

**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)

December 19, 2014

Jessie Wilson, Community Development  
Administrator  
Town of Reading Planning Division  
16 Lowell Street  
Reading, MA 01867-2683

Re: Criterion Child Enrichment, Inc./186 Summer Avenue, Reading, MA

Dear Ms. Wilson:

This letter is in response to your Memo dated December 11, 2014, in which you requested additional information from Criterion Child Enrichment, Inc. ("Criterion"). All of the information you request will be provided. We want to make sure, however, that we are clear on Criterion's position on the limits of what the CPDC can do with the requested information, given the limitations imposed upon it, by the Dover Amendment, *MGL c. 40A, §3*. I will also comment on the draft "Site Plan Review Decision" dated December 8, 2014.

Criterion's position with respect to the Dover Amendment is not new, as it has made repeatedly clear that all submissions and all discussions with Town of Reading officials, including the CPDC and Planning staff, are subject to Criterion's Reservation of Rights, describing the CPDC's limited authority pursuant to the Dover Amendment.

A. Planning Division Memo dated December 11, 2014

1. Parking Demand Study

Criterion's Response

The requested Parking Demand Study is attached (two charts). As requested, the study shows the anticipated typical and maximum need for parking spaces once the program is operational.

2. Class Schedule and Attendance

Criterion's Response

The class schedule and attendance is shown on the Parking Demand Study. While program service offerings are routinely limited to the hours of 8:00 a.m. and 4:30 p.m. It would exceed the CPDC's authority if, under the guise of "parking," the CPDC attempted to control Criterion's schedule by enshrining it in the Site Plan approval. Even under the Town's own Zoning Bylaw, there is no suggestion that the CPDC can micro-manage the schedule of a program that must undergo site plan review. Section 4.3.3.6(j), states that an applicant may be required to "[M]inimize environmental impacts to adjacent properties through hours of operation ...." The schedule of what occurs during the hours of operation is not mentioned, nor implied in the Bylaw.

The Dover Amendment prohibits the CPDC from controlling Criterion's schedule just as it would prevent the CPDC from controlling the hours of church services for a church that provided its expected schedule of services, as part of a Parking Demand study. For the same reasons, the CPDC may not restrict the use of property for special events (which will not be common in Criterion's case) on weekends. Any such attempted control would be far outside of the criteria, which in the case of a Dover Amendment program, can be reasonably regulated by a municipality, namely, "the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." The CPDC Chairman set forth the foregoing limits on the CPDC's authority, at the very start of the Criterion hearing.

Unless Criterion explicitly agrees to subject itself to any matter beyond the scope of the Dover Amendment – as it will do with respect to the landscaping and lighting plans it submits on its site plan, as well as signage and reasonable snow storage and drainage requirements – the CPDC cannot require it. As repeatedly stated, Criterion has not waived any rights by cooperating with the Town, or by discussing or showing on its site plan, matters outside the scope of the Dover Amendment.

3. Site Plan (snow storage, "No Parking" signs, alternative layout of the playground area and rear parking area).

Criterion's Response

Criterion will show increased snow storage, the requested "No Parking" signs, rearrangement of the playground area, and the shifting of some parking spaces to the north end of the property, on the revised site plan to be presented for the January 12, 2015 CPDC hearing – all responsive to CPDC requests.

4. Landscape Plan

Criterion's Response

The revised Landscape Plan, responsive to CPDC comments, will be shown on the revised site plan to be presented for the January 12, 2015 CPDC hearing.

5. Signage

Criterion's Response

The requested change in signage will be shown on the revised site plan to be presented for the January 12, 2015 CPDC hearing.

6. Architectural Plans

Criterion's Response

Criterion, in the spirit of cooperation, and subject to its Reservation of Rights, willingly engaged in a discussion of possible exterior design changes that might be more appealing to some neighbors. For example, Criterion expressed a willingness to alter and augment windows and additional fenestration on the northern facade, and can show such changes on the revised site plan to be presented for the January 12, 2015 CPDC hearing. While Criterion discussed architectural detail with the CPDC, that does not give the CPDC authority to dictate architectural detail.

