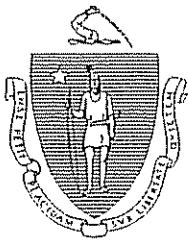


Exhibit 30



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
1350 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103-1629

THOMAS F. REILLY
ATTORNEY GENERAL

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November 16, 2005

Valerie Mulvey, Town Clerk
150 Concord Street
Framingham, MA 01702

RE: Framingham Special Town Meeting of August 3, 2005 — Case # 3545
Warrant Article # 1 (Zoning)

Dear Ms. Mulvey:

Article 1 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article on the warrant for the Framingham special town meeting that convened on August 3, 2005, except as provided below.

As required by G.L. c. 40, § 32, the Town Clerk properly forwarded to us Town Meeting's vote together with a request for its approval by the Attorney General, whereupon the Attorney General then had ninety days in which to ascertain whether the amendments voted by the Town are inconsistent with the Constitution and laws of the Commonwealth. The Attorney General's power to disapprove town by-laws is limited, and he may disapprove a by-law only if it violates state substantive and procedural law, with every presumption made in favor of the by-law's validity.

In his review of the by-law's consistency with procedural law, the Attorney General must ascertain, for each by-law presented for his approval, that statutory procedures prescribed for such by-law were followed. In his review of the by-law's consistency with substantive law, the Attorney General must ascertain, for each by-law presented for his approval, that the subject matter of the by-law itself is not in conflict with, or preempted by, state law. The power to disapprove, moreover, requires that the conflict with state law be facial rather than as applied, meaning that the by-law must be approved if there is a way in which it can be applied that does not conflict with state law. In such instances, the Attorney General will ordinarily caution the Town to apply the by-law only in a manner that does not conflict with state law. In contrast, a by-law is facially flawed if every application of the by-law entails a violation of state law, and a disapproval rather than a caution is required.

In reaching our conclusion that the proposed by-law adopted under Article 1 is, in part, facially consistent with state law we have received and taken into account the views of many who have written both in support of or in opposition to the proposed by-law amendments. We have received a number of letters urging the Attorney General to disapprove the proposed amendments, arguing that the amendments are substantively inconsistent with the protections accorded to exempt uses under G.L. c. 40A, § 3. We



have also received a number of letters urging this Office to approve the proposed amendments because the substance and effect is facially consistent with the protections accorded to certain exempt uses under G.L. c. 40A, § 3.

The amendments adopted under Article 1 make a number of changes to the town's zoning by-laws pertaining to site plan review and uses protected under G.L. c. 40A, § 3. Article 1 of the Town Meeting Warrant provided as follows:

To see if the Town will vote to amend the Zoning By-Law of the Town of Framingham as follows:

Amend Section II.A.1 by deleting the existing words in Paragraph i. and replacing with the following words.

"Charitable and philanthropic buildings for religious purposes or educational purposes on land owned or leased by the Commonwealth, or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a nonprofit educational corporation; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking, building coverage, and site plan review requirements in accordance with the provisions of this By-law."

Amend Section IV.I Site Plan Review, Subsection 2, General Provisions, by deleting the following words in the parenthesis as they appear in the second sentence:

"(excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3)"

The vote by Town Meeting under Article 1 provided as follows:

That Town Meeting amend the Zoning Bylaw of the Town of Framingham as set forth under Article 1 of the August 3, 2005 Special Town Meeting as printed in the handout, as amended.

The handout given at town meeting contained five changes to various sections of the town's zoning by-laws that were not specifically mentioned in the warrant article. While we deem most of the changes proposed in the handout to be companion changes without which the town's zoning by-laws would be internally inconsistent or confusing, we call the town's attention to the change to Section IV.I.2 c. Section IV.I.2 c pertains to the general requirements for site plan review, and the amendments to Section IV.I.2 c in the handout would have provided as follows:

Amend Section IV.I.2 c by striking the numbers and words "5,000" and "the addition of 20" and inserting in place thereof the numbers and words as follows:

c. any new structure, group of structures, substantial improvement, substantial alteration, or change in use of an existing structure or group of structures, which either results in the development, redevelopment, reuse, change in use, or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV.I. in its entirety

We first point out that the amendments to Section IV.1.2.c would render it grammatically indecipherable. While the vote under Section IV.1.2.c deletes specific numerical references from Section IV.1.2.c and inserts new numerical references, the vote also inserts language that already exists in the text of Section IV.1.2.c. The insertion of language that already exists in Section IV.1.2. renders it grammatically indecipherable. Notwithstanding the grammatical deficiency of the amendments to Section IV.1.2, we disapprove and delete the changes to Section IV.1.2.c. as outside the "scope" of the warrant article and thus inconsistent with G.L. c. 39, § 10. **[Disapproval # 1 of 2]** General Laws Chapter 39, Section 10, limits the authority of town meeting to the subjects set forth in the warrant. This requirement allows voters to be apprized of the nature of the matters to which town meeting is authorized to deal. Burlington v. Dunn, 318 Mass. 216, 219 (1945).

The text of the changes to Section IV.1.2.c would, in effect, change the threshold of those structures and uses that are subject to site plan review. The amendments set forth in Warrant Article 1 pertain to site plan review and uses that enjoy protections accorded under G.L. c. 40A, § 3. Nowhere in Warrant Article 1 was there any mention of amending the requirements of site plan review for uses that do not enjoy protections under G.L. c. 40A, § 3. By changing the threshold requirement for site plan review for all structures and uses, the text of the amendments to Section IV.1.2.c dramatically expands the scope of Warrant Article 1. In short, the town meeting warrant did not adequately "warn" the citizens of the changes to Section IV.1.2.c actually voted under the Article. As such, the vote of the town impermissibly expanded the scope of the article. For these reasons, we disapprove and delete the changes to Section IV.1.2.c. We point out that substantively, the changes proposed under the floor amendment are not inconsistent with state law. If the town were to adopt such changes under the appropriate warrant article at a future town meeting, the town could anticipate our approval.

We also call the town's attention to the floor amendment to Section III.A.1.i. Section III.A.1.i. pertains to uses allowed in the town's single residence districts. The vote on the floor amendment to Section III.A.1.i would have provided as follows:

That Article 1 be amended by inserting the following words after the word structures, "frontage on an existing public way."

Section III.A.1.i would then read as follows:

"i. "Charitable and philanthropic buildings for religious purposes or educational purposes on land owned or leased by the Commonwealth, or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a nonprofit educational corporation; provided, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, frontage on an existing public way, and determining yard sizes, lot area, setbacks, open space, parking, building coverage requirements."

(Emphasis added.)

We disapprove and delete the floor amendment to Section III.A.1.i. as inconsistent with the protections accorded to certain uses under G.L. 40A, § 3. **[Disapproval # 2 of 2]** General Laws Chapter 40A, Section 3, provides exemptions from local zoning for the use of land or structures for religious

purposes and educational purposes, but authorizes the reasonable regulation of such uses in exactly eight areas as indicated by the text underlined below. Specifically, Section 3 provides in pertinent part:

No zoning . . . by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements

Certain uses enjoy protection from local zoning under G.L. c. 40A, § 3. However, such uses may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. Frontage on an existing public way is not included in the list. Thus, it is inconsistent with G.L. 40A, § 3, to subject protected uses to reasonable regulations concerning frontage on an existing public way. Therefore, we disapprove and delete the insertion of the words "frontage on an existing public way" that was inserted into Section III.A 1.i by way of an amendment on the floor of town meeting.

Lastly, in approving the remaining changes to the town's by-laws, we remind the town of the lawful application of site plan review to uses that enjoy protections under G.L. c. 40A, § 3. Specifically, the vote under Article 1 delete from Section IV.1.2, "Site Plan Review," text pertaining to uses exempt from local zoning under G.L. c. 40A, § 3. Section IV.1.2 provides in pertinent part as follows [deleted text in strikeout]:

2. General Provisions

The Planning Board shall conduct site plan review and approval. Notwithstanding any provision of this By-Law to the contrary, any structure, use, alteration or improvement which meets any of the following criteria (~~excluding subdivisions for detached single-family dwellings, planned unit developments, and all uses exempt from such zoning regulation as set forth under MGL Chapter 40A, Section 3~~) shall require site plan review and approval as set forth in this section:

Before the amendments adopted under Article 1, Section IV.1.2 expressly exempted from site plan review uses protected under G.L. c. 40A, § 3. Based on the amendments adopted under Article 1, it seems that the town could now apply site plan review to uses protected under G.L. c. 40A, § 3.

As stated in more detail above, G.L. c. 40A, § 3, provides exemptions for the use of land or structures for religious purposes and educational purposes. While Section IV.1.2 no longer expressly exempts uses protected under G.L. c. 40A, § 3, any application of the site plan review process to such uses may only be applied to the extent allowed under G.L. c. 40A, § 3, 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. It is only in those instances in which site plan review may be utilized. It is our view that site plan review is not facially inconsistent with state law to ascertain whether a protected use complies with those reasonable regulations. However, we caution the town that it may need to modify its site plan requirements and process in order to avoid a challenge that the town is applying unreasonable regulations to a protected use. For example, requiring the submittal of a lengthy,

detailed site plan application or requiring an application to wait nine to twelve months for a site plan review may be found to be an unreasonable regulation of a protected use, and thus, inconsistent with G.L. c. 40A, § 3. \

Because we see a lawful application of the proposed by-law, we approve the amendments adopted under Article 1. We, however, strongly suggest that the town discuss the application of the proposed by-law amendments to use protected under G.L. c. 40A, § 3, with town counsel.

