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December 10, 2015

By Email and Federal Express

TOWN OF READING
DEC 14 2015
BUILDING DEPARTMENT

Jeffrey Hansen, Chairman
Town of Reading
Community Planning and Development Commission
Town Hall, 16 Lowell Street
Reading, MA 01867

Re: Criterion Child Enrichment, Inc./186-190 Summer Ave., Reading, MA
Application for Site Plan Approval

Dear Mr. Hansen:

The enclosed documents are submitted as part of Criterion Child Enrichment, Inc.'s ("Criterion") application for Site Plan Approval. As you know, the Community Planning and Development Commission approved Criterion's Site Plan on January 12, 2015. Subsequently, the West Street Historic District was expanded to include portions of Summer Avenue, including 186-190 Summer Ave. As part of the process of obtaining approval of its application for a Certificate of Appropriateness from the Town of Reading Historic District Commission, several changes were made to the Site Plan that the CPDC approved in January. Criterion, therefore, now seeks approval of its modified Site Plan.

The documents submitted with this letter go primarily to Criterion's ongoing assertion of its Reservation of Rights, given its Dover Amendment protected status, and the unchanged need for the previously approved 38 parking spaces. Many of the documents were filed with Criterion's submission that resulted in the January 12, 2015 Site Plan approval. Assistant Town Manager, Jean Delios told me that I could submit these documents by email attachment only, and forgo sending hard copies. That would be consistent with the Site Plan Review regulations, as these are not the types of documents for which multiple copies are required. For your convenience, however, I am sending a set of hard copies by Federal Express, in addition to the pdf files.

If either you or Ms. Delios wish, I will gladly provide 21 hard copy sets of the documents (14 for the CPDC, and in light of the joint hearing on January 25, 2106, 7 for the Historic District Commission). Please let me know.

Criterion's engineer, Jack Sullivan, will be filing the complete set of architect and engineering plans, drawings, and related documents, as well as the Application Form, on Monday, December 14, 2015.

Please do not hesitate to contact me if you have any questions. Thank you.

Very truly yours,

Kenneth N. Margolin

KNM/JF

Cc: J. Raymond Miyares, Esq. (email only)
Jean Delios, Assistant Town Manager
(email only)

TOWN OF READING
COMMUNITY PLANNING AND DEVELOPMENT COMMISSION
186-190 SUMMER AVENUE, READING, MA

Criterion Child Enrichment, Inc.'s Dover Amendment
and Parking Space Related Documents

The following documents are filed (all with the exception of the Affidavit of Robert F. Littleton, Jr., Ed.D., and the Summary Program Narrative, were filed in Criterion Child Enrichment's previous Site Plan Review submission and approval), are submitted as part of Criterion's ongoing emphasis of its protected status under the Dover Amendment, *MGL c. 40A, §3*, and the unchanged level of Criterion's need for parking spaces. All are part of Criterion's current application for Site Plan Review approval:

1. Opinion of Reading Town Counsel, J. Raymond Miyares, Esq., that the Dover Amendment applies to Criterion's program, as does the American with Disabilities Act.

2. Reservation of Rights package previously filed by Criterion attorney, Kenneth N. Margolin.

3. Summary Program Narrative by Attorney Margolin

4. Affidavit of Robert F. Littleton, Jr., Ed.D., Criterion's President, regarding the unchanged need for 38 parking spaces.

5. January 12, 2015 decision of the Town of Reading CPDC, approving Criterion's prior application for Site Plan approval.

Miyares and Harrington LLP

A private law firm in the public interest

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

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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.

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,[1] 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

[1] 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)).

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

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).

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)[2].

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

[2] *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).

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

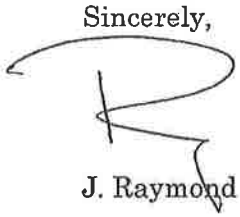
the plaintiff." 269 F.3d at 838. In general, however, it involves a balance of the benefit to the qualified individual and the harm to the public purpose for which the regulation or practice was adopted in the first place. With respect to the benefit to the individual, the Court of Appeals in *Dadian* 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,



J. Raymond Miyares

TOWN OF READING
COMMUNITY PLANNING AND DEVELOPMENT COMMISSION
186-190 SUMMER AVENUE, READING, MA

Criterion Child Enrichment, Inc.'s Re-Filed Dover Amendment
Reservation of Rights Documents

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2	Criterion Enrichment, Inc. Articles of Organization; Name Change
3	Affidavit of Robert F. Littleton, Jr., Ed.D., in support of applicability of the Dover Amendment, *MGL c. 40A, §3*
4	Department of Public Health, "What is Early Intervention?"
5	Early Intervention Federal Statutes

TAB NUMBER 1

Kenneth N. Margolin, Esq. Reservation of Rights Letter

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

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October 6, 2014

Jeffrey Hansen, Chairman
Town of Reading
Community Planning and Development Commission
Town Hall, 16 Lowell St.
Reading, MA 01867

Re: Criterion Child Development, Inc./186 Summer Ave., Reading

RESERVATION OF RIGHTS

Dear Mr. Hansen:

I represent Criterion Child Enrichment, Inc. ("Criterion"), with regard to its plans to open an Early Childhood Intervention program at 186 Summer Avenue, in Reading. Criterion is also represented by Attorney John V. Fernandes. For the reasons set forth below, Criterion submits its Site Plan Review application, pursuant to §4.3.3 of the Reading Zoning Bylaw, under a reservation of rights. This reservation of rights will also apply to all communications with, or appearances before, the Town of Reading Community Planning and Development Commission (the "CPDC").

Criterion asserts that the CPDC has no authority to impose upon Criterion's planned Early Childhood Intervention program, a site plan review process. By submission of its Site Plan Review application, and communication with or appearance before the CPDC, Criterion does not waive its legal rights under the Dover Amendment, *MGL c. 40A, §3*, or any other applicable state or federal law.

While protecting its legal rights with this Reservation of Rights, Criterion wishes to work closely and cooperatively with all Town of Reading officials and boards, including the CPDC. Criterion has deservedly earned a reputation as a good neighbor in all the towns in which it serves children and families in need of its services. It is Criterion's hope that its planned construction and renovation, which will fit gracefully and respectfully on its lot and in the neighborhood, will be satisfactory to the CPDC. What Criterion wishes to avoid is the imposition upon it, of undue expense and delay not authorized by law.

Discussion

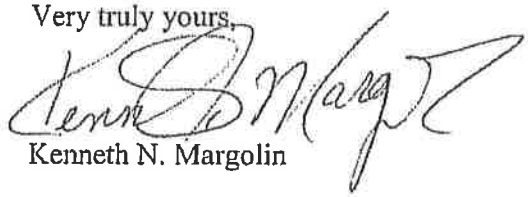
Criterion's planned Early Childhood Intervention program is protected by the Dover Amendment, *MGL c. 40A, §3* (a comprehensive discussion of the applicability of the Dover Amendment to Criterion's project is contained in the memorandum to Town Counsel, J. Raymond Miyares, dated 09/28/2014, a copy of which is attached as Exhibit "A", and incorporated into this Reservation of Rights).

The Town of Reading's Site Plan Review process requires the applicant to submit detailed plans and narratives, leading to a review and decision process far beyond the oversight that a municipality may impose on a Dover Amendment use such as Criterion's. Massachusetts courts have held for more than three decades that the Dover Amendment does not permit site plan review to be imposed upon a use protected by the statute.[1] While one federal court opined, in seeming contravention to Massachusetts appellate law, that site plan review was not always inapplicable to a Dover Amendment use, even that court acknowledged only a very limited process involving simple review of the elements contained at *MGL c. 40A, §3, ¶2.*[2]

Conclusion

The CPDC lacks authority to impose upon Criterion, the site plan review process set forth in the Town of Reading Zoning Bylaw. Nevertheless, subject to this Reservation of Rights, Criterion looks forward to cooperating and working with the CPDC as Criterion's project moves forward.