I believe that the CPDC Chairman, or one of its members, stated explicitly that the CPDC would not get into matters of architecture in its site plan decision (given that Criterion readily meets Zoning Bylaw requirements as to bulk and height of structures). As if to highlight the impracticality (in addition to the illegality) of the CPDC attempting to micromanage the appearance of the building, Criterion was told by Reading Historical Commission members, at the December 9, 2014 HC meeting, that the Historical Commission would not want false windows, and would prefer enlargement of real windows. If Criterion becomes subject to the new Summer Avenue Historic District, the members of that Historic District may have their own ideas on what look would be most consistent with the appearance of the original historic house. Architectural details have no lawful place in the Site Plan approval decision for a Dover Amendment program.

7. Lighting

Criterion's Response

The revised site plan to be presented for the January 12, 2015 CPDC hearing, will reflect Criterion's representation that lights, other than security lights, will be turned off after dark, if no business is being conducted on the premises, and will show that playground lighting is minimal. The phrase "after dark, if no business is being conducted on the premises," avoids confusion that might be caused by the CPDC draft language of "close of business."

8. Grading, Drainage and Utility Plan

Criterion's Response

In response to concerns expressed by the Town Engineer, Criterion has changed its drainage plans from porous pavement, to traditional. The new drainage plan, which will be shown on the revised site plan to be presented for the January 12, 2015 CPDC hearing, will be first vetted with the Town Engineer. Criterion believes that the new plan completely meets the concerns of the Town Engineer, expressed at the December 8, 2014 CPDC hearing.

B. Draft Site Plan Review DECISION

MATERIALS

The list of materials should reflect the supplemental/revised materials submitted by Criterion.

FINDINGS

Paragraph 1

Paragraph 1 incorrectly and incompletely sets out the Dover Amendment legal standard. The paragraph should read (added words in **bold**):

The proposed use **is** protected under Massachusetts General Laws (MGL) Chapter 40A, section 3; it cannot be prohibited from any zoning district, or made subject to a special permit. The proposed use is subject to reasonable regulations **concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.**

Paragraph 2

The second sentence of paragraph 2, beginning with “[T]his site plan review...” is not a finding, and should be in the “Conditions” section of the Draft Decision, titled, “Prior to the Issuance of the Building Permit.”

Paragraph 3

As will be shown on Criterion’s revised site plan, drainage will be “traditional,” as requested by the Town Engineer. Criterion has no current plans for the barn, other than for storage. The CPDC may not, however, control the use of property protected by the Dover Amendment.

Paragraphs 4, 5, 6, 8, and 9

Since the elements of the site plan, will be shown on the plan itself, which will have been revised since the Draft Decision was written, in response to comments and requests made at the December 8, 2014 CPDC hearing, it would be efficient to simply refer to the Site Plan with reference to the elements detailed in the above paragraphs of the Draft Decision.

Paragraph 7

While determining whether height of the structure complies with the Zoning Bylaw, is within the authority of the CPDC with respect to a Dover Amendment project, the CPDC should not be incorporating visual items such as the type of trim, or composition of shingles into its decision, as they exceed the scope of reasonable regulation allowed over a Dover Amendment project. In addition, the CPDC must not write into its Decision, items that may be subject to the authority of the Summer Avenue Historic District, if Criterion becomes subject to that Historic District’s jurisdiction.

CONDITIONS

Prior to the Issuance of a Demolition [Permit] and Prior to the Start of Construction

Criterion’s right to obtain its Demolition Permit will be automatic when the six month demolition delay expires. It is not clear whether the Draft Decision intends to refer to actual “demolition” as part of the “start of construction,” but the conditions in this section cannot be imposed before Criterion obtains its permit, and should be titled “Prior to the Start of Construction.”

Paragraph 1

These conditions are too broad, given the lack of definition of “start of construction” in the Draft Decision. For example, the applicant may be able to begin some site work or

obtain a foundation permit, without obtaining all the permits listed in this paragraph. Moreover, whether and when to issue permits required before the start of construction, is within the province of the Building Inspector, and should not be written in advance, into the Site Plan decision.