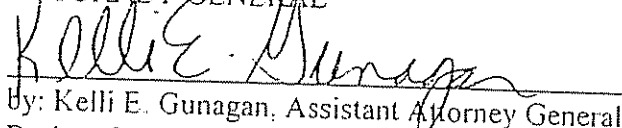
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL



By: Kelli E. Gunagan, Assistant Attorney General
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enc.

pc: Town Counsel

Exhibit 31



TOWN OF FRAMINGHAM
Massachusetts
Office of the
TOWN COUNSEL
Christopher J. Petrini

FILE

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MEMORANDUM

To: Joseph R. Mikielian
Building Commissioner

From: Christopher J. Petrini
Town Counsel

cc: Board of Selectmen
Planning Board
Zoning Board of Appeals
George P. King, Jr., Town Manager
Mark J. Purple, Assistant Town Manager
John W. Grande, Planning Board Administrator
Eugene F. Kennedy, Zoning Board Administrator
Glenna J. Sheveland, Esq., Petrini & Associates, P.C.

Date: November 22, 2005

Re: Opinion Letter in Response to South Middlesex Non-Profit Housing Corporation August 19, 2005 Letter Regarding Denial of an Application for Change of Use for 517 Winter Street

INTRODUCTION

This memorandum is in response to the August 19, 2005 letter sent by counsel for the South Middlesex Non-Profit Housing Corporation ("SMNPHC"), which is a wholly owned subsidiary of South Middlesex Opportunity Council, Inc. ("SMOC"), to the August 11, 2005 letter from the Town of Framingham's ("Town") Building Commissioner, Joseph R. Mikielian, ("Building Commissioner") denying SMNPHC's change of use application from an I-2 to a R-2 use ("Denial"). This memorandum also addresses aspects of the appeal filed on September 9,

2005 by SMNPHC to the Zoning Board of Appeals ("ZBA"), appealing the Building Commissioner's August 11, 2005 Denial of its application for a Change of Use Permit.

In this memorandum, I will address the most relevant issues that have been raised by SMNPHC in its August 19, 2005 letter, based on information provided to date, specifically SMNPHC's claim that the Denial violates both G.L. c. 151B, § 4 ("Chapter 151B") and the federal Fair Housing Act, 42 U.S.C. § 3601 et. seq. ("FHA").

FACTS

On July 13, 2005, the Department of Building Inspection ("Department") received a building permit application from SMNPHC for a change of use, with no additional construction, for a "family shelter, providing temporary housing for families, supported by a program designed to assist formerly homeless families in finding and maintaining permanent housing" for the former nursing home at 517 Winter Street ("Property"). SMNPHC provided both its Articles of Organization and related By-laws. According to the letter accompanying the Change of Use Application, the facility on the Property would house up to 15 families, or 35-40 individuals, at any one time. The staff is expected to be comprised of, at a minimum, one program director, one clinical doctor, one family therapist, one child services coordinator, one child case worker, and eight to nine recovery specialists. Each parent participant in the recovery program will have an individualized plan that details expectations for living in recovery, adult educational goals, steps towards obtaining and maintaining employment and a program involving the care and well-being of children. Each child resident of the program also has an individualized plan, overseen by child health and educational specialists, which outlines childhood education and details specific school and daily supervision requirements.

On August 11, 2005, the Building Commissioner, denied SMNPHC's application for a change of use building permit. The denial was based on the following:

- (1) SMNPHC's failure to provide the necessary information to allow a determination as to whether the proposed use for the Property would meet the requirements of G.L. c. 40A, § 3 ("Section 3"), to be considered a non-profit educational use;
- (2) the August 3, 2005 Town Meeting amendment to the Zoning By-Law ("By-Law"), which required site plan review by the Planning Board for the proposed change of use;
- (3) SMNPHC's failure to provide a stamped floor plan with associated documentation to confirm compliance with 780 CMR 3400.3; and
- (4) SMNPHC's failure to supply an off-street parking plan showing compliance with Section IV B.1 of the By-Law.

SMNPHC responded to the Denial in its letter dated August 19, 2005 ("August 19th Letter") addressed to the Building Commissioner. In this letter, SMNPHC's counsel further

detailed the proposed use of the site and provided legal arguments as to why its counsel believed that SMNPHC's request for change of use could not legally be denied. SMNPHC's counsel listed 23 functions for the proposed use of the facility in the August 19, 2005 Letter, including providing a structured and comprehensive rehabilitative environment, family-based services, individualized substance abuse treatment plans, individual and group counseling, parenting skills education, domestic violence and trauma support and education, mental health assessment, structure for the children, aggressive housing, educational/vocational assessment and referral, job training and search, access to physical health care, aftercare and discharge planning, and child development education.

The August 19th Letter further contends that SMNPHC's proposed use is a protected use under Section 3 and therefore cannot be subject to site plan review, that it is unclear which provision in the Amendment would trigger site plan review for the proposed use, and that drug addiction is considered a physical or mental impairment under 42 U.S.C. § 3602(h) of the FHA, and therefore federal law protects prospective residents from discrimination that denies them available housing based on this disability. SMNPHC then asserts that the Town is subjecting it to a more stringent review process than would be required for non-disabled persons, and that this more stringent review violates the FHA and G.L. c. 151B, both of which prohibit housing discrimination against individuals with disabilities.

In a letter dated November 16, 2005, Assistant Attorney General Kelli Gunagan issued a letter on behalf of the Attorney General approving the By-law amendments enacted by the August 3, 2005 Special Town Meeting in most respects against the challenges raised by SMNPHC, including the amendments eliminating the exclusion of Dover properties from the site plan review provisions of the bylaw. Shortly after Ms. Gunagan issued the approval letter, SMNPHC's counsel orally indicated to the ZBA that SMNPHC wished to withdraw its appeal of the Denial and intended to proceed with the limited site plan review permitted under the Amended Zoning By-law, to the extent applicable.

ANALYSIS

I will address the following three legal issues raised by the August 19th Letter from SMNPHC:

- 1.) Whether SMNPHC has provided the necessary documentation to support its claim that it qualifies as a non-profit educational corporation which intends to use the property at 517 Winter Street for educational purposes as required by (Section 3) and defined by relevant case law?
- 2.) Whether drug addiction qualifies as a handicap under the FHA and Chapter 151B?
- 3.) Whether the Building Commissioner's denial of SMNPHC's application for change of use constituted a violation of Section 3, the FHA, or Chapter 151B.

1. **Has SMNPHC provided the Town with the necessary documentation to support its claim that it qualifies as a non-profit educational corporation?**

As correctly set forth in SMNPHC's August 19th Letter, to qualify for protection under the Dover Amendment, SMNPHC must show that (1) it qualifies as a non-profit educational corporation and (2) its proposed use of the Property is for educational purposes as defined by relevant case law. A showing under the first of these two requirements is relatively easily done and requires no more than providing the Town with proof that it is a corporation whose Articles of Organization permit it to engage in educational activities. Educational activities must be stated as a corporate purpose of the nonprofit corporation, but they do not need to be the primary purpose. See Gardner-Athol Area Mental health Ass'n v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12, 15-16 (1987). In my opinion, SMNPHC has provided the Town with the required documentation and therefore meets the first criteria.

The second criterion, that the proposed use be an educational use, requires a more complex analysis of varying and intertwined interpretations by the courts. In evaluating this criteria, the courts have used a variety of tests, including their own (somewhat nebulous) definitions of education, dictionary definitions of education, and even considerations of whether the proposed facility meets the requirements for tax exemptions under G.L. c. 59, § 5. See, e.g., Commissioner of Code Inspection of Worcester v. Worcester Dynamy, 11 Mass. App. Ct. 97, 99 (1980) ("Education has been long recognized in the courts of this Commonwealth as a broad and comprehensive term"); Whitinsville Retirement Society v. Town of Northbridge, 394 Mass. 757, 759 (1985) ("[A]ccording to one of Webster's definitions, [education] is 'to prepare and fit for any calling or business, or for activity and usefulness in life.' 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"); Harbor Schools v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600,605 (1977) (education means "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"); and Fitchburg Housing Auth. v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 875 (1980) (Education is "the process of developing and training the powers and capabilities of human beings" and preparing persons for activity and usefulness in life").

The Supreme Judicial Court has indicated that "the primary or dominant purpose of the [] facility [s]hould be educational." Whitinsville Retirement Society v. Town of Northbridge, 394 Mass. 757, 760 (1985), citing to Cummington School of Arts, Inc. v. Board of Assessors of Cummington, 373 Mass. 597, 603 (1977). "Merely an "element of education," provided not by a formal program or trained professionals, but only informally gleaned from the interplay among residents . . . is not within the meaning of "educational purpose" pursuant to G.L. c. 40A, § 3." Id. at 761. Notwithstanding this caution, a facility may meet the requirements of an educational use even if it consists of live-in accommodations, primarily serves adults, the subjects taught are not within traditional notions of academic instruction, or the instructors are not certified by the state. See Harbor Schools, *supra* 5 Mass. App. Ct. at 605; Fitchburg Housing Auth., *supra* 380 Mass. at 873

Based on what SMNPHC has provided to the Town to date, it is arguable that the information supports a determination that the primary purpose of the facility is for drug rehabilitation, not education. However, it is more likely than not that a court would find that a significant component of SMNPHC's proposed use is educational in that it is intended to prepare its residents "for activity and usefulness in life." See Commissioner of Code Inspection, T1, Mass. App. Ct. at 99. The Land Court and the Appeals Court broadly define "educational uses," as noted above. You also should remember in the case of Framingham that the Land Court specifically found that a methadone clinic with an ancillary counseling program satisfied the Dover Amendment requirement of an educational use. See Spectrum Health Sys., Inc. v. Framingham Zoning Bd. of Appeals, 9 LCR T15 (2001).