Very truly yours,



Kenneth N. Margolin

KNM/JF

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

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[1] See, for example: *Teddy Bear Club, Inc. v. City of Newton*, WL 2212768 (Mass. Land Ct. 10/4/2004 : "It is also clear that zoning ordinances cannot impose site plan requirements on Dover Amendment uses...."; *Bay Farm Montessori Acd., Inc. v. Town of Duxbury*, 75 Mass.App.Ct. 1103 (2009), quoting *Bible Speaks v. Town of Lenox*, 8 Mass.App.Ct. 19, 31-32 (1979): "... there [was] nothing in the language of G.L. c. 40A, §3, which contemplates the requirement of site plans and informational statements as monitoring devices for educational uses ..."

[2] "... any application of the site plan review process to [Dover Amendment] uses may only be applied to the extent allowed under [the Dover Amendment], that is, to check for compliance with reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements...." *South Middlesex Opportunity Council, Inc. v. Town of Framingham*, 2008 WL 4595369 (D.Mass. 9/30/2008).

Exhibit A

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

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August 6, 2014

J. Raymond Miyares, Esq.
Town of Reading Town Counsel
Miyares and Harrington, LLP
50 Leonard Street, Suite 3
Belmont, MA 02478

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

Dear Attorney Miyares:

I represent Criterion Child Enrichment, Inc. (Criterion) with regard to the property at 186 Summer Avenue, Reading, Massachusetts.[1] Criterion is a nonprofit, charitable organization, established for the purpose of providing human services to persons who have been subjected to circumstances which have adversely affected their ability to lead normal lives, including persons at risk for later-appearing functional deficits, and their families (a copy of the purposes section of Criterion's Articles of Organization, is attached to this memorandum and labeled "A").

It has come to Criterion's attention that some residents oppose Criterion's plans for an Early Childhood Intervention program on the property. Dr. Robert F. Littleton, Jr., Criterion's President, has asked me to prepare a memorandum for Reading Town Counsel, addressing Criterion's right to use its property for its Early Childhood Intervention program.

As is set forth below, Criterion's planned use is fully protected by the Massachusetts "Dover Amendment," *M.G.L. c. 40A, §3*. Further protection for Criterion's program is provided by the Americans with Disabilities Act, *42 U.S.C. §12101, et seq.*, and Section 504 of the Rehabilitation Act, *29 U.S.C. §794*.[2]

---

[1] Criterion is also represented by John V. Fernandes, Esq., of Milford. Attorney Fernandes has been handling various permitting issues, including the demolition permit.

[2] Criterion is confident that it will have no difficultly meeting all reasonable parking and dimensional requirements, that may be lawfully regulated under the Dover Amendment. In addition to 186 Summer Avenue, the contiguous, unbuildable lot known as 190 Summer Avenue, is included in Criterion's P & S. It is fundamental that "[A]djacent lots in common ownership will normally be treated as a single lot for zoning purposes ...." *Preston v. Bd. of Appeals of Hull*, 51 Mass. App. Ct. 236, 238 (2001) (citations omitted).

I. Current Status of the Property

Criterion has a signed Purchase and Sales Agreement with the current owner, for the property. The structures on the property are listed as historic structures, pursuant to §7.2.3 of the Town of Reading General Bylaw (the "Bylaw"). Criterion has applied for a demolition permit. A public hearing was held on July 29, 2014, and the six month demolition delay period pursuant to §7.2.6 of the Bylaw has begun. Criterion management will work with the Town to explore potential alternatives to complete demolition, as required by the Bylaw, and hopes to reach a mutually acceptable resolution in advance of expiration of the six month delay.

Once complete or partial demolition has occurred, Criterion will build a structure to house an Early Childhood Intervention program, that it will operate at 186 Summer Avenue (a copy of the program description portion of the "186 Summer Street Demolition Permit Supporting Documentation," submitted by Criterion as part of its Demolition Permit application, is attached to this memorandum and labeled "B").

II. Overview of Criterion's Early Childhood Intervention Program

Criterion's Early Childhood Intervention program is operated pursuant to Part C of IDEA, the federal Individuals with Disabilities Education Act, *20 U.S.C. §1432, et seq.*, and pursuant to *M.GL. c. 111G, §1, et seq.*, and attendant regulations. The program will serve children between birth and three years of age, and their families, when the children have documented developmental delays or are at risk for developmental delay. The services provided are "for the purpose of minimizing the potential for developmental delay and for preventing the institutionalization of such children and shall be developmental services, including but not limited to speech, occupational and physical therapy, social work, psychological, educational, and nursing services." *M.GL. c. 111G, §1.*

Early childhood intervention programs, such as Criterion's, are an integral part of the state and federally mandated special education system. Services to Criterion's children and families, will be provided pursuant to an Individualized Family Service Plan (IFSP), which is developed after careful "multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs." *20 U.S.C. §1436.*

Not surprisingly, given the Early Childhood Intervention program's place as part of the special education system, the IFSP bears many similarities to the Individualized Education Program (IEP) required by *20 U.S.C. §1414* and *M.G.L. 71B, §3*, and includes, among other elements, "a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or

outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary..." *20 U.S.C. §1436(d)(3).* The program must incorporate "an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills...." *20 U.S.C. §1435(c)(2)(B).*

Criterion will serve small groups of children at its 186 Summer Ave. program. Staff will also provide early childhood intervention services to children and their families, in their homes. Criterion, established in 1985, is one of the largest providers of child and family development services in the Commonwealth, serving over 5,000 families each year, with a staff of over 300 professionals at 12 locations throughout the state. Criterion has a deserved reputation for excellence. Criterion is also a good neighbor, and values cooperative relationships with municipal officials.

III. The Application of the Dover Amendment to Criterion's Planned Use

The Dover Amendment, *M.G.L. c. 40A, §3,* allows programs by nonprofit educational corporations, that serve an educational purpose, to locate as of right in any zoning district, subject only to a specific list of reasonable dimensional and parking requirements.[3] The statute has a lengthy history of judicial interpretation. An overriding theme of the case law for decades, has been that the definition of "education" is expansive and not restricted to traditional schooling. The wide variety of uses deemed "educational" under the law have included, single-family group homes at which habilitation and daily living skills are taught (*Harbor Schools, Inc. v. Board of Appeals of Haverhill*, 5 Mass.App.Ct. 600 (1977); *Fitchburg Housing Authority v. Zoning Board of Appeals of Fitchburg*, 380 Mass. 869 (1980)); major universities, (*Trustees of Tufts College v. City of Medford*, 415 Mass. 753 (1993)); mental health corporation providing services for prevention and treatment of mental illness (*Gardner-Athol Area Mental Health Association, Inc. v. Zoning Board of Appeals of Gardner),* supra, a homeless shelter at which various life coping skills were taught to homeless families, *Brockton Coalition for the Homeless v. Tonis*, 2004 WL 810296 (Mass. Super., Hely, J.); and other programs providing services beyond traditional schooling.

[3] An "educational corporation" is simply a nonprofit corporation whose operation of an educational program, as defined by the Dover Amendment, is within the authority granted by the corporation's bylaws. *Gardner-Athol Area Mental Health Ass'n, Inc. v. Zoning Bd. of Appeals of Gardner*, 401 Mass. 12, 16 (1987).

The oft-quoted definition of "education" in *Mount Hermon Boys' Sch. v. Gill*, 145 Mass. 139, 146 (1887), has been incorporated into Dover Amendment jurisprudence:

> ... Education is a broad and comprehensive term. It has been defined as 'the process of developing and training the powers and capabilities of human beings....' Education 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 many ways, Criterion's Early Childhood Intervention program is more traditionally educational than community residences in which the teaching of life skills, such as coping with significant learning and emotional difficulties, independent living, self-care, job seeking, budgeting, and making use of community resources, occur – all recognized as "educational purposes" protected by c. 40A, §3 (and its predecessor, c. 40A, §2). *Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg*, supra.[4]

IV. Threatened Bylaw Amendment

Some opponents of Criterion's program, have stated publicly that they will try to persuade Reading elected officials to push through a historic commission or historic district-related Bylaw amendment, aimed at derailing Criterion's plans. Such a provision, however worded, would blatantly target Criterion and the children and families it plans to serve, and would violate the Americans with Disabilities Act, as well as the Dover Amendment.