Paragraph 4

This paragraph belongs under the heading, "Prior to the Issuance of a Building Permit."

Prior to the Issuance of a Building Permit

Paragraph 2

Since the elements of the site plan, will be shown on the plan itself, which will have been revised since the Draft Decision was written, in response to comments and requests made at the December 8, 2014 CPDC hearing, it would be efficient to simply refer to the Site Plan with reference to the elements detailed in the above paragraphs of the Draft Decision.

Paragraph 3

Criterion will be revising its drainage plan in accordance with comments by the Town Engineer, which may make the Town Engineer's Memo dated December 4, 2014, no longer relevant.

Paragraph 4

The O&M plan is being provided, and the plan should simply be referenced and incorporated into the Decision.

During Construction

Paragraph 3

The meaning of the first sentence, "... on making alterations to existing utilities" is unclear. We do not know "alterations to existing utilities" are referred to. The second sentence should read: "Utilities depicted on Criterion's Site Plan, as being placed underground, will be placed underground as represented on the Site Plan provided the same is permitted by the utility company and the Department of Public Utilities. Any future utilities placed by Criterion shall comply with all applicable laws and regulations."

Paragraph 4

First sentence: Requiring construction activities to be conducted “in a workmanlike manner” is beyond the authority of the CPDC. That requirement does not appear, either explicitly or implicitly, in §4.3.3.6 of the Zoning Bylaw, which sets forth the criterion for Site Plan approval. The applicant’s construction must comply with the State Building Code. Determination of Building Code compliance is to be determined by the Building Inspector.

Prior to the Issuance of any Certificate of Occupancy

Paragraph 1

While there is no prohibition, or objection, to the Town Planner attending a meeting at which compliance with the Site Plan Review decision is reviewed, the determination of compliance lies strictly within the authority of the Building Inspector, and not the Town Planner.

Paragraph 2

This paragraph does not consider a scenario in which Criterion's building is ready for occupancy before 100% of the landscaping can be completed, for example, if some landscaping could not be put in place during construction, and winter arrived before the landscaping was complete, but not before the building was otherwise ready for occupancy. The paragraph should read:

If Criterion has met the conditions for a Certificate of Occupancy, but has been unable to complete the landscaping shown on the landscaping plan, due the end of the planting season, then nothing shall prohibit the Building Inspector from granting Criterion a temporary Certificate of Occupany, contingent on Criterion's commitment to complete the landscaping as shown on the landscaping plan, by the end of the following planting season.

Paragraph 3

This paragraph should read that “[A]ll parking lot lighting, except security lighting, shall be turned off after dark, if no business is being conducted on the premises” – in order to avoid confusion as to the precise time of “close of business.”

Paragraph 5

As discussed earlier in this letter, any attempt by the CPDC, to control the exterior appearance of the building, exceeds its authority as to a program protected by the Dover Amendment, and in this case, may well conflict with the desires of the Town of Reading

Historical Commission, and should Criterion become subject to it, the new Summer Avenue Historic District.

After Occupancy

Paragraph 1

A condition that “snow will need to be removed from the site at a time when the building is not occupied by students or staff,” in addition to being beyond the proper authority of the CPDC, may interfere with the ability of Criterion's administrators to use their best judgment to provide for the safety of their students and staff. If, for example, a sudden three inch snow squall or unpredicted accumulation of snow, falls while student or staff are in the building, which occasionally happens in New England, does the CPDC intend that the snow could not be removed for safe egress of drivers? There is no sound reason for this micro-management of snow removal, and, as mentioned, the requirement could have unwanted consequences.

Paragraph 3

Consistent with my comment to paragraph 3 under “Prior to Issuance of Any Certificate of Occupancy,” this paragraph should read that “[A]ll parking lot lighting, except security lighting, shall be turned off after dark, if no business is being conducted on the premises” – in order to avoid confusion as to the precise time of “close of business.”