In conclusion, although it is arguable that SMNPHC's proposed use of the Property is primarily for use as a drug rehabilitation facility with only a secondary educational purpose, it is my opinion that it is more likely than not that a reviewing court would find that the proposed use of the Property as described by SMNPHC would constitute an educational use within the meaning of Section 3.

Assuming that the proposed use for the property is found to be an educational use protected by the Dover Amendment, either at the local level or by the courts, the use of the Property is still subject to "reasonable regulations" concerning bulk, dimensions, open space and parking, as expressly permitted by the Dover Agreement. See Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993). In this instance, any application of site plan review would appear to be primarily limited to parking concerns. "[P]arking, as it affects physical conditions on and around an educational use, is a legitimate municipal concern and a proper subject of local zoning regulation." Trustees of Tufts College, 415 Mass. at 762. Therefore, the Property would appear to be subject to site plan review for parking presuming the Attorney General approves the Bylaw amendments approved at the August 3, 2005 Special Town Meeting. If the existing plan submitted by SMNPHC does not comply with reasonable local zoning requirements with respect to parking, a reasonable agreement needs to be reached to provide for acceptable parking at the facility. However, the lack of a parking plan that fully complies with Framingham's zoning requirements in all respects cannot be used to prohibit the use altogether. See Spectrum Health Sys. v. Framingham, *supra*.

2. Does drug addiction qualify as a handicap under the FHA and Chapter 151B?

It is a well settled point of law "that individuals recovering from drug or alcohol addiction are handicapped under the FHA. See, e.g., United States v. Southern Management Corp., 955 F.2d 914, 917-23 (4th Cir.1992); Elliott v. City of Athens, 960 F.2d 975, 977 n. 2 (11th Cir.1992), cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1992); Oxford House, Inc. v. Township of Cherry Hill, 799 F.Supp. 450, 458-60 (D.N.J.1992); United States v. Borough of Audubon, NJ, 797 F.Supp. 353, 358-59 (D.N.J.1991); Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993). In addition, it has been determined that the FHA applies to municipalities. See Keith v. Volpe, 858 F.2d 467, 482 (9th Cir. 1988).

Pursuant to Chapter 151B, an individual is handicapped if he/she is:

- (a) a person with a physical or mental impairment which substantially limits one or more major life activities. Major life activities include walking, seeing, hearing, speaking, breathing, learning, and working;
- (b) a person with a record of having this kind of impairment; and
- (c) a person who is perceived as having this kind of impairment

Decisions issued by the Massachusetts Commission Against Discrimination ("MCAD") indicate that individuals recovering from drug and alcohol addiction are "handicapped" within the meaning of G.L. c. 151B, at least in the employment context. See, e.g., Price v. H.T. Berry Company, Inc., Docket No. 00-BEM-0262 (MCAD, April 9, 2004); Cahillane v. Monsanto Corporation, Docket No. 89-SEM-0229 (MCAD, March 12, 1996). In searching for available case law on this subject, it appears that the appellate courts of the Commonwealth have not yet addressed the issue of whether under state law individuals recovering from these addictions are handicapped within Chapter 151 B. It does, however, seem probable that the state courts would look to both MCAD and the federal courts for guidance in determining whether these individuals are handicapped within the meaning of G.L. c. 151B. Therefore, it is my opinion that the state courts would find that an individual recovering from drug or alcohol addiction is "handicapped" and entitled to the protections of G.L.c. 151B.¹

3(a). Does the Denial of SMNPHC's application and requiring application of site plan review to its Property violate Section 3?

SMNPHC states in its August 19th Letter that it would constitute a violation of the Dover Amendment to subject its property to site plan review. As noted above, it is likely that the courts would find SMNPHC's proposed use of the Property to be a protected use under Section 3. Such a determination, however, would not relieve SMNPHC of its statutory obligation to comply with reasonable zoning requirements. A specific determination has yet to be made that the Amendments adopted by the Special Town Meeting on August 3, 2005 ("Amendments") will in actuality result in a requirement that the Property undergo site plan review. Now that the Attorney General has determined that the Amendments are legal and enforceable in substantial part, a determination will need to be made as to whether site plan review would be triggered under the By-law, and under what section. Although this decision is one for you as Building Commissioner, it is likely that site plan review of the 517 Winter Street change in use application would be triggered by Section IV.I.2.a, which requires parking site plan review for "... any change in use of existing structure or group of structures, which results in the development of any off-street parking or loading facilities ... and ... any ... alteration or enlargement of a parking facility and/or off-street loading facility ... "SMNPHC's proposal for a "change in use" would seem to fit within this definition and thus subject to site plan review pursuant to this section of the Amended Bylaw.

¹ There is at least one Superior Court case in which individuals recovering from these addictions were found to be disabled pursuant to Chapter 151B. See Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Superior Ct. Feb. 28, 1997)

In its August 19th Letter, SMNPHC generally contests the legality of site plan review for any Dover Amendment uses. As noted above, in a letter dated November 16, 2005, the Attorney General approved most of the Amendments, with two exceptions. Prior to the Attorney General's decision, SMNPHC sent three letters to the Attorney General seeking disapproval, one dated August 25, the second dated September 9, and the third dated October 21, 2005. I sent a detailed letter to the Attorney General dated October 24, 2005 (upon which you were copied), responding to SMNPHC's August 25th and September 9th letters. My October 24th letter generally discusses the legality and appropriateness of application of site plan review to Dover uses in appropriate circumstances, as limited by the Dover Amendment, and I direct your attention to this letter for further advice and guidance.

As I indicated previously in my July 22, 2005 Opinion on this property, whether the proposed changes to the By-Law may be applied to SMNPHC is directly guided by G.L. c. 40A, § 6, ¶1, which states "a zoning ordinance or bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law." Since the Planning Board filed its Notice of Public Hearing with the Town Clerk on July 11th, SMNPHC filed its application for a building permit for a change of use with the Building Commissioner on July 13th, newspaper notices of the Planning Board's public hearing for the proposed by-law Amendments were published on July 14 and 21, 2005, and no building permit was issued prior to the publication of the first notice of the public hearing for the proposed changes, SMNPHC is required to comply with those Amendment to the Zoning By-Law approved by the Attorney General.

3(b). Is there validity to SMNPHC's assertions that the denial of its application for failure to comply with local zoning requirements could be found by the courts to constitute violation of the Fair Housing Act?

I next will address SMNPHC's contention that requiring it to comply with site plan review regarding the Property violates the FHA. Before commencing this analysis, I must emphasize that it is never possible to predict with complete certainty how a court would evaluate a FHA claim or any other discrimination claim by SMNPHC. A court's analysis of whether an anti-discrimination law has been violated is inherently fact-bound and case specific. I thus cannot offer an opinion of whether the Town would be deemed to have violated the FHA, Chapter 151B or other anti-discrimination law under the multiple number of varied and divergent factual circumstances and particulars that might arise in the future. Accordingly, my analysis contained herein is limited to whether the Denial issued by the Building Commissioner could be deemed to violate the FHA based on the information provided to date.²

² This Opinion expressly does not address, for example, the potential anti-discrimination law implications of the mission, formation and activities of the PILOT Review Committee. The Board of Selectmen and the PILOT Review Committee recently have asked me to provide an opinion on the legal implications of the mission and activities of this committee, and my analysis of this question will be set forth in a separate opinion.

"Congress enacted the FHA as Title VIII of the Civil Rights Act of 1968 to prohibit housing discrimination on the basis, inter alia, of race, gender, and national origin. In 1988, Congress expanded the coverage of the FHA by enacting the Fair Housing Act Amendments. The FHA, as amended, makes it unlawful: To Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . . As amended, the FHA applies to zoning ordinances and to the zoning of group homes. . . The use of zoning provisions to discriminate against handicapped persons is proscribed by the FHA." Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Superior Ct. Feb. 28, 1997) (citations omitted).

Under the FHA, a plaintiff can establish a violation by showing (1) discriminatory intent; (2) disparate impact; or (3) that the defendant failed to make reasonable accommodations in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling. See Macone v. Town of Wakefield, 277 F.3d 1, 5 (2002); Oxford House, Inc., 819 F. Supp. at 1182, citing 42 U.S.C. § 3604(f)(3)(B). The three criteria set forth in the preceding sentence likely would be used by a court in determining whether a violation of the FHA has occurred, whatever the factual circumstances that may exist.

In order to show an intentional violation of the FHA, SMNPHC would need to establish that the Amendments to the By-Law were undertaken with the intent to preclude housing for the type of residents intended to use the Property. At the time the Amendments were prepared in the notice of public hearing, no one other than SMNPHC knew with certainty as to what use was to be made of the Property. There was speculation that the facility could possibly be used for drug rehabilitation services, but SMNPHC did not actually submit its application until after the Planning Board had filed its Notice of Public Hearing for the Amendments with the Town Clerk on July 11, 2005.

A review of the July 12, 2005 letter accompanying SMNPHC's application indicates that it intended to use the property as "a family shelter, providing temporary housing for families, supported by a program designed to assist formerly homeless families in finding and maintaining permanent housing." The letter contains no direct reference that the Property would be used for individuals recovering from drug or alcohol addiction, but instead contains references that some of the services to be provided on site involve assistance for "living in recovery." As the Town was not aware of the nature of the intended use of the Property prior to the initiation of the By-Law amendment process, which had been ongoing at the Planning Board level for several months to years before SMNPHC's acquisition of the Property, it is unlikely that SMNPHC would be able to establish that the Amendments were undertaken with discriminatory intent. Moreover, insofar as the Amendments simply attempt to treat all uses the same and not treat Section 3 uses more or less favorably than other uses except as required by Section 3, we should be able to argue that the Amendments make changes seeking uniformity, consistency and general applicability, all of which militate against a finding that they constitute evidence of intentional discrimination.