There is no doubt that Criterion will serve children who have "disabilities" as defined in the Americans with Disabilities Act (the "ADA"), *42 U.S.C. §12101, et seq.; 42 U.S.C. §12102*. 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.*[5] The activities of the Historical Commission, any Historic District Commission, and the Reading Board of Selectmen, are

---

[4] Criterion's program, existing as it does as part of the federal and state special education spectrum of services, is in no way similar to those programs in which the educational component was secondary, an after-thought. (See, for example, *Whitinsville Retirement Society, Inc. v. Town of Northbridge*, 394 Mass. 757 (1985); *Regis College v. Town of Weston*, 462 Mass. 280 (2012)).

[5] As a result of federal funding to the Town of Reading, Section 504 of the Rehabilitation Act, 29 U.S.C. §794, would likely also apply. Courts have interpreted the ADA and the Rehabilitation Act, 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); *Sharpsvisions, Inc. v. Borough of Plum 475 F.Supp.2d 514, 521 (W.D. Pa 2007)).*

"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.

Any discriminatory intent aimed at Criterion because of the disabilities of the clients it serves, would obviously violate the ADA. Even absent discriminatory intent, however, a bylaw designed to thwart Criterion by forcing it to leave in place historic elements to its property that would render it unfit for its clients with disabilities, would have a disparate impact on Criterion. Under a disparate impact theory, there need be no evidence of discriminatory intent – only of 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)*. The services that Criterion will provide to infants and young children with disabilities, and their families, are desperately needed in Reading and surrounding areas. Criterion's choice of properties was made after an extensive search. The Bylaw amendment that some Reading residents hope will be enacted, would have a far larger negative impact on Criterion clients – because of their disabilities – than it would on non-handicapped individuals, and would thus violate the federal civil rights legislation, the ADA.

Despite the fact that that the threatened Bylaw amendment might not be part of the Town of Reading Zoning Bylaw, it would nevertheless violate Criterion's rights under the Dover Amendment. While programs protected by the Dover Amendment are not exempt from all land use requirements (see, for example, *Southern New England Conference of Seventh-Day Adventists v. Town of Burlington, 21 Mass.App.Ct. 701 (1986))*, courts have invalidated attempts to use criteria outside of the Dover Amendment to restrain the use of properties protected by the law. For example, the Land Court has recognized the inappropriateness of using traffic concerns to block a Dover Amendment project, holding that "... discretion to overturn a child care facility use based on general traffic safety issues would certainly violate the Dover Amendment ...." *Teddy Bear Club, Inc. v. City of Newton, 2004 WL 2212768 (Mass.Land Ct., Sands, III, J.)* at 5.

In a leading Dover Amendment case, the Appeals Court held that municipal decisions made under non-zoning powers, can still violate the Dover Amendment. In overturning the Town of Brookline's denial of a lodging house license, the Appeals Court acknowledged that while Brookline's licensing scheme was not part of the zoning bylaw, that:

> ... a municipality may not, through the exercise of its power under G.L. c. 140, §23, *undo the Dover Amendment* by forbidding the use of land for educational purposes on general grounds of adverse impact on the neighborhood or similar land use considerations.

> *Newbury Junior College v. Town of Brookline*, 19 Mass.App.Ct. 197, 206-207 (1985) (emphasis supplied).

The Court noted further that "[A] municipality 'cannot achieve indirectly that which it is forbidden to achieve directly.'" *Id.* at 206, quoting *Rogers v. Provincetown*, 384 Mass. 179, 182 (1981), and endorsed the trial judge's ruling that "[T]he courts have repeatedly said that educational use cannot be prohibited by zoning. To allow such use to be prohibited by any backdoor method ... is ... wrong." *Id.* at 207.

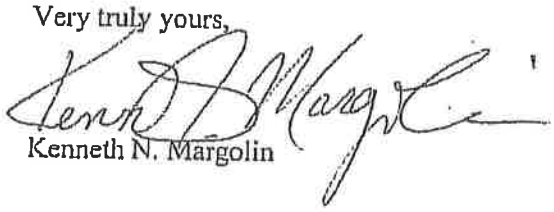
V. Conclusion

Criterion's Early Childhood Intervention program, planned for 186 Summer Avenue, Reading, falls well within the scope of "educational purpose" under *c. 40A, §3*. Given Criterion's undeniable status as an "educational corporation" as defined by the Supreme Judicial Court in *GAAMHA v. Zoning Board of Appeals of Gardner*, supra, Criterion's program will have absolute use protection under the Dover Amendment. When the time comes for Criterion's application for a Building Permit, Criterion management is confident that it will meet all lawful and reasonable dimensional and parking regulations. They look forward to working with Town of Reading officials toward a smooth and timely opening of the program.

Threatened efforts to stop Criterion from serving children with disabilities and their families, by way of a historic commission or historic district bylaw, would run afoul of the Americans with Disabilities Act and the Dover Amendment, and would be unlawful, as well as unjust.

Please do not hesitate to call if you have any questions about this memorandum or Criterion's planned Early Childhood Intervention program.

Very truly yours,



Kenneth N. Margolin

KNM/JF

Cc: John V. Fernandes, Esq.

TAB NUMBER 2

Criterion Child Enrichment, Inc. Articles of Organization; Name Change

FORM CD 180 Rev. 3-79-1514-81

"A"

Examiner

The Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY
Secretary of State
ONE ASHBURTON PLACE, BOSTON, MASS. 02108

ARTICLES OF ORGANIZATION
(Under G.L. Ch. 180)
Incorporators

NAME	RESIDENCE
Include given name in full in case of natural persons; in case of a corporation, give state of incorporation.	
Robert F. Littleton, Jr.	9 Walnut St., Milford, MA 01757

112108

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s):

CSM

Approved

1. The name by which the corporation shall be known is:

Center for the Development of Human Services, Inc.

2. The purposes for which the corporation is formed is as follows:

The Center for the Development of Human Services, Inc. is a charitable corporation organized to provide human services for persons who have been subjected to physical, environmental or social circumstances which have adversely affected their ability to lead normal lives. Those receiving services shall include persons for whom symptoms have not yet appeared but who have experienced circumstances that research has shown places them "at-risk" for functional defecits which may appear at a later date. 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. This may include the provision of administrative and/or managerial services for other corporations or persons committed to similar human service objectives. Such objectives will be carried out without regard to the race, religion, color, sex, national and/or ethnic origin of any student, employee, contractor or vendor with whom the organization has any dealings; and to engage exclusively as an organization to advance such purposes within the meaning of and in compliance with Section 501(c) (3) of the Internal Revenue Code of 1954 or similar section as amended.

C ☐
P ☐
M ☐
R.A. ☐

84 338036

F.C.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

FEDERAL IDENTIFICATION
NO. 22-2592997
Fee: $15.00

Examiner

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

C47

Name Approved

ARTICLES OF AMENDMENT
(General Laws, Chapter 180, Section 7)

We, Robert F. Littleton, Jr. , *President / *Vice Resident

and Melvin Thompson , *Clerk / *Assistant Clerk

of Center for the Development of Human Services, Inc.
(Exact name of corporation)

located in 345 Fortune Boulevard, Milford, Massachusetts
(Address of corporation in Massachusetts)

do hereby certify that these Articles of Amendment affecting articles numbered:

1. Name Change only
(Number those articles 1, 2, 3, and/or 4 being amended)

of the Articles of Organization were duly adopted at a meeting held on Sept. 22, 20 03, by vote of:

_____ members; four (4) directors, or _____ shareholders

being at least two-thirds of its members/directors legally qualified to vote in meetings of the corporation (or, in the case of a corporation having capital stock, by the holders of at least two thirds of the capital stock having the right to vote therein):

To change the name of the corporation from:
Center for the Development of Human Services, Inc.
to: Criterion Child Enrichment, Inc.

C ☐
P ☐
M ☐
R.A. ☐

3

P.C.

