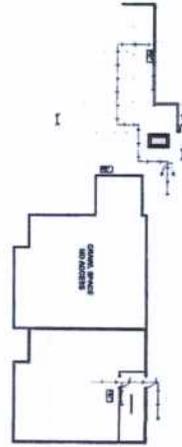


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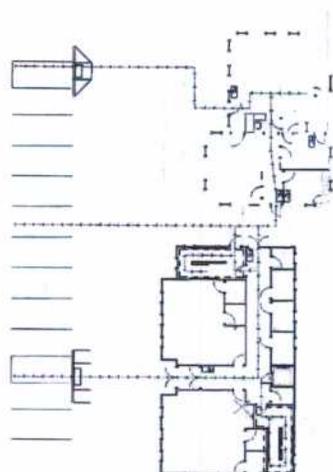
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**CRITERION CHILD ENRICHMENT**  
**RESTORATION, RENOVATION, & ADDITION**  
**186-190 SUMMER AVENUE**  
**READING, MASSACHUSETTS 01867**

**MAXWELL ARCHITECTS, LLC**  
 PLANNING / PROGRAMMING / DESIGN

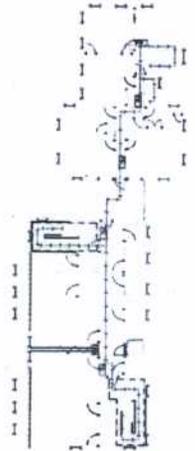
186-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867  
 TEL: 978.271.1111  
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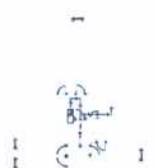
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A-102  
BASEMENT EGRESS PLAN  
SCALE: 1/8" = 1'-0"



2  
A-102  
FIRST FLOOR EGRESS PLAN  
SCALE: 1/8" = 1'-0"



3  
A-102  
SECOND FLOOR EGRESS PLAN  
SCALE: 1/8" = 1'-0"



4  
A-102  
THIRD FLOOR EGRESS PLAN  
SCALE: 1/8" = 1'-0"



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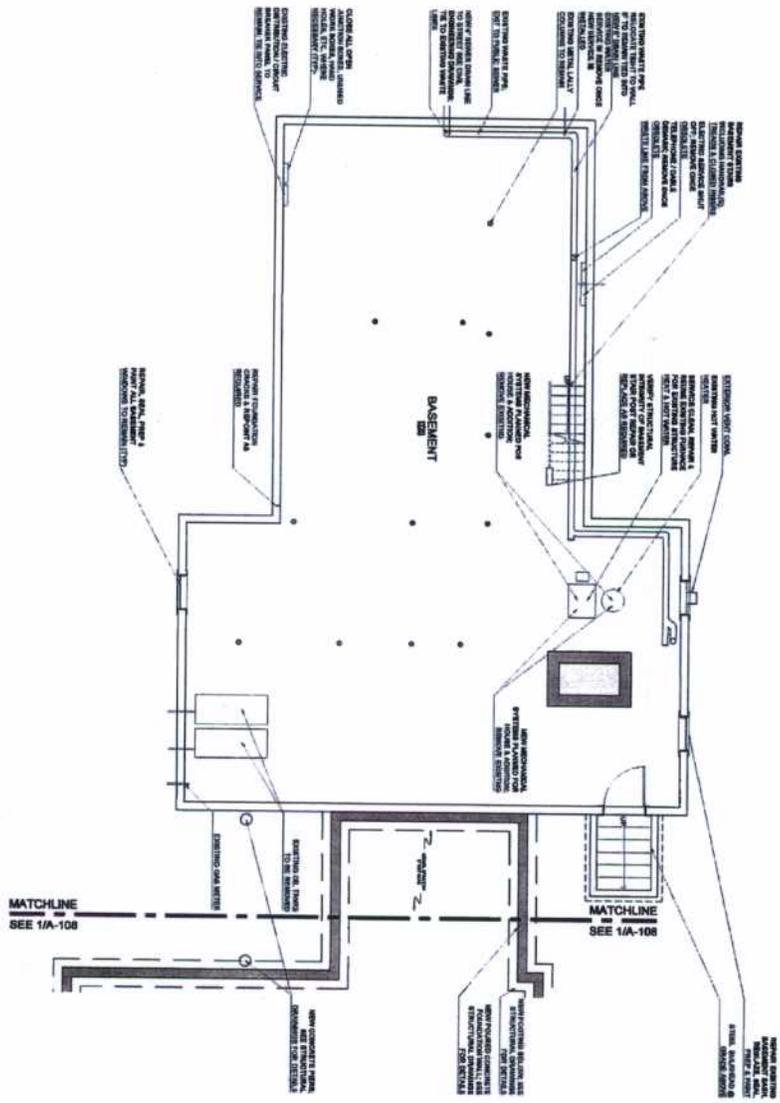
PROPOSED EGRESS PLANS  
 CRITERION CHILD ENRICHMENT  
 RESTORATION, RENOVATION, & ADDITION  
 186-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
 PLANNING / PROGRAMS / DESIGN