In order to establish disparate impact, SMNPHC would have to prove that the Amendments will either directly or indirectly result in precluding SMNPHC from using the

Property for the use proposed. State law envisions a review by local government and sets limits on what a municipality may require of these types of uses pursuant to Section 3. The fact that the Town has chosen to devise a method by which it may provide a uniform system of site plan review, without precluding the use, can hardly be argued to have a disparate impact. At most it may be an inconvenience, one that is borne by all individuals or entities seeking a change of use in the Town. As noted in my October 24th letter to the Attorney General, it also is important that the site plan review process set forth in the Amendments is in connection with the issuance of a building permit, not with the issuance of a special permit. A special permit process by definition is discretionary and much more likely to be deemed to constitute a violation of Section 3 as applied.

Finally, it is also unlikely that SMNPHC, under the facts as they currently exist, would be able to establish that waiving all zoning requirements without any form of review is a "reasonable accommodation." "An accommodation is reasonable if it does not cause any undue hardship or fiscal or administrative burdens on the municipality." See Granada House, slip op. at 7; see also Rakuz v. Spunt, 39 Mass.App.Ct. 171, 176 (1995); Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608 (1994). In the current instance, SMNPHC has demanded that the Town not apply any aspect of local zoning to its use of the Property. SMNPHC initially failed to provide the Town with the necessary information to make a decision as to whether it met the requirements to be considered a protected use pursuant to Section 3, and in fact continues to assert that it is in no way subject to any form of review under local zoning. Insofar as the site plan review will not result in precluding the use, SMNPHC is unlikely to persuade a court that such an accommodation is reasonable. The Town should be able to present probative evidence that such an extensive and unnecessary waiver would undoubtedly "undermine the basic purpose that the zoning ordinance seeks to achieve" which is to provide some form of review for Section 3 uses to ensure compliance with "reasonable regulations" concerning bulk, dimensions, open space and parking. Trustees of Tufts College v. Medford, 415 Mass. 753, 757 (1993). As site plan review prior to the issuance of a building permit will not result in a complete prohibition of the proposed use on this Property, a claim by SMNPHC that it was denied a reasonable accommodation should be able to be countered by the Town.

3(c). Is there validity to SMNPHC's assertions that denying its application for failure to comply with local zoning requirements would be found by the courts as a violation of Chapter 151B?

The relevant text of Section 4 of Chapter 151B states that it is unlawful "for any person to directly or indirectly induce, attempt to induce, prevent, or attempt to prevent the sale, purchase, or rental of any dwelling or dwellings ..." to handicapped individuals as identified by the statute. A review of relevant case law indicates that even if individuals recovering from drug or alcohol addiction are determined to be "handicapped" within the meaning of Chapter 151B, there is nothing to indicate that Section 4 of Chapter 151B was intended to be applied against a municipality. See Macone v. Town of Wakefield, 16 Mass.L.Rptr. 506, 2003 WL 21960670 (Mass. Super. Jul 16, 2003), aff'd, 62 Mass. App. Ct. 1105 (Oct. 14, 2004) (unpublished 1:28 order). The lower court in Macone found:

[I]n interpreting G.L. c. 151B, § 4, the court may look to the analogous federal statute, however, the court is not bound by interpretations of the federal statute in construing state law. While, in this case, the court may look to 42 USC § 3601 et seq., the Fair Housing Act, for guidance, it is unclear whether the legislature intended G.L. c. 151B, § 4 to apply to the interaction between a developer and a municipality. . . . In construing the General Laws of Massachusetts, however, "the word 'person' ordinarily does not describe the State or its subdivisions." Commonwealth v. Dowd, 37 Mass. App. Ct. 164, 166 (1994). Furthermore, G.L. c. 151B, § 4(13)(a) talks about the sale, purchase or rental of a dwelling. The statute does not include the words construction, licensing, or granting permits. The plain language of the statute refers to a buyer-seller relationship rather than the developer-municipality relationship involved in this case. In the light of these considerations, the court believes a significant question has been raised as to whether the facts of this case present a cause of action under G.L. c. 151B.

Superior Court decision, slip op. at 2. The Appeals Court did not further address this finding, other than to note that the lower court had accepted, without deciding, that such a claim could be brought by the plaintiff against a municipality. See Macone v. Town of Wakefield, 62 Mass. App. Ct. 1105 (Oct. 14, 2004) (unpublished 1:28 order).

The conclusion that a claim pursuant to Chapter 151B would likely be inapplicable against a municipality is further supported by a review of 804 CMR §2 01(2), which indicates that persons intended to be covered by Section 4 of this chapter are.

Owners of single or multiple family dwellings, commercial space, or land intended for such use; licensed real estate brokers, managing agents, lessees, sublessees, or assignees of such dwellings, commercial space or land; those having the right of ownership or possession, or right to rent, lease or sell, or negotiate for the sale or lease of such dwellings, commercial space or land; agents or employees of any such persons herein mentioned; or any organization of unit owners in a condominium or housing cooperative.

The Attorney General's Office has stated that Chapter 151B "makes it unlawful for an owner, licensed real estate broker, or other covered person to refuse to rent, lease, sell, negotiate for sale or otherwise to deny to or withhold from any person or group of persons such accommodations because of a disability." Fair Housing Rights For Individuals with Disabilities, Mass. Attorney General (1999), available at <http://www.ago.state.ma.us/sp.cfm?pageid=1633>. In view of all of the foregoing, I believe it more likely than not that a court would find that Chapter 151B, Section 4 does not cover municipalities, as the courts typically "apply the plain language used in the statute when that language is unambiguous." ROPT Ltd. Partnership v. Katim, 431 Mass. 601, 603 (2000); Crenshaw v. Macklin, 430 Mass. 633, 634 (2000); Commissioner of Revenue v. Cargill, Inc., 429 Mass. 79, 82 (1999).

CONCLUSION

Although it is likely that a court would conclude that the use proposed for the Property by SMNPHC is a protected educational use pursuant to G.L. c. 40A, § 3, it does not relieve SMNPHC from compliance with "reasonable regulations" concerning bulk, dimensions, open space and parking, or from site plan review, assuming site plan review is triggered under the Amended By-Law. Individuals recovering from drug and alcohol dependency have been recognized as handicapped under federal law and are likely to be recognized as handicapped under state law as well.

Under the facts as they currently exist, and absent the provision of contrary evidence of discrimination, it is my opinion that it is more likely than not that SMNPHC will be unable to show that the Building Commissioner's August 1, 2005 Denial of its application for a change in use indicates discriminatory intent, disparate impact, or that the Town failed to make "reasonable accommodations" for its use. Based on the information provided to date, it is my opinion that it is more likely than not that SMNPHC will be unable to pursue a claim under G.L. c. 151B, Section 4 against the Town, as the language of that statute does not appear to have been intended to be applied to municipalities.

I hope this opinion is of assistance to you. Please let me know if you have any questions or need any additional follow-up. Thank you.

Exhibit 32



TOWN OF FRAMINGHAM
Inspectional Services Division
Department of Building Inspection

Memorial Building, Room B-10
150 Concord Street
Framingham, Massachusetts 01702-8368

Joseph R. Mikielian, C.B.O.
Building Commissioner
Director of Inspectional Services

Telephone: 508-620-4838
Fax: 508-628-1362
Email: building.dept@framinghamma.gov

December 2, 2005

James D. Hanrahan, Esq.
Bowditch & Dewey, LLP
161 Worcester Road
Framingham, MA 01701-9320

Re: 517 Winter Street – Proposed Change of Use Permit
Your Letter of August 19, 2005

Dear Mr. Hanrahan:

This letter is in reply to your letter of August 19, 2005 ("August 19th Letter"). I apologize for the delay in responding to your letter, but I was waiting for the Attorney General's response to the Town's recent amendments to the Zoning By-Law and the Zoning Board of Appeals' response to your appeal, before making a reply. In your August 19th Letter, you provided further information on South Middlesex Non-Profit Housing Corporation's ("SMNPHC's") proposed change of use of the property at 517 Winter Street as a non-profit educational use group facility. Although your letter provides more specific details on the intended use of the facility and provides further information on those programs and services that SMNPHC believes qualifies its use as "educational" within the meaning of G.L. c. 40A, § 3 ("Section 3"), your letter did not address all of the reasons which resulted in the denial of SMNPHC's application.

More particularly, to date, SMNPHC has failed to provide this Department with all the requested information regarding compliance with the Massachusetts State Building Code, specifically 780 CMR 3400.3. 780 CMR 3400.3 requires that "A change from any other use group to a residential use group (R) or any alteration or change of occupancy within a residential use group shall comply with the requirements of the code for new construction. . . ." Although SMNPHC has engaged, an architect to prepare a stamped floor plan and provide the required documentation for compliance with 780 CMR 3400.3, not all such documentation including a labeled floor plan and a certification of the existing fire suppression system by a Fire Protection engineer has been received by this office to date. As I am sure you are aware, even if the use is found to be an educational use within the meaning of Section 3, SMNPHC must still comply with the requirements of the State Building Code, as well as all "reasonable regulations" under local zoning concerning bulk, dimensions, open space, and parking. See Trustees of Tufts College v. City of Medford, 415 Mass. 753, 757 (1993).