*Delete the inapplicable words.
Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

12/3/04

Revised: 6/01

TAB NUMBER 3

Affidavit of Robert F. Littleton, Jr., Ed.D., in support of applicability of the Dover Amendment, *MGL c. 40A, §3*

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 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 along with Criterion's Reservation of Rights letter and Dover Amendment materials to the Town's Community Planning and Development Commission, prepared by our attorney, Kenneth N. Margolin. The purpose of the Dover Amendment materials is to establish that Criterion's planned Early Childhood Intervention program is an educational use covered by the zoning protections of the Dover Amendment, *MGL c. 40A, §3.*

3. The Affidavit explains the primary educational purpose of Criterion's planned Early Childhood Intervention program.

4. 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.

5. Education can be defined as the act or process of imparting or acquiring particular skills. The Massachusetts Early Intervention system is comprised of community-based programs, which provide comprehensive, integrated services to facilitate the developmental progress and skill development of eligible children between the ages of birth to three years old. Eligible children are those whose developmental pattern are

atypical, or are at serious risk to become atypical through the influence of certain biological and/or environmental factors.

6. 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.

7. 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.

10. Each child eligible for services has received a thorough developmental evaluation to determine their areas of needs. From this evaluation, an Individualized Family Service

Plan (IFSP) is developed outlining the services to work on specific educational and developmental outcomes for each child. Parents are partners in the identification of these outcomes and are provided with support and training to engage their child in routine based activities each day. These activities are specifically designed to provide additional and repetitive educational opportunities to enhance their child's development. As children gain skills through services provided at their home and at the center, new outcomes are developed to continuously promote developmental advancement and mastery of skills that provide the expected independence typical for their age.

11. Children receiving early intervention services are formally transitioned to public schools at least within 90 days of their third birthday. Optimally, children are referred at 2 ½ years of age and information is shared with the public schools about the child's developmental and educational status, outlining the child's strengths and needs and ways that the child learns best. This transition is key to assisting special education preschool classrooms to develop educational programming for the child consistent with the early intervention experiences and developmental and educational services embedded in the individualized plan while at the early intervention program.

12. 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.

13. When the final regulations to Part C of IDEA were published in September 2011, U.S. Secretary of Education, Arne Duncan, highlighted the educational purpose of 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).

14. Every child receiving early intervention services has an Individualized Family Service Plan outlining outcomes and services to address to meet those outcomes. For example, a high percentage of children receiving early intervention services have speech and language delays. These children will receive services at the home or center by a Developmental Specialist trained in early childhood development and education. A

program with specific strategies and activities will be used to engage the child in language acquisition and promote opportunities to communicate. Achieving their developmental and educational goals prepares each child for their transition to public schools at age three years old, if needed.

15. Parents are encouraged to be active participants in the home visit. The Early Intervention Educator describes the objectives of the visit and the strategies to be used. There is discussion about why a particular strategy has been selected and how the child is responding to that approach. The Early Intervention Educator models desired interactions or skills for the parent, gives the parent an opportunity to practice and then discuss the manner in which they can be incorporated into daily routines.

16. Training on strategies and techniques also occurs through parent-child groups at the center where they are engaged with their child amongst other children whose parents attend these developmentally appropriate groups. Other educators that support the services provided to the child with the parent present are Speech and Language Pathologists, Physical Therapists and Occupational Therapists. Their roles are to provide ongoing assessment of each child's developmental progress in the communication, gross and fine motor areas. Their support to service providers and parents helps to provide the best comprehensive approaches to assist children to obtain their greatest potential in all facets of their educational development.

17. Children may also receive individual center visits provided by the specialists outlined above when there is a need for specialized equipment, materials or space that will best promote acquisition of developmental and educational goals. Parents may also

attend a parent support or education group that has a specific curriculum which teaches methods and strategies to promote children's developmental and educational outcomes.

18. All Early Intervention personnel providing early intervention services are certified by the Department of Public Health as the lead agency for administering Part C of the Individual with Disabilities Education Act (IDEA). Certified Early Intervention Specialists comprised of various developmental, educational and allied health personnel collaboratively work as a team to address the outcomes of each child in partnership with his or her family. All personnel are highly qualified with specifically required educational backgrounds and credentials which directly ensures that the agency's mission of education and support to young children and their families is realized.

19. As I hope the reader can see from the description of the Early Childhood Intervention services that will be provided by Criterion in its planned Reading program, education is at the heart and soul of the purpose of Early Childhood Intervention, both the life skills education that has always been considered education under the Dover Amendment, and education of the most traditional sort. The Early Childhood Intervention services that Criterion will provide through its Reading program will help children with disabilities benefit from their education throughout their school years, and better their opportunities to live more productive, independent and fulfilling lives.

Signed this 7th day of October, 2014, under the pains and penalties of perjury.

Robert F. Littleton, Jr., Ed.D., President
Criterion Child Development, 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.

TAB NUMBER 4

Department of Public Health, "What is Early Intervention?"

WHAT IS

Early Intervention?

Early Intervention (EI) in Massachusetts is a statewide, integrated, developmental service available to families of children between birth and three years of age. Children may be eligible for EI if they have developmental difficulties due to identified disabilities, or if development is at risk due to certain birth or environmental circumstances.

EI provides family-centered services that facilitate the developmental progress of eligible children. EI helps children acquire the skills they will need to continue to grow into happy and healthy members of the community.

What should I do next?

- Call the Central Directory for Early Intervention at 1-800-905-8437, or visit www.massfamilyties.org for a listing of certified Early Intervention programs serving your city or town.
- Call and speak with a local EI program to make a referral.

Massachusetts Department of Public Health
Early Intervention Services
250 Washington Street
Boston, MA 02108
www.mass.gov/dph/earlyintervention
Call (617) 624-6060
TTY (617) 624-5992

Massachusetts Department of Public Health
Early Intervention Services
www.mass.gov/dph/earlyintervention

Who is eligible for EI?

Any Massachusetts child up to three years of age and his/her family may be eligible for EI services if the child:

- **Is not reaching age-appropriate milestones** in one or more areas of development.
- **Is diagnosed** with a physical, emotional or cognitive condition that may result in a developmental delay.
- **Is at risk** for developmental delay due to various biological and/or environmental factors.

How can a child and family become involved with EI?

The process is simple. Anyone (a parent, doctor, care giver, teacher or friend) can call 1-800-905-8437 and ask for a listing of certified Early Intervention programs serving a particular city or town. Early Intervention services do not require a prescription. Referrals are made directly to a certified program.

What happens after a referral?

With parental consent, an EI team will conduct an evaluation with the child and family to determine eligibility. This evaluation will focus on specific areas of child development, including areas related to cognitive, language, motor, social, emotional, behavioral and self-help skills.

If the child is eligible, an Individualized Family Service Plan (IFSP) is written based on the individual needs of the child and family. The IFSP meeting occurs within 45 days of referral.

Who provides EI services?

Services are provided by a professional and dedicated EI team, which includes the child's family. Depending on the child's needs, an EI team may also include a developmental specialist, physical therapist, speech-language pathologist, psychologist, occupational therapist, social worker, nurse and other specialty service providers.

Where and how are services provided?

An EI team serves the child and family in what are called "natural settings"– for example, at home, childcare centers, community play groups or libraries. Providing services in natural settings supports children in their everyday activities with family and friends.

Who pays for EI?

- Most health insurances pay for some or all of the cost of services if you give consent to have your insurance billed.
- The Massachusetts Department of Public Health pays for any costs not covered by insurance, including co-payments and deductibles.

TAB NUMBER 5

Early Intervention Federal Statutes

United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1431

§ 1431. Findings and policy

Effective: July 1, 2005
Currentness

(a) Findings

Congress finds that there is an urgent and substantial need--

(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to maximize the potential for individuals with disabilities to live independently in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

(b) Policy

It is the policy of the United States to provide financial assistance to States--

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

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(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 631, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744.)

Notes of Decisions (4)

20 U.S.C.A. § 1431, 20 USCA § 1431
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

End of Document

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United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1432

§ 1432. Definitions

Effective: July 1, 2005
Currentness

In this subchapter:

(1) At-risk infant or toddler

The term "at-risk infant or toddler" means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) Council

The term "council" means a State interagency coordinating council established under section 1441 of this title.

(3) Developmental delay

The term "developmental delay", when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1) of this title.