Modification/Revisions – Plan Changes after Approval by the Approving Authority

Since Zoning Bylaws change from time to time, I suggest that rather than quote the current Bylaw language in full, that this section simply read:

Any Minor or Major Modifications to the Site Plan, must comply with all applicable requirements of the Zoning Bylaw of the Town of Reading, subject to any limitations imposed on the Town, by the Dover Amendment, MGL c. 40A, §3.

C. Conclusion

Criterion has gone to great lengths to cooperate with the CPDC, and to be responsive to concerns and desires of neighbors and Town officials. Criterion will continue to act in that fashion – a good neighbor policy has been characteristic of all Criterion programs. Criterion has significant rights, however, under the Dover Amendment, and has explicitly and repeatedly, reserved those rights and made clear that all discussions with and presentations to, Town of Reading boards and officials, were subject to those rights.

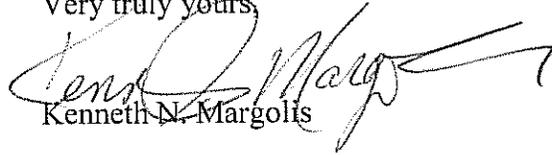
December 19, 2014

Page 9 of 9

Reasonable regulation of the eight factors listed in the Dover Amendment may be subject to CPDC authority.<sup>1</sup> Criterion has voluntarily agreed to make its landscaping and lighting plans subject to the Site Plan approval decision. Criterion has not objected to placement of the drainage plan as part of the Site Plan approval. The CPDC can place elements of Criterion's project, that are desired by the CPDC, but not within the CPDC's authority to require, in a separate section of the Site Plan Review Decision, beginning with the words, "[T]he CPDC recommends, but does not require, compliance with the following."

We will look forward to presenting Criterion's revised site plan, at the January 12, 2015 CPDC hearing.

Very truly yours,



Kenneth N. Margolis

KNM/JF

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

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<sup>1</sup> There is still case law, never overruled, set forth in previous memoranda I have submitted to this Board, that holds that no site plan review proceedings may be imposed upon a program protected by the Dover Amendment. Other decisions suggest that a Dover Amendment project may be required to undergo site plan review, but only with respect to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.