December 2, 2005

Page 2

On November 17, 2005, you submitted a proposed parking plan with 24 spaces assuming a maximum of 40 occupants and a maximum of 14 employees. At SMNPHC's request we met with SMNPHC representatives on November 18, 2005 and identified the "Number of spaces required" for a residential care facility at one per four (4) occupants plus one per two (2) employees." as well as the other requirements of the State Building Code mentioned above. I also requested an accurate floor plan and certification by a fire protection engineer. The Planning Board must still review this proposed parking layout as part of the site plan review process.

Even with the encouraging progress that has been made, I believe it is necessary for me to respond to some of the assertions made in your August 19th Letter. There is no merit to the claim that the Town's initial denial of SMNPHC's request for a building permit constitutes a violation of the Federal Fair Housing Act. As set forth in the Town's response to the Attorney General dated October 24, 2005, a copy of which Town Counsel provided to John Perten of your office, the process of amending the Town of Framingham's Zoning By-Law had commenced well before SMNPHC's application was submitted and prior to any notice to the Town of what type of use SMNPHC was proposing for its property. SMNPHC's application was denied for failure to comply with the State Building Code and reasonable local requirements.

Additionally, submitting the use of the property to site plan review in no way precludes the use of this property as a non-profit educational facility (assuming SMNPHC establishes that the proposed use of the facility constitutes an "educational use") within the meaning of the Dover Amendment. Site plan review is an accepted method by which to impose "reasonable terms and conditions" upon Dover's practiced uses for the protection of the public. Y.D. Dugout, Inc. v. Board of Appeals of Canton, 357 Mass. 25, 31 (1970). As you noted in your August 19th letter some of the normally required submissions and studies for site plan review may not be appropriate for review of a Section 3 use. You must, however, also be aware of the fact that the recent amendments to the Town Zoning By-Law include a provision to allow the Planning Board to waive some or all of the site plan review requirements of Section IV I.2.

Finally, there is nothing in the language of G.L. c. 151B that would support a conclusion that the provisions cited in your letter were intended to be applied to a municipal government. The courts of this Commonwealth have acknowledged, "[t]he plain language of the statute refers to a buyer-seller relationship rather than the developer-municipality relationship . . . the court believes a significant question has been raised as to whether the facts of this case present a cause of action under G.L. c. 151B." See Macone v. Town of Wakefield, 16 Mass.L.Rptr. 506, 2003 WL 21960670 (Mass.Super. Jul 16, 2003), aff'd, 62 Mass. App. Ct. 1105 (Oct. 14, 2004) (unpublished 1.28 order). It is very probable that if faced with this question, the courts would find that "[i]n construing the General Laws of Massachusetts . . . 'the word 'person' ordinarily does not describe the State or its subdivisions.'" Commonwealth v. Dowd, 37 Mass. App. Ct. 164, 166 (1994).

December 2, 2005

Page 3

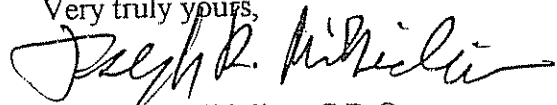
You further assert in your August 19th Letter that you believe that a number of measures undertaken by this Department in relation to your change of use application go beyond the typical requirements of the Building Department when presented with an application for change of use from one use to another. Specifically, you assert that the involvement of Town Counsel and notification to the Board of Selectmen regarding the issues you have arisen in seeking a change of use permit from this Department are not normal procedures and therefore constitute evidence of discrimination. First, Town Counsel is normally involved in actions and activities of this Department, whenever the need arises. This Department routinely asks for both formal and informal opinions of Town Counsel, where the applicant has asserted particularized legal rights, as SMNPHC has in this case. SMNPHC initially undertook a vocal public refusal to comply with the normal process and requirements of local zoning and the routine procedures of this Department. SMNPHC's actions and local reaction to those actions have necessitated the more active (but certainly not highly unusual) participation by Town Counsel in this case. This office has the right to consult counsel, just as SMNPHC has the right to consult you. Town Counsel has found no case holding that the consultation of counsel may provide a basis for a discrimination claim.

With respect to the Board of Selectmen, the Selectmen were made aware of the actions of this office as it would with any issue that had become an issue of public concern among certain citizens in the community. It is the Board of Selectmen's responsibility to appropriately consider the future implications of such issues on the Town and its policies.

The Attorney General's recent November 16, 2005 approval of the August 3, 2005 Bylaw Amendments in substantial part provides further support for the fact that there was nothing illegal or improper in this Department's conclusion that SMNPHC may have to undergo site plan review that is consistent with Section 3 and with the Bylaw as amended. This Department has not requested nor required that you to provide it with anything other than what is clearly intended by both by the language of Section 3 and the court's interpretation of that language, as well as the Town's site plan review bylaw as amended.

Please give me a call if you have any questions regarding the foregoing.

Very truly yours,



Joseph R. Mikielian, C.B.O.
Building Commissioner/
Director of Inspectional Services

cc: Zoning Board of Appeals
Planning Board
Christopher J. Petrini, Town Counsel
Mark J. Purple, Interim Town Manager

Exhibit 33

<p>Stop SMOC www.smocingham.org</p>

SMOC has deal to place ex-cons: Only a few people served under pact with DOC have been placed in Framingham	Saturday, December 31, 2005
David McLaughlin 508-626-4338	Metrowest Daily News

FRAMINGHAM -- Social service agency SMOC has been helping ex-convicts for more than two years find housing as part of a Department of Correction contract, which it won after touting its ability to work with dangerous criminals like arsonists and sex offenders.

The contract, a copy of which was obtained by the Daily News, has come under fire for drawing former criminals to Framingham by providing housing and other services to them. SMOC is headquartered in Framingham and owns the bulk of its housing here.

"I think this exposes the fact that there is an underlying plan, a document... for designating Framingham as a place that would be suitable for centering a large population of arsonists, sex offenders and criminals," said Selectman Ginger Esty.

Numbers provided by the state and SMOC, however, do not indicate the town has become a haven for those who participate in the re-entry program. Since it began in 2003, only two people have been placed in Framingham out of more than 500 referrals, according to SMOC. The Department of Correction put the number at three.

"Framingham is not being inundated with inmates," said Diane Wiffin, a spokeswoman for the department.

Despite those figures, Police Chief Steven Carl said he is concerned about the contract, which he learned about several weeks ago. Carl said the problem is the cumulative result of local social service programs creating "a group of individuals that raise eyebrows and cause concern for other people living in the community."

"A handful from the prisons, a big handful from other shelters and services coming into Framingham to our shelter, a handful from a variety of other programs -- a handful ends up being a bucketful pretty quick," he said.

Indeed, a police survey presented to selectmen in November found that at least half of those staying at the wet shelter downtown were from outside the Framingham area. About half the guests who provided reliable information also had extensive criminal records, what Carl described yesterday as "historic criminal lifestyles."

And in its original bid for the Department of Correction contract two years ago, SMOC goes into detail about its history of working with people with extensive criminal records. In its bid proposal, the agency notes that it has the capacity and experience to provide statewide housing services to "serious, violent offenders."

"Invariably, one finds throughout our continuum the presence of offenders using SMOC services and resources," the document states. "We know for a fact that offenders make up a solid percentage of the individuals we serve. In some programs they are the target population while in others the number is quite high."

The re-entry program is aimed at male inmates across the state whom the Department of Correction identifies as being a high risk for homelessness upon their release from prison. The contract, set to run out in June 2006, is worth \$891,000 over the 3-year period.

SMOC works with the inmates for six months after their release, ensuring they have stable housing and employment, said Planning Director Gerard Desilets. It also works to connect them to other services they may need like substance-abuse or mental health counseling, services that SMOC also offers to its clients.

Of about 500 referrals to the agency since the contract began, SMOC is handling about 220 active cases. Most of the inmates return to the areas where they are from, Desilets said, with the bulk ending up in Boston and Springfield.

"Their fears and concerns about this contract being a conduit for the corrections system into the town of Framingham is an alarmist and uneducated response," he said.

The re-entry program, according to the DOC, is made up of six regions across the state: Boston, Worcester, Lowell, Springfield, Fall River and Framingham. When asked how many ex-convicts have found housing in communities around Framingham, Desilets said the number would "probably be very few if any."

In its bid proposal, SMOC highlights some of the "effective strategies" it has developed to help ex-offenders find housing. If an offender can relate his criminal history "however extensive" to substance abuse, a landlord cannot deny him access to housing, according to the proposal. Substance abuse is considered a legal disability under the Americans with Disabilities Act.

"SMOC Housing Specialists have also developed creative housing search techniques to address high-risk, difficult to place offender subgroups, for example arsonists and sex offenders," the document states. "Housing Specialists were forced to develop these techniques for these specific subgroups when the ADA and advocacy were either unsuccessful or not pertinent to the offender's case."

Peter Adams, a member of the neighborhood group Stop Tax Exempt Private Property Sprawl, which is fighting a SMOC project on Winter Street, criticized the "secretive" way the contract was awarded that prevented the public from commenting about it.

"What concerns me is not that the ex-cons are getting help. They need help, and they're more likely to re-offend if they don't get help," he said. "What bothers me is the fact that again until I see the numbers I'm going to believe that Framingham is going to be the hub of this region and receive a disproportionate share of the offenders."

Wiffin, the DOC spokeswoman, said all the regulations pertaining to procurement and public advertising were adhered to.