(4) Early intervention services

The term "early intervention services" means developmental services that-:

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

(i) physical development;

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(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which the services are provided, including the requirements of this subchapter;

(E) include--

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services, and sign language and cued language services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

(ix) early identification, screening, and assessment services;

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

(xi) social work services;

(xii) vision services;

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(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including--

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) registered dietitians;

(ix) family therapists;

(x) vision specialists, including ophthalmologists and optometrists;

(xi) orientation and mobility specialists; and

(xii) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.

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(5) Infant or toddler with a disability

The term "infant or toddler with a disability"--

(A) means an individual under 3 years of age who needs early intervention services because the individual--

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(B) may also include, at a State's discretion--

(i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under section 1419 of this title and who previously received services under this subchapter until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this subchapter serving such children shall include--

(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this subchapter or participate in preschool programs under section 1419 of this title.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 632, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744.)

Notes of Decisions (3)

20 U.S.C.A. § 1432, 20 USCA § 1432
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1433

§ 1433. General authority

Effective: July 1, 2005
Currentness

The Secretary shall, in accordance with this subchapter, make grants to States (from their allotments under section 1443 of this title) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

CREDIT(S)
(Pub.L. 91-230, Title VI, § 633, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

20 U.S.C.A. § 1433, 20 USCA § 1433
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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United States Code Annotated
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Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1434

§ 1434. Eligibility

Effective: July 1, 2005
Currentness

In order to be eligible for a grant under section 1433 of this title, a State shall provide assurances to the Secretary that the State--

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

(2) has in effect a statewide system that meets the requirements of section 1435 of this title.

CREDIT(S)
(Pub.L. 91-230, Title VI, § 634, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2746.)

20 U.S.C.A. § 1434, 20 USCA § 1434
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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Subchapter III. Infants and Toddlers with Disabilities

20 U.S.C.A. § 1435

§ 1435. Requirements for statewide system

Effective: December 20, 2010
Currentness

(a) In general

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

(1) A rigorous definition of the term "developmental delay" that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.

(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with subchapter II, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this subchapter that will reduce the need for future services.

(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

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(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that--

(A) shall include--

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II (other than section 1419 of this title), to a preschool program receiving funds under section 1419 of this title, or another appropriate program; and

(B) may include--

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out--

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

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(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this subchapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1418 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title--

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy

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In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 of this title and previously received services under this subchapter, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this subchapter until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements

If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that--

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains--

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under subchapter II; and

(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under subchapter II, including--

(I) types of services and the locations at which the services are provided;

(II) applicable procedural safeguards; and

(III) possible costs (including any fees to be charged to families as described in section 1432(4)(B) of this title), if any, to parents of infants or toddlers with disabilities;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under subchapter II;

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(D) all early intervention services outlined in the child's individualized family service plan under section 1436 of this title are continued while any eligibility determination is being made for services under this subsection;

(E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A) of this title) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(F) the requirements under section 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10402 of Title 42).

(3) Reporting requirement

If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 1419 of this title but whose parents choose for such children to continue to receive early intervention services under this subchapter.

(4) Available funds

If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B) of this title.

(5) Rules of construction

(A) Services under subchapter II

If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II for the period of time in which the child is receiving services under this subchapter.

(B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public education.

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CREDIT(S)

(Pub.L. 91-230, Title VI, § 635, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2747; amended Pub.L. 111-320, Title II, § 202(b), Dec. 20, 2010, 124 Stat. 3509.)

20 U.S.C.A. § 1435, 20 USCA § 1435
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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20 U.S.C.A. § 1436

§ 1436. Individualized family service plan

Effective: July 1, 2005
Currentness

(a) Assessment and program development

A statewide system described in section 1433 of this title shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive--

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

(b) Periodic review

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness after assessment

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of plan

The individualized family service plan shall be in writing and contain--

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

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(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) Parental consent

The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 636, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2751.)

Notes of Decisions (1)

20 U.S.C.A. § 1436, 20 USCA § 1436
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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20 U.S.C.A. § 1437

§ 1437. State application and assurances

Effective: July 1, 2005
Currentness

(a) Application

A State desiring to receive a grant under section 1433 of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain--

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433 of this title;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this subchapter pursuant to section 1440(b) of this title are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under section 1434 of this title, including--

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433 of this title; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this subchapter;

(6) a description of the State policies and procedures that require the referral for early intervention services under this subchapter of a child under the age of 3 who--

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

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(7) a description of the procedure used to ensure that resources are made available under this subchapter for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this subchapter, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used--

(A) to ensure a smooth transition for toddlers receiving early intervention services under this subchapter (and children receiving those services under section 1435(c) of this title) to preschool, school, other appropriate services, or exiting the program, including a description of how--

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 1435(a)(10) of this title will--

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under subchapter II, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under subchapter II, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under section 9840a of Title 42, early education and child care programs, and services under this subchapter; and

(11) such other information and assurances as the Secretary may reasonably require.

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(b) Assurances

The application described in subsection (a)--

(1) shall provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State will be expended in accordance with this subchapter;

(2) shall contain an assurance that the State will comply with the requirements of section 1440 of this title;

(3) shall provide satisfactory assurance that the control of funds provided under section 1443 of this title, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property;

(4) shall provide for--

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter; and

(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this subchapter;

(5) provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State--

(A) will not be commingled with State funds; and

(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 1443 of this title to the State;

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this subchapter; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) Standard for disapproval of application

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The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) Subsequent State application

If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this subchapter (as in effect before December 3, 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this subchapter.

(e) Modification of application

An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) Modifications required by the Secretary

The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this subchapter, if--

(1) an amendment is made to this chapter, or a Federal regulation issued under this chapter;

(2) a new interpretation of this chapter is made by a Federal court or the State's highest court; or

(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 637, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2752.)

Notes of Decisions (2)

20 U.S.C.A. § 1437, 20 USCA § 1437
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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Town of Reading
Community Planning and Development Commission
186-190 Summer Avenue

CRITERION CHILD ENRICHMENT, INC.'s PROJECT NARRATIVE

I. PROCEDURAL HISTORY

On January 2, 2015, this Town of Reading Community and Planning Commission ("CPDC") approved the Site Plan application of Criterion Child Enrichment, Inc. ("Criterion") As will be set forth in more detail at section III of this Narrative, Criterion, a Massachusetts non-profit, tax exempt corporation, plans to operate at 186-190 Summer Avenue, Reading (the "property") an Early Intervention program for infants and toddlers, most of whom will have developmental and other disabilities.

Subsequent to the January 2, 2015 approval, the West Street Historic District Commission was expanded to include portions of Summer Street, including the property, and renamed the Town of Reading Historic District Commission (the "HDC"). Originally, and in the Site Plan approved by the CPDC, Criterion planned to demolish an existing non-historic addition to the existing historic house, and add a new addition. In response to concerns of the HDC and some neighborhood residents, Criterion modified its plans so that the two existing structures – the historic house and the historic barn – will be retained with no change to their footprint, and with minimal exterior architectural changes. The two structures will be connected by means of an underground passageway.

The HDC expressed other concerns about Criterion's proposal, and in response to those concerns, Criterion made a number of changes to the site plan, requiring Criterion to return to the CPDC. Some of the most substantive changes, in addition to the underground connector, was the elimination of the new addition, a reduction in the width of the driveway from twenty-four to twenty feet, the use of a mix of pervious and non-pervious surfaces to eliminate some curbing and create a more residential look (and thus changing the drainage plan), planting of trees along the right side of the driveway, the movement of some parking spaces to the rear of the property (the number of spaces remains thirty-eight), elimination of one light pole, and a change in grading (permitted by the use of the underground connector) to lessen any change from the current grading. To the extent feasible, Criterion's engineer, Jack Sullivan, attempted to vet some of the major changes to the Site Plan (driveway width; surface composition and drainage), with appropriate Town officials.

On November 4, 2015, the HDC approved Criterion's application for a Certificate of Appropriateness. Understanding that some of the changes required by the HDC, to Criterion's Site Plan previously approved by the CPDC, would now require CPDC approval, the two Town commissions agreed to hold a joint hearing, so that the HDC could participate in Criterion's return to the CPDC.

