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December 8, 2014

By Hand

Community Planning and Development Commission
Town of Reading
16 Lowell Street
Reading, MA 01867

Re: Criterion Child Enrichment, Inc., 186-190 Summer Avenue – Site Plan Review

Dear Chairman Hansen and Members of the Commission:

I represent 01867 Neighborhood Preservation and residents of the Summer Avenue neighborhood regarding Criterion Child Enrichment's application dated November 6, 2014, for site plan approval for its proposed project at 186-190 Summer Avenue. This letter addresses some of the issues raised by that application for the CPDC's public hearing this evening.

Educational Use

On November 7, after submissions by Criterion's counsel and me, Town Counsel issued an opinion that Criterion's proposed use of the property will be an educational use protected by the Dover Amendment (G.L. c. 40A, § 3, 2nd paragraph). The problem with Criterion's position that its therapeutic services are educational (and Town Counsel's opinion) is that it has no stopping point, giving the CPDC and other local boards no guidance in evaluating projects under the Dover Amendment. Criterion apparently views all child therapy, rehabilitation and other services as education in its broadest sense. Nor can its argument be limited to toddlers with disabilities. If its circle time, blocks and other activities are educational for those children, they are for all children. In that view, all day care (at least good day care) is educational, as well. Whatever the Dover Amendment means, it cannot be that broad, and no case holds that it is.

We understand that the CPDC will not address the "educational use" issue at this hearing. My clients reserve their rights to argue that, notwithstanding its laudable social service and the breadth of "education" under the Dover Amendment, Criterion's program is not primarily educational as required under *Regis College v. Town of Weston*, 462 Mass. 280 (2012). If the CPDC's site plan review does not produce an acceptable result, this issue will have to be resolved in the courts.

Site Plan Review

The Reading Zoning Bylaw provides that educational uses under the Dover Amendment “shall be permitted by-right in all districts and subject to ‘reasonable regulations’ as defined therein.” Zoning Bylaw, § 4.2.2 n. 1. The Bylaw requires site plan review for projects such as Criterion’s § 4.3.3.1. The criteria for approval address typical site plan issues. § 4.3.3.6.a-j.

Criterion asserts that the site plan review required by the Zoning Bylaw exceeds the CPDC’s permissible oversight of its proposal, claiming to be submitting to that review only to be a good citizen. However, the Bylaw’s site plan criteria address legitimate issues permitted under the Dover Amendment and are not a back-door attempt to regulate a protected use. Accordingly, requiring site plan approval for this facility is permissible, notwithstanding Criterion’s selective citation of cases to the contrary. *See Trustees of Boston College v. Board of Aldermen of Newton*, 58 Mass. App. Ct. 794, 800 n. 7 (2003), *citing Osberg v. Planning Board of Sturbridge*, 44 Mass. App. Ct. 56, 57 (1997). As long as Criterion cannot demonstrate that the CPDC’s application of the site plan criteria would “substantially diminish or detract from the usefulness of [its] proposed structure, or impair the character” of its facility “without appreciably advancing the municipality’s legitimate concerns,” *Trustees of Tufts College v. Medford*, 415 Mass. 753, 798 (1993), it must comply with them. Here, such legitimate concerns include “maintain[ing] the historic character of residences ... which distinguish the town as a desirable community.” General Bylaw, § 7.3.1.

Short of violating the *Tufts College* test quoted above, the Zoning Bylaw’s site plan review provisions should be applied with the usual rigor; Criterion’s objection does not warrant some kind of “limited” review. Many of the Bylaw’s site plan review criteria are particularly important here. Minimizing the number of removed trees 6” caliper or larger (§ 4.3.3.6.a.), minimizing visual intrusion by controlling the visibility of parking viewed from residences through landscaping and fencing (6.d.), minimizing glare from headlights and lighting intrusion (6.e.), minimizing unreasonable departure from the character, materials, signage and scale of buildings in the vicinity (6.f.), maximizing property enhancement through use of landscaping and other site amenities (6.i.), and minimizing environmental impacts to adjacent properties through hours of operation, noise, etc. (6.j.), among others, are critical objectives for protection of this neighborhood. The CPDC should ensure that those objectives are met in this case.

I look forward to discussing these issues with you at the hearing. Thank you.

Sincerely,



Arthur P. Kreiger

c: J. Raymond Miyares, Esq., Town Counsel (by email)
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Clients (by email)