Send comments to:  hjw2001@rcn.com

Stop SMOC
www.smocingham.org

Exhibit 34

values. "Much of the subcommittee's report focuses on whether the programs have affected homeowners' property values. The group looked at changes in the assessed values of properties near such programs. In some cases, such properties saw below-average increases in values in recent years, the report said." The paper then quoted SMOC's Jerry Desilets as saying "there have been a number of credible studies that show . . . that the siting of social-service programs have not had a negative impact on property values." Desilets' statement was highly misleading and we presented the Globe with contrary evidence, but heard nothing back and there was no followup article.

January 9: Police Chief Steven Carl called for the SMOC wet shelter to ban sex offenders, as other shelters have done recently. Several months ago, the Middlesex Human Service Agency in Waltham banned Level 3 offenders from its shelter, and in August, the Housing Assistance Corp. banned all "known sex offenders" from its shelter in Hyannis. The MetroWest Daily News reported that "Framingham had 22 Level 3 sex offenders, or those most likely to re-offend, as of Friday, several of whom are homeless and give their address as the Irving Street shelter. There were 86 Level 2 offenders. Social service agency **SMOC, which runs the emergency shelter, says it will not institute a ban like shelters in Waltham and on Cape Cod.**"

January 5: The MetroWest Daily News reported that the Framingham Police Department survey "aimed at finding out why there is an increasing number of the most dangerous sex offenders moving to town found that several came here even though they had no ties to community while others could not even be tracked down. **At least four of the 19 Level 3 sex offenders at the time of the report had no connection to Framingham before their offenses**, according to their interviews with police. Others lived here when they committed their crimes or had lived in Framingham previously. [...] Two sex offenders told police they were sent here by the state's Parole Board when they were released from prison. Another said he came to Framingham on the train to stay at the shelter downtown because the Pine Street Inn in Boston was full." They reported on a man convicted of rape and abuse of a child who was living in Boston after his release from prison but "was sent to Framingham by the Parole Board after he violated his parole twice in Boston."

December 2005

December 31: In a front page article, the MetroWest Daily News revealed the existence of a secret contract between SMOC and the Department of Corrections to find housing for dangerous criminals who were drug users. "In its bid proposal, SMOC highlights some of the 'effective strategies' it has developed to help ex-offenders find housing. **If an offender can relate his criminal history 'however extensive' to substance abuse, a landlord cannot deny him access to housing, according to the proposal.** Substance abuse is considered a legal disability under the Americans with Disabilities Act. SMOC Housing Specialists have also developed creative housing search techniques to address high-risk, difficult to place offender subgroups, **for example arsonists and sex offenders.**"

December 14: A STEPPS "Enough is Enough" sign appeared in a Wall Street Journal article entitled "Town Resists Expansion of Antipoverty Agency," which quotes STEPPS member Chris Titcomb as saying. "They're taking our tax money to do something that will bring down the value of my house." Although there were numerous technical errors in the article -- for instance, the article asserts that a Planning Board decision is "expected soon" although SMOC isn't even on the agenda yet -- it is encouraging to see this struggle between the town and the social service industry drawing national attention.

December 9: The Metrowest Jewish Day School purchased 159 Prospect Street, a magnificent turn-of-the-century mansion sited on a 10.25 acre parcel, for \$1.6 million. The property, located about 1/2 mile from Route 9, will be the school's future home. The school's Marlene Aron said "It is the school's intention to keep the home and add on to it or site another building on the lot."

December 7: A Special Town Meeting passed two new zoning bylaws, one of which tightened up the August bylaw change which was partially overturned by the Attorney general on November 17. This removes some loopholes and makes it more likely that a nonprofit buying, building, or changing a property will trigger a site plan review at the Planning Board.

November 2005

November 22: SMOC withdrew its appeal from the Zoning Board of Appeals. ZBA chair Phil Ottaviani read a letter from Bowditch & Dewey, SMOC's law firm, which read (not an exact transcript), "In light of the Attorney General's decision, we would like to withdraw our appeal of the Building Commissioner's denial of our change of use for 517 Winter Street." Of course, this is just a cover story -- SMOC's appeal had nothing to do with whether or not the law was valid. They wanted to be **exempted** from the law, meaning that the appeal assumed the law **was** valid. SMOC's lawyer said that they would prefer a withdrawal without prejudice. Susan Craighead so moved, Richard Paul seconded, and chair Phil Ottaviani voted yes and announced the motion passed 3-0. The withdrawal of SMOC's appeal means that they will almost certainly **not** file a lawsuit and will instead comply with the new town bylaw requiring them to appear before the Planning Board for site plan review. This is not a panacea, of course. The Planning Board's purview is limited, and while they may require things of SMOC that are outside their purview, SMOC's compliance is not guaranteed, and a lawsuit might still be filed. For more on this, see "What does SMOC's ZBA withdrawal mean for the future?"

November 17: The Massachusetts Attorney General's Office has approved Framingham's new by-law requiring Dover Amendment cases to undergo site plan review with two minor deletions today. The AG removed the amendment regarding frontage, as well as lessening the amount of parking required to trigger site plan review. This means that SMOC will have to appear before the Planning Board and answer questions regarding their plans for 517 Winter (unless they choose to challenge the bylaw in court, which could take years and be an expensive loss for them). It also means they will not be able to "sneak in" any more such shelters. Social Service providers will now have to face at least some public scrutiny.

November 16: The MetroWest Daily News reports that the wet shelter was home to more outsiders than people from around Framingham in a recent analysis ("Wet shelter draws from outside Framingham" by David McLaughlin). The article

Exhibit 35

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From "Peter C.S. Adams" <adamsp@cs.umb.edu>

Subject Re: Mass. Dept Of Corrections and SMOC - Coming to

Date Mon, 02 Jan 2006 15:36:38 -0500

[Part 1 text/plain US-ASCII (4.7 kilobytes)] ([View Text in a separate window](#))

Thus spake JANETLEOMBRUNO@aol.com, circa 12/31/2005:

> I am responding to Dave McLaughlin's front page story today about SMOC's
> contract with the Dept. of Corrections placing criminals in Framingham. [...]
> It seems to be some what of an instructional manual to find housing for the
> hardest to place criminals. Why are we surprised they end up in Framingham?

According to the article, SMOC said they had only placed two serious offenders in Framingham. The DOC said three. (I'm glad their record keeping is so good!) But I think the key word there is "placed" -- remember, once they're placed, they fall off the radar as far as the state is concerned. What's to stop SMOC from "placing" sex offenders and arsonists in, say, Springfield, and then bringing them to Framingham for one of their world-famous drug programs?

SMOC, after all, has its headquarters here and the majority of its many real estate holdings here. They have long touted the benefits of having all their services in the same vicinity. Why should we believe them now when they suddenly say they aren't concentrating their new clients here?

According to SMOC's bid, their "Housing Specialists have also developed creative housing search techniques to address high-risk, difficult to place offender subgroups, for example arsonists and sex offenders." In other words, they have found landlords that do not require CORI checks (and who are presumably over insured). Why should we believe that these landlords are not primarily in the Framingham area?

I think the people of Framingham are concerned with where the arsonists and sex offenders end up, not where they are "placed."

It's also interesting that SMOC has long denied that their programs influence crime in Framingham and decried the characterizations of their clients as criminals. Now we have evidence of SMOC actively pursuing criminals as clients. What are we to make of this?

> I am sick and tired of hearing that SMOC helps many other people too. We
 > know that. We have NO problem with that. I am just done with helping
 > criminals and drug addicts find loopholes in the ADA and other such laws
 > meant to help people with real disabilities.

Thank you so much for saying that, Janet! One of my biggest criticisms of the current state of the law in this area is that recovering drug addicts (and it is absurdly easy to become legally "recovering") are afforded the same "disabled" status as veterans whose legs were blown off in a war or folks who were born blind.

These voluntarily disabled people are more than a "loophole" in the law, they are walking insults to the truly disabled and water down the word "disabled" just as the Dover Amendment waters down the word "educational." The more you learn about these laws and the way they can be taken advantage of, the more you become suspicious every time you hear the words "disabled" and "educational."

> SMOC has to be accountable and listen to the majority of Framingham
 > residents. It is quite clear they have no intentions of doing that.
 > After seeing that the contract is worth \$891,000, I can see why.

SMOC is a big business -- this is why I call them and similar businesses the "social service industry." SMOC is the biggest social service provider in the region at \$50 million a year, so I doubt it's the piddling amount of less than a million dollars that interested them. No, this contract with the Department of Corrections is, for SMOC, a way to acquire new clients and therefore continue to grow. After all, once SMOC has found the drug addicted sex offenders housing, they can move them into other SMOC programs, getting them food, clothing, medical care, counseling, and drug treatment. That's where the real money will come in.

As for the contract itself, what bothers me is the secrecy. I criticized the state for this in my interview with McLaughlin, but all it warranted in the article was a mention that I disliked the secrecy. The DOC spokeswoman responded that "all the regulations pertaining to procurement and public advertising were adhered to." So how do we square that with the fact that Framingham Police Chief Steven Carl "said he is concerned about the contract, which he learned about several weeks ago" (from Esty)?

Obviously, the state's regulations pertaining to procurement and public advertising are inadequate if the police chief only learns about the DOC contracting with a Framingham company to place dangerous criminals from a third party!