**Criterion Group Services Attendance & Parking Demand Study  
MAXIMUM OPERATIONS**

| PC= Parent/Child<br>CO= Child Only | GROUP<br>START/END<br>TIME | AVERAGE<br>ATTENDANCE | AVERAGE<br>VEHICLES<br>DROPPING OFF | AVERAGE<br>FAMILY VEHI-<br>CLES PARKING | PRG. STAFF<br>VEHICLES - GROUP<br>& ADMINISTRATION | TOTAL<br>VEHICLES<br>PARKING |
|------------------------------------|----------------------------|-----------------------|-------------------------------------|---|--|------------------------------|
| <b>MONDAY</b>                      |                            |                       |                                     |   |  |                              |
| PC Group 1 -AM                     | 9:15-11:45                 | 11                    |                                     | 11                                      |  |                              |
| PC Group 2 -AM                     | 9:30-11:15                 | 11                    |                                     | 11                                      |  |                              |
| <b>Total</b>                       |                            | <b>22</b>             |                                     | <b>22</b>                               | <b>5</b>   | <b>27</b>                    |
| <b>TUESDAY</b>                     |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:45                 | 11                    |                                     | 11                                      |  |                              |
| CO Group 2 - AM                    | 9:15-11:45                 | 9                     | 9                                   |   |  |                              |
| PC Group 3 - AM                    | 9:30-11:15                 | 10                    |                                     | 10                                      |  |                              |
| <b>Total</b>                       |                            | <b>30</b>             | <b>9</b>                            | <b>21</b>                               | <b>9</b>   | <b>30</b>                    |
| PC Group 1 - PM                    | 12:15-1:45                 | 12                    | 1                                   | 11                                      |  |                              |
| <b>Total</b>                       |                            | <b>12</b>             | <b>1</b>                            | <b>11</b>                               | <b>8</b>   | <b>19</b>                    |
| <b>WEDNESDAY</b>                   |                            |                       |                                     |   |  |                              |
| CO Group 1 - AM                    | 9:15-11:45                 | 9                     | 9                                   |   |  |                              |
| CO Group 2 - AM                    | 9:15-11:45                 | 9                     | 9                                   |   |  |                              |
| <b>Total</b>                       |                            | <b>18</b>             | <b>18</b>                           |   | <b>8</b>   | <b>8</b>                     |
| <b>THURSDAY</b>                    |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:45                 | 11                    |                                     | 11                                      |  |                              |
| PC Group 2 -AM                     | 9:15-11:45                 | 11                    |                                     | 11                                      |  |                              |
| PC Group 3 - AM                    | 9:30-11:30                 | 7                     |                                     | 7                                       |  |                              |
| <b>Total</b>                       |                            | <b>29</b>             |                                     | <b>29</b>                               | <b>9</b>   | <b>38</b>                    |
| PC Group 1 - PM                    | 12:15-2:45                 | 9                     |                                     | 9                                       |  |                              |
| <b>Total</b>                       |                            | <b>9</b>              |                                     | <b>9</b>                                | <b>6</b>   | <b>15</b>                    |
| <b>FRIDAY</b>                      |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:15                 | 7                     |                                     | 7                                       |  |                              |
| PC Group 2 - AM                    | 9:15-11:45                 | 11                    |                                     | 11                                      |  |                              |
| CO Group 3 - AM                    | 9:15-11:45                 | 9                     | 9                                   |   |  |                              |
| <b>Total</b>                       |                            | <b>27</b>             | <b>9</b>                            | <b>18</b>                               | <b>8</b>   | <b>26</b>                    |

**CONSIDERATIONS:**

- Drop-Offs: Most children will be brought to Criterion by their parents, one child per car. A few children may be brought, and dropped off by a transportation company vehicle, also one child per vehicle. The ratio of parents whose children are dropped off to a given class, versus those who stay with their children, varies unpredictably from zero to a few. It is not feasible to provide an accurate estimate. Regardless of the ratio of parent to transportation company vehicles on a given day, "drop-offs" have no impact on the number of parking spaces required. If a child is dropped off by a transportation company van, then one less parking space is needed for a parent car. The maximum number of parking spaces requested, assumes days with no transportation company drop-offs, which is not uncommon.
- Group hours from morning to afternoon provides a half hour buffer for leaving, arriving and transition discussions.
- Average attendance for monthly All Staff Meeting (2:30-4:00) is 28 staff.
- Turning 3 Training for families twice per year (7:00-9:00 pm) averages 12 parents and 2 staff.
- First Aid/CPR Trainings (2:00-4:00) four times per year averages 14 staff each session.



**Criterion Group Services Attendance & Parking Demand Study**  
**ROUTINE OPERATIONS**

The attached chart was prepared in response to a request from the CPDC staff, for a parking needs analysis, for Criterion Child Enrichment, Inc.'s Early Intervention program planned for 186 Summer Ave., Reading, Massachusetts. We believe the data to be accurate, as it is based upon the actual program that will be moving from its current Stoneham location, to 186 Summer Avenue. In response to a concern about overlap between sessions (parents staying past the end of a class), we have adjusted the schedule to leave 30 minutes, rather than 15 minutes, between classes. Even with 15 minutes between classes, overlap has never presented a parking problem for a Criterion Early Intervention program. Due to the fact the Early Intervention Program reorganizes its classes quarterly to accommodate admissions and discharges, there is no "typical" ratio in the attendance supported by parent transport and that provided by company transport (no parent present). Therefore, we have proposed a parking capacity of 38 parking spots that is consistent with the maximum use projection appearing on page two of the Parking Demand Study (attached).