II. DESCRIPTION OF THE PROPERTY

186-190 Summer Avenue (previously referred to as "186 Summer Avenue) comprises two structures, to which Criterion will provide desparately needed repair and renovation, while leaving their footprints completely intact, and making only minor exterior architectural changes, to allow for Criterion's proposed use. The property is known as "Kemp Place." On it is an 1853 farm house (the historic house) in the Italianate Style. The exterior is faced with painted clapboards and wood trim. The front porch appears to have been expanded in the 1920s and was repaired with modern materials within the last fifteen years. There is a side entrance of the South side which enters into the main reception hall. The structure is set back from the street and on a raised plot. The house is a two and half story structure with transverse gables. The front porch/veranda is held up by gothic columns and there is a deteriorated cupola and paired roof brackets. A large brick chimney, thought to be from the 1880s, is located on the south side into what is presently the dining room. The main windows are long and tall on the first floor. The roof is deteriorated slate tiles. There is a deteriorated unfinished one story addition (link/shed) on the east end of the house, connecting to a one and half story addition (shop) further to the east, also unfinished and in deteriorated condition over a stone foundation, above the grade at its eat end. The Main house has a first floor area of 2,220 SF. The link/shed has an area of 210 SF and the shop has a first floor area of 480 SF.

The Barn is a separate structure, also thought to be from 1853. The barn is set behind (east) and slightly to the south of the main house. It too is primarily in the Italianate style and quite deteriorated, with structural problems. The exterior cladding is painted clapboard and wood trim. The roof appears to have been replaced with asphalt shingles. The gable end, shed roof is broken by a cross gable. The front windows, main and side doors are highly articulated with painted wood trim. The barn includes a hay loft and a deteriorated stone foundation open to daylight on the rear (east). The bar first floor area is approximately 1,225 SF.

According to town records there was a pool constructed in the 1960s, to the south of the barn. There is no visible evidence of the pool today so it is assumed the pool was removed or filled in at some point in the past. No permit record indicates when or if this pool removal took place.

III. CRITERION CHILD ENRICHMENT, INC.'s PROPOSAL

The historic house will contain two of Criterion's four classrooms, plus necessary administrative, meeting and storage space. The historic barn will also contain two classrooms. Details are provided on the plans submitted by Criterion, prepared by DHK Architects. The underground connector will allow easy passage between the two structures, while significantly reducing changes to the site visible from a public way – a concern that the HDC deemed important. The two structures, the underground connector, and the overall site, will meet all applicable statutory and regulatory safety, architectural and accessibility requirements.

IV. CRITERION'S EARLY INTERVENTION PROGRAM

Criterion plans to operate an Early Intervention Program Site for the Reading community and the surrounding towns and neighborhoods. Criterion Child Enrichment specializes in developmentally appropriate programs and services for young children and their families. Their mission seeks to support the early development and education of young children and their families. We believe in the strength of the family and its capacity to promote the health and development of children. Criterion offers community-based developmental enrichment groups, child care, early intervention and newborn home visiting programs. They emphasize the professional development of staff and other community early childhood providers. Each year, our agency sponsors the Great Beginnings Conference for advanced early childhood professionals. Founded in 1985, Criterion has grown to be one of the largest providers of child and family development services in the Commonwealth of Massachusetts. Criterion Child Enrichment is a private non-profit corporation. They serve over 5000 families each year with a staff of over 300 professionals at 12 locations throughout Massachusetts. Criterion's programs are highly respected in the early intervention community and in the communities it serves.

Criterion's Early Intervention Program facility must be handicap accessible to users and staff, as well as free from hazardous materials including asbestos and lead paints, commonly found in structures of the age and construction of the existing buildings on this property. The building must be fire protected. The completed facility must meet current Federal, State and Local code requirements for Educational Structures. Currently, there is no Early Intervention program in the state-created cachment area that includes the Town of Reading. The property will enable Criterion to provide families, including families who reside in Reading, with an Early Intervention program within their own cachment area, easing the travel burden for many families who now must travel to Stoneham. While serving children and families in need, Criterion will be saving and rehabilitating two historic structures in dire need of repair, whose long-term future may have been threatened. They will now remain for future generations.

CRITERION CHILD ENRICHMENT, INC.,
by its attorney,

Kenneth N. Margolin
BBO #319900
Law Office of Kenneth N. Margolin, P.C.
246 Walnut Street, Suite 101
Newton, MA 02460
(617) 641-9600

Dated: December 10, 2015

Affidavit of Robert F. Littleton, Jr.
in Support of Criterion Child Enrichment, Inc.'s
Request for CPDC Approval of Criterion's
Modified Site Plan

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

1. I am the President of Criterion Child Development, Inc. ("Criterion"). This Affidavit is presented in support of Criterion's request that the CPDC approve Criterion's modified Site Plan for its proposed Early Intervention program at 186-190 Summer Avenue, Reading, Massachusetts.

2. The Town of Reading Community Planning and Development Commission ("CPDC") approved the site plan presented by Criterion, in a "Site Plan Review Decision" dated January 12, 2015 and filed with the Town Clerk on January 22, 2015 (the "Decision").

3. During the hearing on Criterion's Site Plan Review application, the CPDC considered, among other factors, the nature of Criterion's proposed use, to determine whether it was subject to the "Dover Amendment," *MGL c. 40A, §3*, and to determine the number of parking spaces that the CPDC would approve.

4. After review of documents submitted by Criterion's attorney, and after consideration of a legal opinion by Town Counsel, J. Raymond Miyares, Esq., the CPDC determined that Criterion's Early Intervention program would be educational (Criterion is a non-profit educational corporation), and therefore entitled to the protections of the Dover Amendment.

5. The CPDC also sought from Criterion, and received, a Parking Demand Study detailing the anticipated staffing and client use at the program, in order to determine the appropriate number of parking spaces that would be approved (copies of the two charts

showing the Parking Demand Study, are attached to this Affidavit and labeled "Attachment A" and "Attachment "B").

6. In its Decision, the CPDC approved thirty-eight (38) parking spaces, as shown on Criterion's Site Plan submission.

7. Subsequent to the Decision, the Town of Reading expanded the existing West Street Historic District Commission, to include the portions of Summer Avenue, including 186-190 Summer Avenue. Criterion, therefore required approval from the Historic District Commission ("HDC"), of Criterion's application for a Certificate of Appropriateness.

8. The HDC approved Criterion's request for a Certificate of Appropriateness, on November 15, 2015, in a Decision filed with the Town Clerk on November 16, 2015.

9. In order to satisfy the HDC, Criterion made certain changes in the Site Plan approved by the CPDC in its Decision. These changes included, primarily, a decision to utilized only the existing historic house and barn for Criterion's program, and not to add a new addition, thus keeping the existing footprint completely unchanged; a different drainage system in order to reduce curbing and increase the use of pervious pavement; additional landscaping; a narrower driveway; changes in the location (but not the number) of parking spaces; some grading changes to maintain the existing grading to the extent reasonably feasible; and the use of an underground connector between the existing historical house and historical barn.

10. While Criterion was required by the HDC to make changes to the Site Plan approved by the CPDC, Criterion has made no changes whatsoever in its proposed Early Intervention program. The use, the nature of clients served, the services provided, and the

schedule of classes, are completely unchanged from those presented when Criterion previously appeared before the CPDC.

11. In order to forgo the new addition, Criterion gave up some flexibility in the use of its internal space, especially for storage of equipment and records. The number of employees who will be at the 186-190 Summer Avenue Early Intervention program, and the number of families and children to be served, will be unchanged. Therefore, the parking analysis presented by Criterion to the CPDC, upon which CPDC based its approval of thirty-eight (38) parking spaces, is unchanged. Criterion's need for 38 parking spaces is the same, and is based on the same intensity of use, as was the case when the CPDC approved 38 spaces in its Decision of January 12, 2015.

Signed this 9th day of December, 2015, under the pains and penalties of perjury.

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

Attachment A

Criterion
CHILD ENRICHMENT
where creativity comes to play

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

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.

Attachment B

Criterion
CHILD ENRICHMENT
...where creativity comes to play

Criterion Group Services Attendance & Parking Demand Study
MAXIMUM OPERATIONS

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

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.