Project Architect  
 Project Manager  
 Project Designer

1481  
 A-102  
 01/18/2018

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1  
A-103

PROPOSED HISTORIC HOUSE BASEMENT PLAN



PROJECT NUMBER: 1481  
 DATE: 1/11/14  
 DRAWN BY: JTB  
 CHECKED BY: JTB

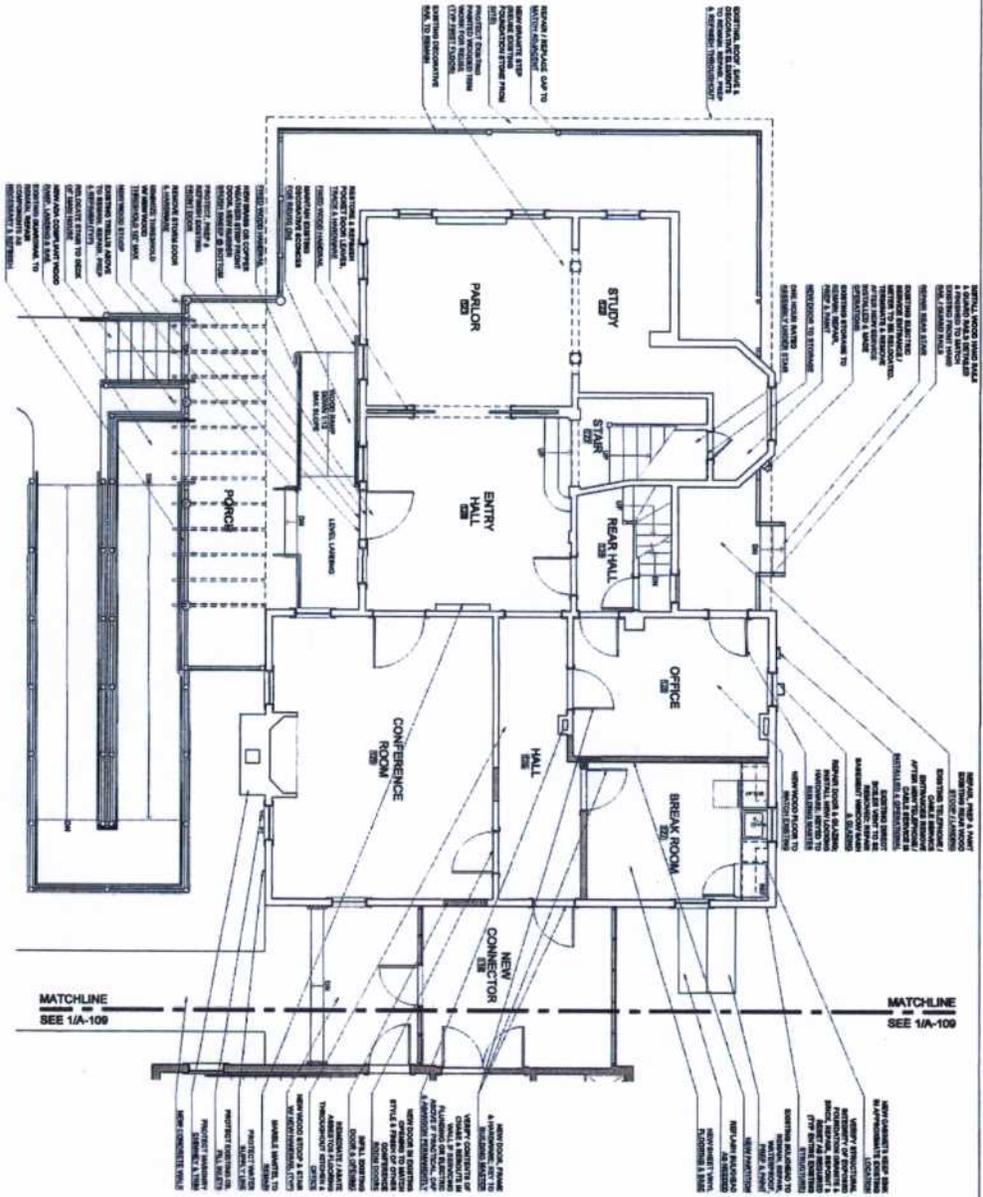
HISTORIC HOUSE BASEMENT PLAN  
 CRITERION CHILD ENRICHMENT  
 RESTORATION, RENOVATION, & ADDITION  
 186-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
 PLANNING / PROGRAMMING / DESIGN

**NOTES:**  
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1  
 A-104

PROPOSED HISTORIC HOUSE FIRST FLOOR PLAN  
 1/8" = 1'-0"