| PC= Parent/Child<br>CO= Child Only | GROUP<br>START/END<br>TIME | AVERAGE<br>ATTENDANCE | AVERAGE<br>VEHICLES<br>DROPPING OFF | AVERAGE<br>FAMILY VEHI-<br>CLES PARKING | PRG. STAFF<br>VEHICLES - GROUP<br>& ADMINISTRATION | TOTAL<br>VEHICLES<br>PARKING |
|------------------------------------|----------------------------|-----------------------|-------------------------------------|---|--|------------------------------|
| <b>MONDAY</b>                      |                            |                       |                                     |   |  |                              |
| PC Group 1 -AM                     | 9:15-11:45                 | 8                     |                                     | 8                                       |  |                              |
| PC Group 2 -AM                     | 9:30-11:15                 | 8                     |                                     | 8                                       |  |                              |
| <b>Total</b>                       |                            | <b>16</b>             |                                     | <b>16</b>                               | <b>5</b>   | <b>21</b>                    |
| <b>TUESDAY</b>                     |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:45                 | 9                     |                                     | 9                                       |  |                              |
| CO Group 2 - AM                    | 9:15-11:45                 | 7                     | 7                                   |   |  |                              |
| PC Group 3 - AM                    | 9:30-11:15                 | 7                     |                                     | 7                                       |  |                              |
| <b>Total</b>                       |                            | <b>23</b>             | <b>7</b>                            | <b>16</b>                               | <b>9</b>   | <b>25</b>                    |
| PC Group 1 - PM                    | 12:15-1:45                 | 9                     | 1                                   | 8                                       |  |                              |
| <b>Total</b>                       |                            | <b>9</b>              | <b>1</b>                            | <b>8</b>                                | <b>8</b>   | <b>16</b>                    |
| <b>WEDNESDAY</b>                   |                            |                       |                                     |   |  |                              |
| CO Group 1 - AM                    | 9:15-11:45                 | 8                     | 8                                   |   |  |                              |
| CO Group 2 - AM                    | 9:15-11:45                 | 8                     | 8                                   |   |  |                              |
| <b>Total</b>                       |                            | <b>16</b>             | <b>16</b>                           |   | <b>8</b>   | <b>8</b>                     |
| <b>THURSDAY</b>                    |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:45                 | 7                     |                                     | 7                                       |  |                              |
| PC Group 2 -AM                     | 9:15-11:45                 | 6                     |                                     | 6                                       |  |                              |
| PC Group 3 - AM                    | 9:30-11:30                 | 6                     |                                     | 6                                       |  |                              |
| <b>Total</b>                       |                            | <b>19</b>             |                                     | <b>19</b>                               | <b>9</b>   | <b>28</b>                    |
| PC Group 1 - PM                    | 12:15-2:45                 | 5                     |                                     | 5                                       |  |                              |
| <b>Total</b>                       |                            | <b>5</b>              |                                     | <b>5</b>                                | <b>6</b>   | <b>11</b>                    |
| <b>FRIDAY</b>                      |                            |                       |                                     |   |  |                              |
| PC Group 1 - AM                    | 9:15-11:15                 | 5                     |                                     | 5                                       |  |                              |
| PC Group 2 - AM                    | 9:15-11:45                 | 8                     | 1                                   | 7                                       |  |                              |
| CO Group 3 - AM                    | 9:15-11:45                 | 7                     | 7                                   |   |  |                              |
| <b>Total</b>                       |                            | <b>20</b>             | <b>8</b>                            | <b>12</b>                               | <b>8</b>   | <b>20</b>                    |

**CONSIDERATIONS:**

- Drop-Offs: Most children will be brought to Criterion by their parents, one child per car. A few children may be brought, and dropped off by a transportation company vehicle, also one child per vehicle. **The ratio of parents whose children are dropped off to a given class, versus those who stay with their children, varies unpredictably from zero to a few. It is not feasible to provide an accurate estimate.** Regardless of the ratio of parent to transportation company vehicles on a given day, "drop-offs" have no impact on the number of parking spaces required. If a child is dropped off by a transportation company van, then one less parking space is needed for a parent car. The maximum number of parking spaces requested, assumes days with no transportation company drop-offs, which is not uncommon.
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