In the old days, the state provided services like this, and when it placed a program, there were public hearings and accountability. Now the state outsources these services, and obviously the accountability has been outsourced, as well

peter

--

Peter Adams, STEPPS webmaster
<http://www.stepps.info>
"Enough is enough"

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From "Steven W. Orr" <steveo@syslang.net>

Subject Re: Channel 5 News Report

Date Mon, 15 May 2006 09:34:01 -0400 (EDT)

[Part 1 text/plain US-ASCII (1.9 kilobytes)] [\(View Text in a separate window\)](#)

On Sunday, May 14th 2006 at 23:49 -0400, quoth Janice Skelley:

=>On Sunday night, 5/14, Channel 5 aired a huge report (right after all
=>the flood news), about sex offenders and those being released from
=>prison, and how they are being filtered into the Framingham and
=>Worcester shelters. Jim Cuddy was interviewed and it was a blunder for
=>SMOC. SMOC was cited by State Rep. Spellane from Worcester as being a
=>corporation that is out for the money and totally deceptive. The whole
=>news report was indicative of what we've uncovered, and was amazingly
=>aware of SMOC's motives.

Thank you Janice. There's another interesting facet to this scandal. (And
by the way, I do view this as a scandal.):

The Dept of Corrections is the maker of the contract to SMOC to troll the
prison system to look for arsonists and sex criminals to bring to
Framingham and Worcester. The value of the contract (if I remember it
correctly from the news report last night) was around ~\$890K. (Someone
correct me if I'm wrong.) There were two things that caught my attention.
Thing One was that the contract expires in June (tick tick tick) and Thing
Two is that there is zero accountability for SMOC to demonstrate
performance on the contract. i.e., if they place people or don't, the DOC
has no way of knowing. And on top of that, not only does the DOC not know
what SMOC is doing, but WE do not know either.

I would like to ask our three State level representatives to help us to
prevent this contract from being renewed. I ask this as a Framingham
resident who does not want to see more rapists and arsonists being brought
into our town. In addition, I also ask this as a tax payer of the State
of Massachusetts who does not want to see money being wasted on badly
engineered, single bid, inherently corrupt contracts.

--

<http://steveo.syslang.net/cgi-bin/>

10/16/2007

steveo at syslang dot net TMMP1 <http://frambors.syslang.net/>

Do you have neighbors who are not frambors?

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Subject SMOC thoughts

Date Sun, 1 Jan 2006 18:15:08 -0800 (PST)

[Part 1 text/plain iso-8859-1 (3.2 kilobytes)] ([View Text in a separate window](#))

All,

In reading Saturday's lead story in The News, some thoughts come to mind. In no particular order:

--If I read where Jim Cuddy refers to "our clients" one more time, I'm going to throw a brick into his wet shelter. His referring to drug addicts, drunks, and sex offenders as "clients" makes me think that Cuddy is snorting up some of his clients' blow, washed down by a quart of Jack Daniels, while enjoying every minute of it.

--It is my understanding that SMOC has a list of local landlords on hand, ready to rent apartments to whatever trash SMOC can dredge up out of society's gutters. Having been a landlord in the past, I will unequivocally state that a landlord's first three concerns are getting the rent on time, getting the rent on time, and then getting the rent on time. As long as the checks clear, most landlords are not too concerned about their tenants' past. Granted, I never had any SMOC-type clients or similar human waste as tenants, although I did have a couple of lulus who ate up some valuable time of mine while costing me a few bucks. But if SMOC can guarantee rent to a SMOC-friendly landlord, said landlord could absolutely care less if his/her rent is, in part or in full, your tax money. In fact, many landlords like getting your tax money as rent, as it's guaranteed, and the checks will never bounce. (I personally would never have accepted a SMOC client or welfare queen for a tenant, and that is hardly a unique sentiment amongst landlords, but that's a conversation for another time). Where SMOC's income is derived from Social Service contracts, all of that money comes from what we pay to Beacon Hill at a 5.3% rate every paycheck.

--Many of the clients have, as stated in the story, "extensive criminal records". I doubt that any of us are stupid enough to think that their criminal record will come to a screeching halt once they enter SMOC's domain. SMOC, of course, does not care about that, as further criminal acts by their present day clients will insure SMOC of a future client base.

--"SMOC housing specialists have also developed creative housing search techniques to address high-risk, difficult to place offender subgroups, for example, arsonists and sex offenders". As is typical of stories in The News, this portion of the article ends right there, and fails to explain what the hell this means in terms of sex offenders--damn, I mean CLIENTS--being placed wherever SMOC sees an opening. Again, refer to my point above regarding the SMOC-friendly landlords. No such landlord is going to care about renting to a sex offender as long as these losers are accompanied by a monthly rent check.

Don't believe Gerry Desilets for one second when he states that this SMOC contract is not a conduit for more of

Majordomo at syslang net: archive-get-part

meets the eye in Saturday's article.

Tony Siciliano
ajsiciliano@yahoo.com

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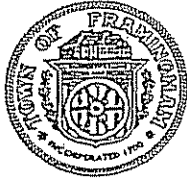
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TOWN OF FRAMINGHAM
Inspectional Services Division
Department of Building Inspection
Memorial Building, Room B-10
150 Concord Street
Framingham, Massachusetts 01702-8368

Joseph R. Mikielian, C.B.O.
Director of Inspectional Services/Building Commissioner

Telephone: 508-620-4838
Fax: 508-628-1362
Email: Building_Dept@FraminghamMa.gov

February 7, 2006

James D. Hanrahan, Esq.
Bowditch & Dewey, LLP
161 Worcester Road
Framingham, MA 01701-9320

Re: 517 Winter Street – Proposed Change of Use Permit
Your Letter of January 11, 2006

Dear Mr. Hanrahan:

This letter is a reply to your letter of January 11, 2006 ("January 11th Letter"). In that letter you requested further clarification and information regarding South Middlesex Non-Profit Housing Corporation's ("SMNPHC's") proposed change of use of the property at 517 Winter Street as a non-profit educational use group facility.

As you state and in accordance with Section IV.1.(4).(a) of the Town of Framingham Zoning By-Laws, prior to SMNPHC filing of an application to the Planning Board you should submit a draft application to the Building Commissioner and he shall advise the applicant as to the pertinent sections of the By-Law.

Since your attached background material and letter of January 11, 2006 represents a draft application as required by the By-Law I refer you to Section IV.1.2.c and IV.1.2.d, as most recently amended and which specifically requires a site plan review by the Town of Framingham Planning Board.

Regarding your request that I make a formal determination that the proposed use is a non-profit educational use before it can be referred to the Planning Board. I believe this request is no longer relevant since the amended by-law does not refer to any such type facility or imply that such a facility is to be treated in any unique or special manner. As you know, any language

that previously gave special status to a non-profit educational use (G.L. c. 40A, Section 3) use was deleted from the Town of Framingham Zoning By-Law.

As I stated in my December 2, 2005 response you submitted a proposed parking plan, attached to your application, with 24 spaces assuming a maximum of 40 occupants and a maximum of 14 employees. At SMNPHC 's request we met with SMNPHC representatives on November 18, 2005 and identified the "Number of spaces required" for a residential care facility at one per four (4) occupants plus one per two (2) employees." As well as the other requirements of the State Building Code mentioned above for an accurate floor plan and fire protection. The Planning Board must still review this proposed parking layout as part of the site plan review process required pursuant to Section IV.I. 2. c and d, which requires site plan review for a change of use.

You also state that a certification of the existing fire suppression system by a Fire Protection Engineer is still pending and a further requirement before a building permit can be issued. We have not received to date any further correspondence from your engineer.

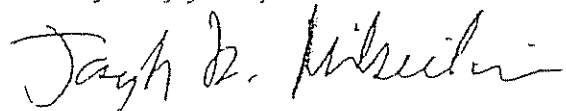
Finally, in your January 11 letter, you ask for my some guidance on two other issues related to your Planning Board site plan review application

1. Whether or not a 35- day review period by Town Departments is necessary or appropriate for this particular site plan review.
2. What schedule of administrative fees is appropriate for this application and subsequent site plan review by the Planning Board?

In both issues, I can only refer you to the Planning Board Administrator, since as the Building Commissioner my jurisdiction is limited to the State Building Code and enforcement of the Town Zoning By-Laws and not the administration of site review procedures of the Planning Board or any fees collected by this independently elected Town Board.

Please give me a call if you have any questions regarding the foregoing.

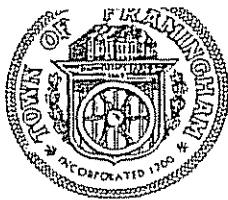
Very truly yours,



Joseph R. Mikielian, C.B.O.
Building Commissioner/
Director of Inspectional Services

cc: Zoning Board of Appeals
Planning Board
Christopher J. Petrini, Town Counsel
Mark J. Purple, Interim Town Manager

Exhibit 39



FRAMINGHAM PLANNING BOARD

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201-06

Exhibit E

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Ann V. Welles, Vice Chairperson
Carol J. Spack, Clerk
Andrea Carr-Evans
Susan P. Bernstein
Sidney Garovitz, Associate Member

Planning Board Staff:
John W. Grande, AICP, Director
Jessica A. Levensgood, Senior Planner
MaryRuth Reynolds, Administrative Assistant

PLANNING BOARD
06 FEB 23 P 12:23

MEMORANDUM

To: Christopher J. Petrini, Town Counsel

From: John W. Grande, Planning Board Director

Date: February 23, 2006

Re: Site Plan Review Process for Dover Amendment-Protected Uses (517 Winter Street)

South Middlesex Non-Profit Housing Corporation (SMNPHC) has filed an application for Site Plan Review Approval with the Planning Board. The following are procedural questions relating to this first review of a Dover Amendment-protected use under the recently adopted amendments to the Zoning By-Law for Site Plan Review. Please provide legal interpretation to which elements of the review process the applicant is subject.

SMNPHC is assuming protection under the Dover Amendment, stating that they conform to both the requirement that it is a non-profit entity and also that the primary use is educational. Materials submitted in the application support this claim. Is this sufficient proof of their status?