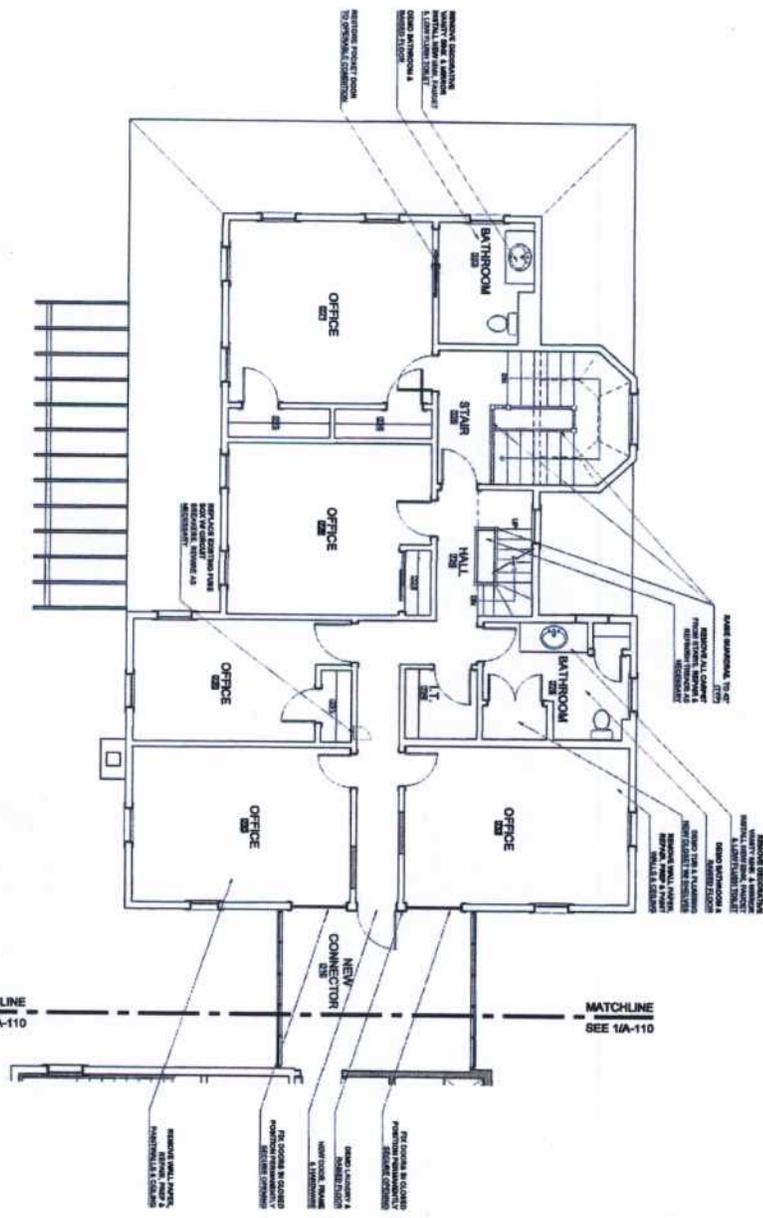


PROJECT NUMBER: 1401  
 DATE: 1/14/14  
 DRAWN BY: DT/ST/DB

HISTORIC HOUSE FIRST FLOOR PLAN  
 CRITERION CHILD ENRICHMENT  
 RESTORATION, RENOVATION, & ADDITION  
 186-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
 PLANNING/PROGRAMMING/DESIGN  
 100 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867  
 TEL: 978-271-1111  
 FAX: 978-271-1112  
 WWW.MAXWELLARCHITECTS.COM

NOTE: RESTORATION, RENOVATION, & ADDITION TO EXISTING STRUCTURE. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS STATE BOARD OF ARCHITECTURE'S REGULATIONS AND THE MASSACHUSETTS STATE BOARD OF PLANNING AND ZONING. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS STATE BOARD OF ARCHITECTURE'S REGULATIONS AND THE MASSACHUSETTS STATE BOARD OF PLANNING AND ZONING. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS STATE BOARD OF ARCHITECTURE'S REGULATIONS AND THE MASSACHUSETTS STATE BOARD OF PLANNING AND ZONING.