Town of Reading

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COMMUNITY PLANNING AND DEVELOPMENT COMMISSION

CPDC
RECEIVED
TOWN CLERK
READING, MASS.
2015 JAN 23 A 11: 34

Site Plan Review

DECISION

January 12, 2015

Project: 186-190 Summer Avenue, Criterion Child Enrichment

To the Town Clerk:

This is to certify, at a public hearing of the Reading Community Development and Planning Commission (CPDC) opened on December 8, 2014 and continued and closed on January 12, 2015 by a motion duly made and seconded, it was voted:

"We, the CPDC, as requested by Robert Littleton, Jr., President of Criterion Child Development, Inc., under the provisions of Section 4.3.3 of the Zoning Bylaws of the Town of Reading, and MGL Chapter 40A Section 3, to consider the contemplated site plan for property addressed at 186-190 Summer Avenue (Assessors Map 15, Lot 294, 295 & 296), as shown on the plan prepared by Sullivan Engineering Group, dated October 9, 2014 and lastly revised December 15, 2014 and the plan prepared by Maxwell Architects, LLC dated November 6, 2014 and lastly revised December 22, 2014, do hereby vote 3-0-1 to approve the said plans, subject to the Findings and Conditions below."

MATERIALS:

The following materials in addition to the plans as recorded were submitted into the public record:

November 6, 2014	Development Review Team (DRT) Notes dated October 22, 2014.
November 6, 2014	Site Plan Review Application, certified list of abutters and stamped envelopes.
November 6, 2014	Letter to Mr. Jeff Hansen from Attorney Kenneth Margolin dated October 29, 2014 re: Reservation of Rights and Dover Amendment Package.
November 6, 2014	Letter to Chairman Jeff Hansen from Attorney Kenneth Margolin dated November 5, 2014 with responses to Town Counsel inquiries.

November 6, 2014	Copy of Demolition Permit Application signed by property owner on June 26, 2014.
November 6, 2014	Copy of Locus Plan for 186-190 Summer Avenue.
November 6, 2014	Civil Drawings Sheets 1-5 prepared by Sullivan Engineering Group, LLC dated October 9, 2014 lastly revised November 5, 2014.
November 6, 2014	Architectural Drawings, Sheets A-101 –A-901 prepared by Maxwell Architects LLC, dated November 6, 2014.
November 6, 2014	Landscape Plan, Sheet L-101 prepared by Maxwell Architects, dated November 6, 2014.
November 6, 2014	Site Lighting Plan, Sheet 1of 1 prepared by VISUAL dated November 2, 2014.
November 6, 2014	Existing Plans, Sheets EX-101 – EX-201 prepared by Maxwell Architects, dated November 6, 2014.
November 6, 2014	Drainage Calculations, prepared by Sullivan Engineering Group, LLC dated November 5, 2014.
November 7, 2014	Letter from Town Counsel J. Raymond Miyares to Town Manager Bob LeLacheur dated November 7, 2014.
November 24, 2014	Letter from Fire Chief Gregory Burns to Community Development Administrator Jessie Wilson re: Site Plan for 186-190 Summer Avenue.
December 1, 2014	Email correspondence from Chief Engineer, Peter Price, RMLD to Community Development Administrator Jessie Wilson re: Site Plan for 186-190 Summer Avenue.
December 2, 2014	Planning Staff Comments dated December 2, 2014.
December 4, 2014	Memorandum for Town Engineer George Zambouras dated December 4, 2014.
December 8, 2014	Letter from Marc Maxwell to Jessie Wilson, Town of Reading re: Site Plan Review Questions.
December 8, 2014	Revised Site Plan prepared by Maxwell Architects, LLC, dated November 6, 2014 and lastly revised December 8, 2014.
December 8, 2014	Color Photographs of the site, submitted by Attorney Arthur Kreiger on December 8, 2014.
December 8, 2014	Letter from Attorney Kreiger to CPDC received on December 8, 2014.
December 8, 2014	Letter from Dennis Carr, submitted to CPDC on December 8, 2014.
December 9, 2014	Email correspondence from Mary Ellen O'Neil dated December 9, 2014.
December 10, 2014	EPA Porous Pavement Fact Sheet, submitted by Mary Ellen O'Neil to CPDC on December 10, 2014.
December 11, 2014	Memorandum from Community Development Administrator Jessie Wilson to Project Applicant and Architect dated December 11, 2014.

December 19, 2014	Correspondence from Attorney Kenneth Margolin dated December 19, 2014, containing responses to CPDC Action Items.
December 20, 2014	Letter from 01867 Neighborhood Preservation to Mr. Marc Maxwell dated December 20, 2014.
December 23, 2014	Revised Civil Drawings Sheets 1-7 prepared by Sullivan Engineering Group, LLC dated October 9, 2014 and lastly revised December 15, 2014.
December 23, 2014	Revised Architectural Drawings, Sheets A-101 –A-901 prepared by Maxwell Architects LLC, dated November 6, 2014 and lastly revised December 22, 2014.
December 23, 2014	Revised Landscape Plan, Sheet L-101 prepared by Maxwell Architects, dated November 6, 2014 and lastly revised December 22, 2014.
December 23, 2014	Revised Site Lighting Plan, Sheet 1of 1 prepared by VISUAL dated November 2, 2014 and lastly revised December 22, 1014.
December 23, 2014	Existing Plans, Sheets EX-101 – EX-201 prepared by Maxwell Architects, dated November 6, 2014.
December 23, 2014	Revised Drainage Calculations, prepared by Sullivan Engineering Group, LLC dated December 17, 2014.
January 4, 2015	Email from Ms. Mary Ellen O'Neil with summary of Abutter Requests Dated December 30, 2014 and received on January 4, 2015.
January 5, 2015	Letter from Dennis Carr, submitted to Town Engineer George Zambouras dated and received January 5, 2015.
January 7, 2015	Memorandum for Town Engineer George Zambouras dated January 7, 2015.
January 8, 2015	Planning Staff Comments re: Revised Submission dated January 8, 2015.
January 9, 2015	Letter from Attorney Kenneth Margolin dated January 9, 2015 re: Draft Site Plan Review Decision.
January 12, 2015	Letter from Fire Chief Gregory Burns to Community Development Administrator Jessie Wilson re: Revised Site Plan for 186-190 Summer Avenue.

FINDINGS:

1. The proposed use is protected under Massachusetts General Law (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 sized, lot area, setbacks, open space, parking and building coverage requirements.
2. The proposal is based upon the combining of three lots to create a single lot totaling 71,223 square-feet in the S-15 residential zoning district.

3. The proposed project is to renovate an existing historic home and to construct a new addition of 5,620 square foot for use as an educational facility by Criterion Child Enrichment. The historic barn on site is proposed to be stabilized and saved for future use as storage. Other improvements include the construction of a paved parking lot for 38 parking spaces, construction of a 1,200 square foot playground area and installation of drainage system including catch basins, stormceptor and infiltration fields.

4. A trash and recycling dumpster are proposed at the rear of the site and is proposed to be enclosed by a 6-foot high stockade fence that will be painted to match the building.

5. **Lighting –** The lighting plan identifies four (4) decorative pole lights, eight (8) bollard lights, seven (7) wall sconce lights, and three (3) flood lights as depicted on the lighting plan dated December 22, 2014 prepared by VISUAL.

6. **Landscaping –** The Applicant is proposing a variety of landscaping throughout the site as depicted on the landscape plan dated December 22, 2014 prepared by Maxwell Architects, LLC.

7. **Building Elevations –** The Applicant is proposing to demolish a portion of the existing historic home and construct a 5,620 square foot addition. The façade of the new addition is proposed to be composite clapboard siding, composite trim, and the proposed roof is to be asphalt shingles as depicted in the proposed elevation drawings and in the color rendering dated December 22, 2014 prepared by Maxwell Architects, LLC.

8. **Signage –** The proposed signage on the site includes a wood free-standing monument sign that will be approximately 3'-2" in height. Other on-site signage includes handicap parking signs and "No Parking" signs along the travel lane in the parking area.