1  
A-105

PROPOSED HISTORIC HOUSE SECOND FLOOR PLAN



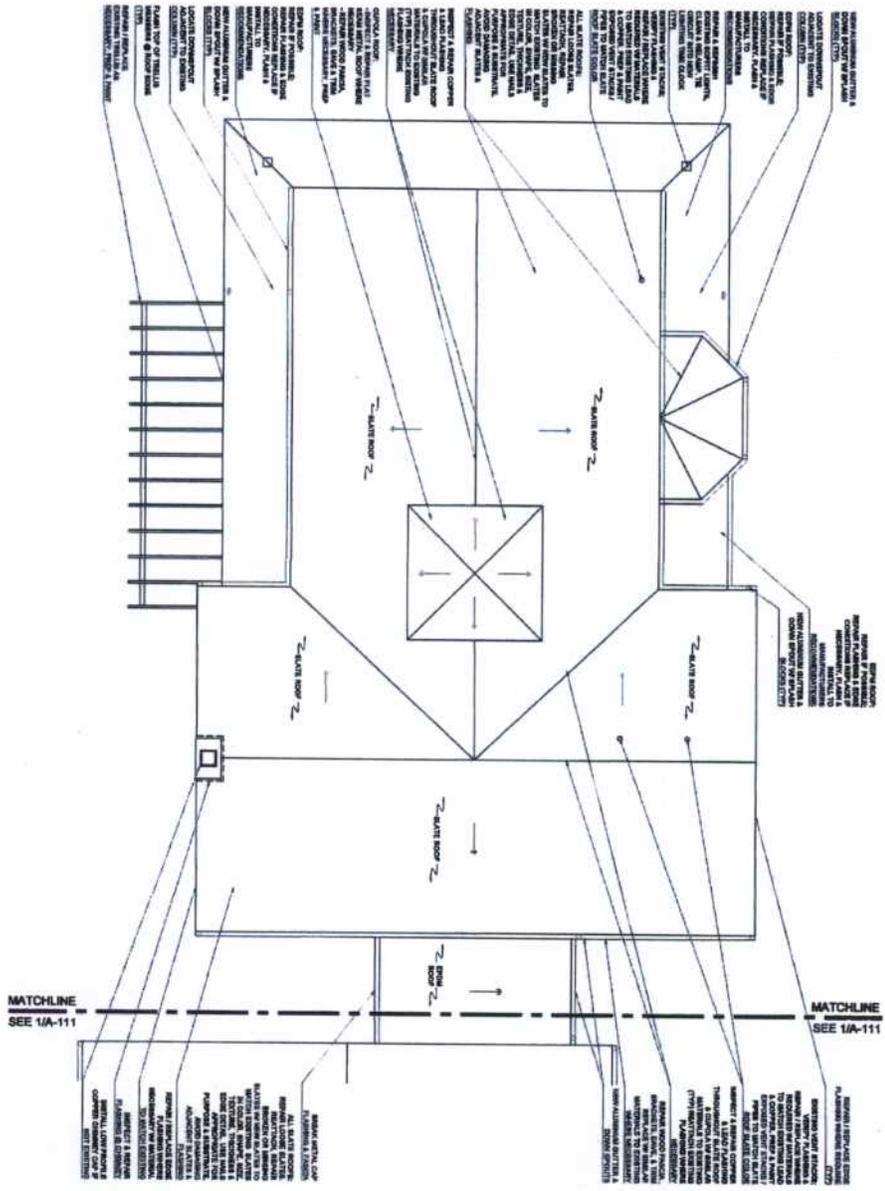
PROJECT NUMBER: 1401  
DATE: 1/14/14  
DRAWN BY: DT/ROB/BS

HISTORIC HOUSE SECOND FLOOR PLAN  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMMING / DESIGN



**NOTES:**  
 1. THIS DRAWING IS A PART OF A SET OF ARCHITECTURAL DRAWINGS FOR THE RESTORATION, RENOVATION, AND ADDITION OF THE CRITERION CHILD ENRICHMENT CENTER, 186-190 SUMMER AVENUE, READING, MASSACHUSETTS. THE PROJECT IS BEING DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH THE MASSACHUSETTS STATE BOARD OF ARCHITECTURE'S REGULATIONS AND THE MASSACHUSETTS STATE BOARD OF BUILDING OFFICIALS' REGULATIONS. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHERS OR FOR THE ADEQUACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT AS SHOWN ON THESE DRAWINGS. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY OTHERS OR FOR THE ADEQUACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT AS SHOWN ON THESE DRAWINGS.



1  
A-107

PROPOSED HISTORIC HOUSE ROOF FLOOR PLAN



MATCHLINE  
SEE 1A-111

MATCHLINE  
SEE 1A-111

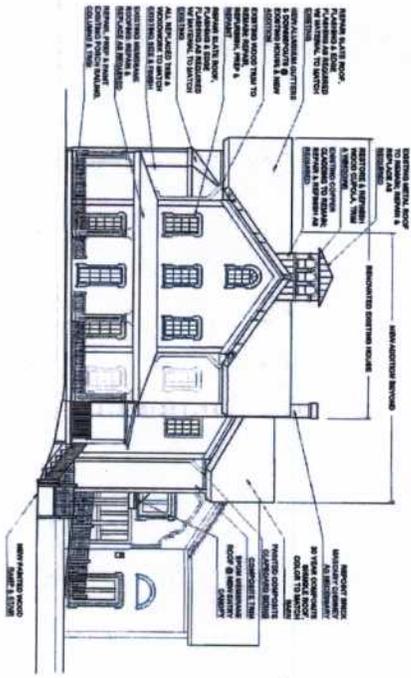
MAIN HOUSE THIRD FLOOR & CUPOLA  
 CRITERION CHILD ENRICHMENT  
 RESTORATION, RENOVATION, & ADDITION  
 186-190 SUMMER AVENUE  
 READING, MASSACHUSETTS 01867

**MAXWELL ARCHITECTS, LLC**  
 PLANNING / PROGRAMMING / DESIGN

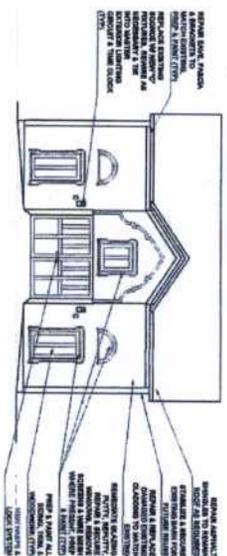
Project: Criterion Child Enrichment Center  
 Location: 186-190 Summer Avenue, Reading, MA  
 Date: 10/1/2011  
 Scale: 1/8" = 1'-0"

10/1  
 A-107  
 DIVISIONS

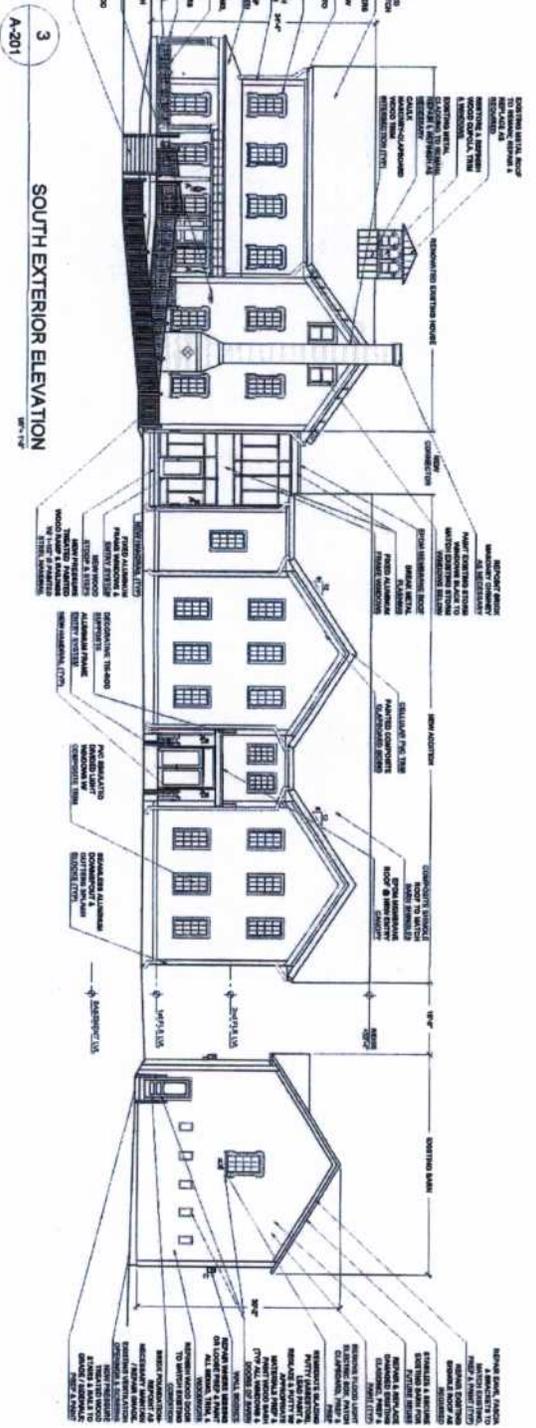




1  
A-201  
WEST EXTERIOR ELEVATION  
1/8" = 1'-0"



2  
A-201  
BARN WEST EXTERIOR BARN ELEVATION  
1/8" = 1'-0"



3  
A-201  
SOUTH EXTERIOR ELEVATION  
1/8" = 1'-0"

NOTES:  
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.  
2. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.  
3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.  
5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.

EXTERIOR ELEVATIONS  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

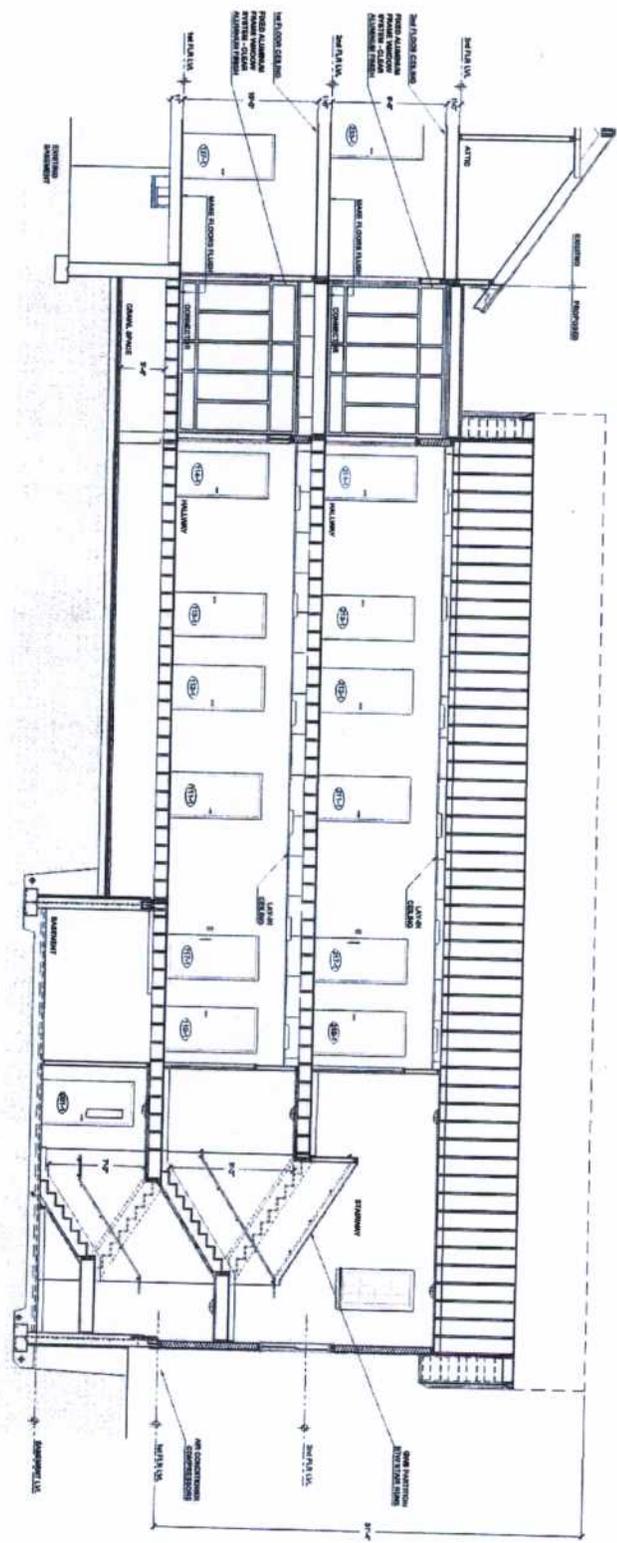
MAXWELL ARCHITECTS, LLC  
PLANNING/PROGRAMMING/DESIGN  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867  
TEL: 978-271-1111  
WWW.MAXWELLARCHITECTS.COM