9. **Snow Storage –** Snow storage is proposed at the rear of the site and along the edge of the parking lot travel lane as identified on the site plan prepared by Sullivan Engineering Group, dated October 9, 2014 and lastly revised December 15, 2014 and the site plan prepared by Maxwell Architects, LLC dated November 6, 2014 and lastly revised December 22, 2014.

CONDITIONS:

Prior to the Start of Construction:

1. All other requirements and permits shall be sought and received, including, but not limited to, utility connections, sewer, water, curb cut, street opening and Jackie's Law excavation permits from the Engineering Division (prior to excavation), Board of Health, and other State laws and regulations.

2. The Engineering Division shall be notified at least 72 hours in advance to mark out Town utilities.
3. All Site work shall be inspected by the Engineering Division. The Applicant/Owner's contractor shall submit a construction schedule of proposed work and all inspections shall be scheduled at least 36 hours in advance.
4. **Revised Grading, Drainage and Utility Plan:** Prior to the start of construction, the Applicant shall submit to the Town Engineer and Town Planner for review and approval a revised drainage plan depicting the alteration of the elevations of, or relocation of the infiltration system #2. The plan shall also depict the elimination of the surcharge drain lines.
5. **Pre-Construction Meeting:** The Applicant shall coordinate with the Town Planner a pre-construction meeting with Town staff prior to the start of any construction to review these conditions and any and all final construction sequencing, details, and/or plans for this Project. Periodic status reports (agreed upon at said pre-construction meeting) shall be submitted to the Town outlining the general status of the construction and major milestones completed.

Prior to the issuance of a Building Permit:

1. **Combined Lots:** This site plan review and approval is contingent upon evidence that the lots have been combined. The Applicant shall submit to the Town Planner and Building Inspector a full size copy of the plan that depicts the two lots have been combined by an Approval Not Required Plan (ANR). This shall be required prior to the issuance of a Building Permit to ensure compliance with zoning requirements.
2. **Revised Site Plan:** The Applicant shall submit a revised Site Plan to the Town Planner, Town Engineer and Fire Chief for review and approval that depict the following:
   a. Fire truck turn-around and associated signage as well as the relocation of snow storage area toward the eastern property line.
   b. Relocation of the two (2) parking spaces nearest Summer Avenue to the rear parking area and extension of lawn area where the two spaces were located.
   c. Stained wooden fencing along the northern property line from the basement stair to the inside corner of the abutting property.
3. **Revised Lighting Plan:** The Applicant shall submit a revised Lighting Plan to the Town Planner and Town Engineer for review and approval that depict the following:
   a. Pole lighting height revised to 12-feet.

b. Elimination of one (1) bollard light located at the rear of the building near the basement egress.

c. Elimination of the flood lights.

d. Replacement of the rear barn light with Lighting Type C.

e. Replacement of the ground sign lights with two 2" diameter ground sign lights.

f. Relocation of the pole light nearest the entrance as a result of the relocated parking spaces indicated in the above Condition.

4. **Revised Landscape Plan**: The Applicant shall submit a revised Landscape Plan to the Town Planner and Town Engineer for review and approval that depict the following:

   a. Arborvitae plantings to be located on the northern side of the building from the end of the proposed wooden fence to the back of the historic house.

   b. Extension of landscaping in the area in area of the two (2) parking spaces as indicated in Condition 2 above.

   c. Identification of any additional tree removals as a result of changes associated with the proposed fire truck turn-around.

   d. Any changes to the landscaping as a result of the dumpster relocation.

5. Full construction documents must be submitted and approved by the Fire Department. A building permit shall not be issued until the Fire Department has approved the plans.

<u>During Construction:</u>

1. Per Reading General Bylaw Section 8.9.8., Hours of Construction shall be adhered to and said hours shall be posted in a conspicuous place at the entrance prior to any work on the site. The Hours established by Town of Reading General Bylaw are:

   Mondays through Fridays inclusive: 7:00 AM to 8:00 PM,
   Saturdays: 7:00 AM to 5:00 PM,
   Sundays and Legal Holidays: None

2. **Site Inspections:** Town staff or their designee shall have reasonable access to inspect the site to determine compliance with this Decision. All drainage facilities (if any) shall be subject to inspection by the town.

3. The Applicant and/or its contractor shall provide during construction complete, full coordination with local officials on making alterations to existing utilities. Utilities shall be placed underground as indicated on the approved site plan, provided the same is permitted by the utility company and the Department of Public Works.

4. During construction, blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down, and proper storage and disposal methods, subject to the approval of the Health Administrator or designee. The Applicant shall ensure that abutting local streets and private ways are kept clear of dirt and debris, which may accumulate as a result of construction activities, and documentation shall be provided demonstrating ongoing pest management control, subject to the approval of and administration by the Health Administrator.
5. The Applicant and/or its contractor shall ensure the limit of work/erosion control barriers and construction fencing are maintained throughout construction.

Prior to the Issuance of any Certificate of Occupancy:

1. The Applicant shall schedule a meeting with the Building Inspector and Town Planner before a request for a Certificate of Occupancy to review compliance with this decision.
2. **Landscaping**: All landscaping must be installed as shown on the approved Landscape Plan. If occupancy is sought prior to the completion of the landscape plantings, the Applicant may submit a bond for the outstanding landscape items. The amount of the bond shall be determined by the Engineering Division based upon the remaining amount of landscape items required.
3. **Lighting**: All lighting shall be installed as depicted on the approved Lighting Plan. All exterior lighting, with the exception of security lighting shall be turned off after dark, if no business is being conducted on the premises.
4. **Trash and Recycling Dumpster**: The trash and recycling dumpster and stockade enclosure shall be installed as shown on the final approved site plan.
5. **No Parking Signs:** The No Parking Signs shall be installed in accordance with the final approved site plan.
6. **Parking Area**: The parking lot shall be constructed and striped in accordance with the final approved site plan.
7. **As-Built Plans:** The Applicant shall provide to the Engineering Division, As-Built drawings for all utility and site work and shall be certified by a Registered Professional Engineer of Surveyor. The Plan shall be in accordance with Town standards and shall depict all final improvements, utilities and shall be submitted in paper and ACAD electronic format.

After Occupancy:

1. The Applicant shall ensure that the required parking spaces are accessible at all times. Snow shall not restrict sight lines, block safe passage to the entrance or be stored in parking spaces and shall be removed off-site as needed.

2. Emptying of the trash and recycling dumpster shall be in accordance with Board of Health Regulations.
3. Lighting - All exterior lighting, with the exception of security lighting shall be turned off after dark, if no business is being conducted on the premises.

Modifications/Revisions - Plan Changes after Approval by the Approving Authority: Contemplated future changes to the plan approved hereby shall be presented to the Community Planning & Development Commission, the Zoning Enforcement Officer/Building Inspector, or other relevant Town Boards or staff prior to implementing proposed changes.

1. Minor Modification: Changes that do not substantially alter the concept of the approved Plan in terms of the qualities of the specific location, the proposed land use, the design of building form and approved building details and materials, site grading or egress points. Including but not limited to small changes in site layout, topography, architectural plans, landscaping plan, traffic circulation, parking, lighting plan, signage, open space or other criteria set forth in the Reading Zoning Bylaw. Requests for approval under a minor modification shall be reviewed and evaluated to determine if the proposed work qualifies for review through the Minor Site Plan Review process in accordance with the Reading Zoning Bylaw. Request for Minor Modification approval shall be reviewed by the Town Planner who by administrative approval may grant approval for the Minor Modification. At the determination of the Town Planner, the applicant may be required to present the proposed modification at a public meeting of the CPDC.

2. Major Modification: Substantial additions, deletions or deviations from the approved plan include but are not limited to large changes in site layout, topography, and architectural plans, landscaping plans traffic circulation, parking, lighting plan, signage, open space or other criteria set forth in the Reading Zoning Bylaw. (Note: Approval of the major modification shall be grounds for reconsideration of the Site Plan application. Denial of proposed major modifications shall not invalidate the Site Plan in conformance with the previously approved Plan).

Signed as to the accuracy of the vote as reflected in the minutes:

1/22/15

Jean Delios
Assistant Town Planner, Community Services

Date

Cc: Applicant, Town Clerk, Building Inspector, Health Director, Town Engineer, Town Counsel, Town Manager, planning files