A-201  
MAXWELL ARCHITECTS, LLC  
PLANNING/PROGRAMMING/DESIGN



1  
A-303

BUILDING SECTION - LONG  
1/8" = 1'-0"



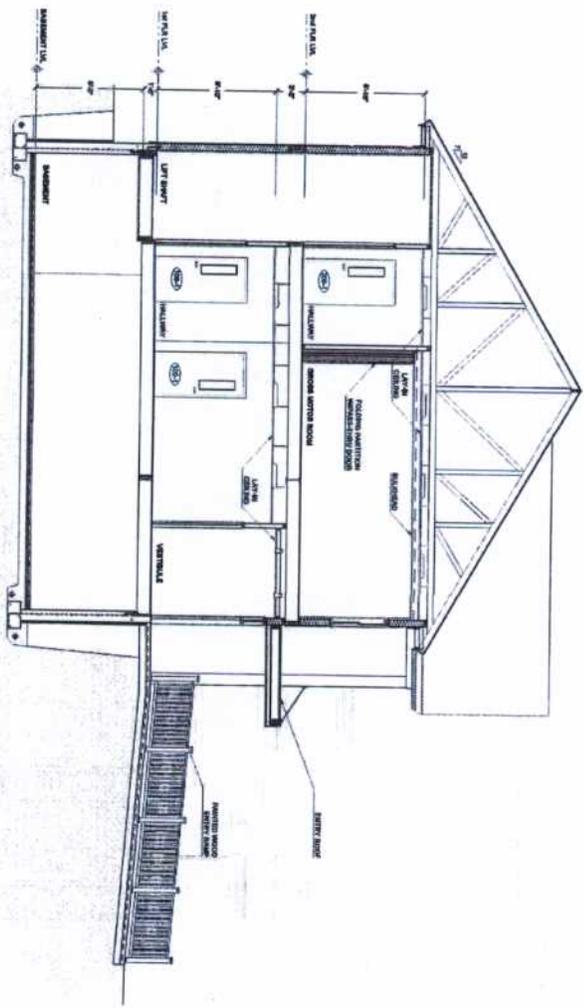
1-011  
A-303  
1/8" = 1'-0"  
1/8/2017

PROPOSED BUILDING SECTIONS  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMMING / DESIGN  
100 North Street  
Reading, MA 01867  
978-942-1100  
www.maxwell-architects.com

1  
A-304

BUILDING SECTION - SHORT A  
1/8" = 1'-0"



MAXWELL ARCHITECTS, LLC  
A-304  
1/8" = 1'-0"  
NOT TO SCALE

PROPOSED BUILDING SECTIONS  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
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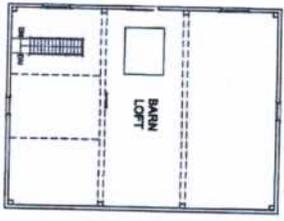
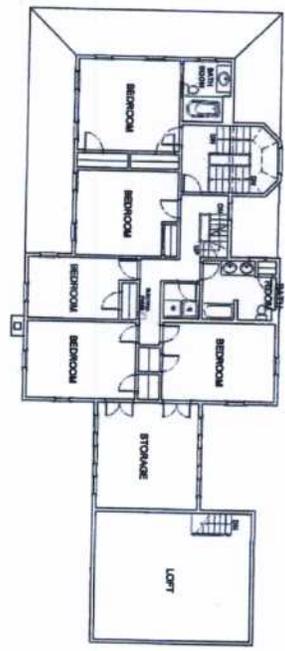
2  
EX102

EXISTING THIRD FLOOR PLAN



1  
EX102

EXISTING SECOND FLOOR PLAN

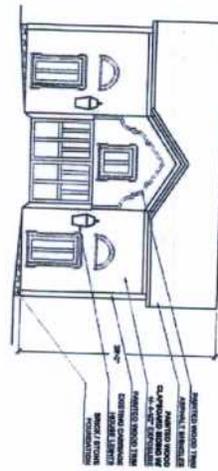


Scale: 1/8" = 1'-0"  
Date: 01/20/2018  
EX 102

EXISTING SECOND & THIRD FLOOR PLAN & CUPOLA  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

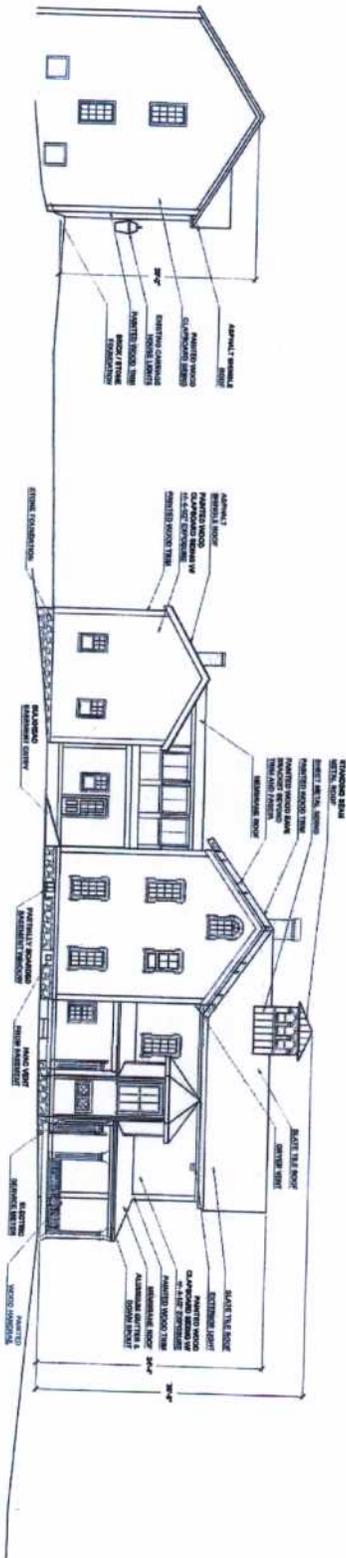
MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMMING / DESIGN  
186-190 Summer Avenue  
Reading, MA 01867  
Tel: 978-271-1111  
www.maxwellarchitects.com





1  
EX-102

EXISTING WEST ELEVATION  
1/8" = 1'-0"



2  
EX-102

EXISTING NORTH ELEVATION  
1/8" = 1'-0"

EXISTING ELEVATIONS  
CRITERION CHILD ENRICHMENT  
RESTORATION, RENOVATION, & ADDITION  
186-190 SUMMER AVENUE  
READING, MASSACHUSETTS 01867

MAXWELL ARCHITECTS, LLC  
PLANNING / PROGRAMMING / DESIGN

EX 201  
1/8" = 1'-0"  
REV 01/20/2018

**LAW OFFICE OF KENNETH N. MARGOLIN, P.C.**

246 WALNUT STREET, SUITE 101  
NEWTON, MASSACHUSETTS 02460

(617) 641-9600

FAX: (617) 641-9606

WEB ADDRESS: [www.margolinlaw.com](http://www.margolinlaw.com) EMAIL: [margolin@margolinlaw.com](mailto:margolin@margolinlaw.com)

March 25, 2015

By Federal Express

Everett Blodgett, Chairman  
West Street Historic District Commission  
16 Lowell Street  
Reading, MA 01867

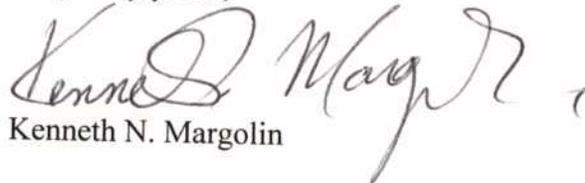
Re: Criterion Child Enrichment, Inc./186-190 Summer Avenue

Dear Mr. Blodgett:

Enclosed are seven (7) copies each, of the following documents, which are part of Criterion Child Enrichment, Inc.'s application to the Historic District Commission:

1. Historic District lot coverage chart;
2. Historic District lot coverage map;
3. Roome & Guarracino, LLC Report on condition of the Historic Barn

Very truly yours,

  
Kenneth N. Margolin

KNM/JF

Cc: J. Raymond Miyares, Esq. (email only)  
John V. Fernandes, Esq.

**TOWN OF READING**

**MAR 26 2015**

**BUILDING DEPARTMENT**

# **ROOME & GUARRACINO, LLC**

Consulting Structural Engineers

48 Grove Street Somerville, MA 02144

Tel: 617.628.1700 Fax: 617.628.1711

September 9, 2014

Mr. Marc Maxwell A.I.A.  
Maxwell Architects, LLC  
20 Windom Street  
Somerville, MA 02144

Reference: 186 Summer Avenue, Barn-Reading, MA  
Existing Conditions Study

Dear Marc:

This letter summarizes our findings regarding the present condition of the structure of the barn at the rear of 186 Summer Avenue in Reading, Massachusetts, and our recommendations regarding future uses of the structure. These observations and recommendations are based on information provided to us by your office, as well as, our field observations of August 27, 2014. There do not appear to be any existing structural drawings for this building, and as such, our comments are based solely on our field observations and experience. Our field observations were only visual surface observations, we have not cut any holes in building finishes, to verify structure, nor have we done any testing to determine the structure's underlying condition.

## **Existing Conditions**

On August 27, 2014, I toured the existing barn with John Williams from your office. This approximately 30'x 39' building, originally built about 1853 to be a barn/garage, has functioned as such ever since. The structure is a three story wood framed building, set into the side of a hill, with a walkout full basement. It has a gable roof with asphalt shingles.

The building has a full basement with mortared rubble foundation walls and brick top courses on the three sides of the perimeter. The floor is dirt. There are random old tree trunks for posts on the bearing lines that support the main 8x10 wood carrying beams with 2x10's at 20" c/c floor joists for the main floor. The second floor framing is 2x10's at 20" c/c spanning approximately 13' to the bottom chord (8x18 wood beam) of full story height trusses at the third points of the buildings length. There is a partial framed third floor. The roof purlins frame to the trusses. The exterior of the building is painted wood clapboards. The exterior framed walls act as shear walls to provide lateral stability for the building under wind and seismic loadings.

Based on our analysis of the first floor framing members, the joist have an allowable gravity load carrying capacity of approximately 100 PSF, and the girders can carry about 80 PSF as presently supported (this could be increased to 100 PSF by adding more posts in the basement). The second floor joists can theoretically carry approximately 100 PSF, but due to the poor condition of the framing can in reality carry nothing safely. Additionally, the actual second floor loading may be further limited by the capacity of the trusses, which are very difficult to analyze due to their joinery.

MAR 26 2015

TOWN OF READING

The loading capacity of the main and second floors is not adequate for the proposed heavy file storage. The first floor could be used for light storage, but based on the present condition of the building, the second floor is not usable. The allowable loading capacity of the partial third floor was not able to be determined, but appears to be inadequate for most uses. The allowable loading capacity of the building's roof was also not discernable, but appeared to be adequate based on its performance.

All the framing for the building is visible, and generally the barn is in fairly poor shape. There is evidence of major structural distress. Support posts in the basement are rotted and may not have adequate foundations, as evidenced by the observed settlement of the first floor framing. While the foundation walls appear to be stable, the lower floor is dirt and the exterior wood sills may have some rot on the outside that is not discernable without removing exterior siding. The first floor framing is adequate for its present use. The upper floors are sagging badly and are basically unsafe. The roof show no evidence of major structural problems, although there is ample evidence of settlement, as the ridge is sagging (evidence of exterior wall movement). The exterior of the building is badly in need of repair and paint. The building structure generally appears to be in poor condition.

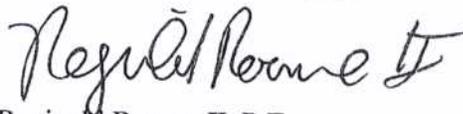
#### **Addition/Renovation Feasibility**

We understand that your client is presently considering securing the barn and leaving it unoccupied for a few years while he decides how to proceed. This approach is acceptable, although it should be noted that during this period the structure will continue to deteriorate. In the future, we understand that two options are being considered for the barn. Both record storage and/or educational uses are being considered. At present, the barn would be classified as an "Occupancy Category I – Unoccupied Accessory Building". Any change to one of these higher occupancies would have significant structural implications. Both gravity loading upgrades, as well as seismic retrofitting, would most likely be required, in addition to the required deferred maintenance.

If you have any further questions, or if we can be of any further assistance, please do not hesitate to call.

Very truly yours,

**Roome & Guarracino LLC**



Reginald Roome II, P.E.  
Partner





BY ADDRESS		RANK ORDER BY LOT COVERAGE	
ADDRESS	LOT COVERAGE	ADDRESS	LOT COVERAGE
<b>SUMMER STREET</b>			
141	7.0%	189 SUMMER	4.0%
149	12.0%	194 SUMMER	5.0%
152	14.0%	176 SUMMER	6.0%
159	9.8%	141 SUMMER	7.0%
160	8.0%	217 WOBURN	7.0%
167	17.0%	160 SUMMER	8.0%
168	9.0%	172 SUMMER	8.0%
169	16.0%	175 SUMMER	8.5%
172	8.0%	168 SUMMER	9.0%
175	8.5%	205 SUMMER	9.0%
176	6.0%	<b>PROPOSED 186 SUMMER</b>	<b>9.6%</b>
181	10.0%	159 SUMMER	9.8%
<b>PROPOSED 186</b>	<b>9.6%</b>	181 SUMMER	10.0%
189	4.0%	199 SUMMER	10.0%
194	5.0%	227 WOBURN	10.0%
195	12.0%	210 SUMMER	11.0%
198	14.5%	51 TEMPLE	11.0%
199	10.0%	149 SUMMER	12.0%
205	9.0%	55 TEMPLE	12.0%
210	11.0%	195 SUMMER	12.0%
211	13.0%	211 SUMMER	13.0%
216	15.0%	69 TEMPLE	13.0%
		152 SUMMER	14.0%
<b>WOBURN STREET</b>			
217	7.0%	61 TEMPLE	14.7%
227	10.0%	198 SUMMER	14.5%
237	42.0%	216 SUMMER	15.0%
		169 SUMMER	16.0%
		65 TEMPLE	16.0%
<b>TEMPLE STREET</b>			
51	11.0%	167 SUMMER	17.0%
55	12.0%	PARKER SCHOOL	20.0%
61	14.7%	UNITARIAN CHURCH	42.0%
65	16.0%		
69	13.0%		
<b>OTHER PROTECTED USES</b>			
UNITARIAN CHURCH	42%		
PARKER SCHOOL	20%		