The application triggers major site plan review under IV 1.2.d (pending Attorney General Approval):

d) any substantial improvement or substantial alteration or change in use of an existing structure or group of structures which results in the development, redevelopment, reuse, change in use or an increase of 3,000 square feet of gross floor area or requires 5 or more parking spaces or an off-street loading facility, when any portion of any lot or parcel of land on which said structure or use is located in or lies within 200 feet of a residential district, shall be subject to this Section IV 1 in its entirety.

Ordinarily this provision requires an applicant to satisfy all of the Development Impact Assessments and corresponding Development Impact Standards. However, according to the Attorney General's letter dated November 16, 2005, it would appear that Dover Amendment-protected uses, such as this application, are subject only to "reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements (M.G.L. c. 40A, §3)." Should this language then be interpreted to mean that the provisions normally required under Major Site Plan Review are not applicable in these cases? If so, would the applicant be required to request waivers for the customary requirements

and is a statement of their exclusion due to Dover Amendment status sufficient (as included in the Application Supplement)?

The applicant intends to only submit a Parking Plan illustrating the increase in number of parking spaces, so as to comply with that aspect of the eight "reasonable regulations" as referred to above. Other site plan review content requirements are omitted from the plan, which could be interpreted as relating to those eight regulations, include for example:

- IV.1.5 a.1. - Topography of the property
- IV.1.5 a.7. - "Location, size, and type of materials for surface paving, curbing and wheel stops."
- IV.1.5 a.8. - "Location, dimension, type and quantity of materials for open space, planting, and buffers where applicable."
- IV.1.5 a.10. "Polar diagram showing direction and intensity of outdoor lighting, indicating fixture height, location, type of lighting and wattage."
- IV.1.5 a.12. Planning Board Signature Block
- IV.1.5 b. Landscaping Plan

Which requirements of Section IV.1. Site Plan Review are to be considered relating to the Attorney General's eight regulations and therefore should be required from Dover Amendment-protected uses for review? The project does not propose to alter the existing structure, yard, lot, setback, open space or coverage, bringing back up the questions on waivers.

The applicant has paid the fees as would be required under Major Site Plan Review, however is not required to comply with the entire process usually allotted for those projects. Should the fee schedule be revised to incorporate this new category of project review?

The customary process of Site Plan Review allows for a 35-day review period by Town Departments prior to public hearing. Should the Board follow these procedures for Dover Amendment-protected projects as well? The applicant questions whether the 35-day time period is necessary when being reviewed against only the eight dimensional requirements rather than Section IV.1 in its entirety.

Your guidance on scoping the proper review process for these Dover Amendment-protected cases is appreciated and will help to establish procedures for subsequent applications.

Exhibit 40



TOWN OF FRAMINGHAM
Massachusetts
Office of the
TOWN COUNSEL
Christopher J. Petrini

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E-mail: cjpetrini@petrinilaw.com

MEMORANDUM

To: Planning Board
John W. Grande, Planning Board Director
Jessica Levensgood, Senior Planner

From: Christopher J. Petrini
Town Counsel

cc: Board of Selectmen
Valerie W. Mulvey, Interim Town Manager
Joseph Mikielian, Building Commissioner
Eugene F. Kennedy, Senior Planner
Glenna J. Sheveland, Esq., Petrini & Associates, P.C.

Date: April 6, 2006

Re: Response to Questions Regarding Site Plan Review Pursuant to Section IV.I.2. of
the Zoning By-Law as Applied to G.L. c. 40A, § 3 (Dover Amendment) Uses.

INTRODUCTION

This memorandum is in response Jay Grande's February 23, 2006 memorandum requesting that I provide the Planning Board with guidance as to what portions of site plan review can be applied to G.L. c. 40A, § 3 ("Section 3" or "Dover Amendment") uses. Your questions are specifically related to the recent submission by South Middlesex Non-Profit Housing Corporation ("SMNPHC") relative to 517 Winter Street requesting waivers from compliance with the normal requirements for major site plan review as required by Section IV.I.2.d. of the Zoning By-Law. Ordinarily this provision would require an applicant to satisfy all of the Development Impact Assessment and corresponding Development Impact Standards. However, Section 3 and related case law establishes limits as to what types of local zoning requirements may be applied to Dover Amendment uses.

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You specifically have asked that I address six questions. The first three questions are predominately substantive in nature and include the following: (1) Should the language of Section 3 be interpreted to mean that the provisions normally required under Major Site Plan Review are not applicable in these cases; (2) Are the statements provided by the applicant in its application in the current instance sufficient to make the determination that they are a Section 3 use; (3) Which requirements of Section IV.I. Site Plan Review should be considered pursuant to the limitations identified in Section 3 and by the Attorney General? The remaining three questions are procedural in nature: (4) Should applicant be required to request waivers for the customary requirements; (5) Should the fee schedule be revised to incorporate a new category of project review; and (6) Should the Board follow the normal 35-day review period by Town Departments prior to public hearing since the review is more narrow than would be required by Section IV.I. in its entirety?

1. Should the language of Section 3 be interpreted to mean that the provisions normally required under Major Site Plan Review are not applicable in these cases?

In directly addressing the issue of the application of site plan review to Dover Amendment uses, the Appeals Court recently reiterated the now well established legal principle that site plan review must be limited to the purpose of the "regulation" of a permitted use and does not include the discretion to issue outright denial of the proposed use, which is especially true when applied to Section 3 uses. See Calhoun v. Zoning Bd. of Appeals of Wellesley, 64 Mass.App.Ct. 1107 (2005) (Unpublished 1:28 Decision), citing to The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19, 32-33 (1979). Although the Dover Amendment bars the adoption of a zoning ordinance or by-law that seek to prohibit or restrict the use of land for educational or religious purposes, it contains the proviso that a municipality may adopt and apply reasonable regulations concerning the bulk and height of structures and in determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, for the land and structures for which an educational use is proposed. See G.L.c. 40A, § 3; see also Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 798 (2003). Significantly, the Supreme Judicial Court has held that local regulations addressing bulk, height, etc., are "presumptively valid under the proviso to the Dover Amendment." Trustees of Tufts College v. Medford, 415 Mass. 753, 765 (1993).

The Appeals Court has clearly stated that "the probable effects of the use on (such factors as) . . . changes in the number of legal residents, . . . increases in municipal service costs, . . . changes in tax revenue, . . . land erosion or loss of tree cover, . . . character of surrounding neighborhood, . . . master plan of the town, . . . (or) any pertinent regional plans." are inappropriate considerations under Section 3. The Bible Speaks, 8 Mass. App. Ct. at 32. Additionally, the Appeals Court indicated in The Bible Speaks that requiring municipal service and fiscal impact assessments are not within the enumerated proviso language of Section 3 and therefore such requirements are not appropriately applied to Dover Amendment uses. Id. at 31-32. In view of the existing case law, the protections afforded Section 3 uses preclude requiring an applicant to meet the requirements for Fiscal Impact and Community Impact Assessment and Standards under Major Site Plan Review.

Based on the facts as presented in each individual application, it might be reasonable to require compliance with the Traffic or Environmental Impact Assessment and Standards of Major Site Plan Review. Both the Supreme Judicial Court and the Appeals Court have acknowledged that at least traffic and wetland issues are possible legitimate concerns that could support the enforcement of local regulations. See Trustees of Tufts College v. City of Medford, 33 Mass. App. Ct. 580 (1992); Trustees of Tufts College, 415 Mass. at 755 (although traffic appears to be typically considered in conjunction with setback or parking requirements); The Southern New England Conference Association of Seventh-Day Adventists v. Town of Burlington, 21 Mass. App. Ct. 701 (1986) (statutory prohibition against local zoning law regulating or restricting use of land or structures for religious purpose did not exempt religious use from lawful wetlands control under local zoning bylaw).

Therefore, determining what provisions of site plan review are applicable in reviewing Section 3 uses will vary according to the facts provided by the applicant. The Planning Board should make it clear to the applicant that their responsibility will be to establish that (1) the use is a qualified Section 3 use (as described further below), (2) indicate which provisions of site plan review the applicant believes should be waived, and (3) provide a detailed explanation as to why those provisions do not apply to their proposed use based on the facts as presented by the applicant. It should not be enough to merely state that because they are a Dover Amendment use the provision in question does not apply.

2. Are the statements provided by the applicant in its application in the current instance sufficient to make the determination that they are a Section 3 use?

In keeping with the requirements associated with any request for site plan review, it should be expected that the burden in regards to whether the proposed use is a protected Section 3 use should lie with the applicant. In order to qualify for protection under the Dover Amendment, SMNPHC must show that (1) it qualifies as a non-profit educational corporation and (2) its proposed use of the Property is for educational purposes as defined by relevant case law. A showing under the first of these two requirements is relatively easily done and requires no more than providing the Town with proof that it is a corporation and its Articles of Organization permit it to engage in educational activities. Educational activities must be stated as a corporate purpose of the nonprofit corporation, but they do not need to be the primary purpose. See Gardner-Athol Area Mental Health Ass'n v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12, 15-16 (1987). In my opinion, SMNPHC has already provided the Town with the required documentation and therefore meets the first criteria, based on its correspondence with the Building Commissioner.

The second criterion, that the proposed use be an educational use, requires a more complex analysis of varying and intertwined interpretations by the courts. In evaluating this criteria, the courts have used a variety of tests, including their own (somewhat nebulous) definitions of education, dictionary definitions of education, and even considerations of whether the proposed facility meets the requirements for tax exemptions under G.L. c. 59, § 5. See, e.g., Commissioner of Code Inspection of Worcester v. Worcester Dynamy, 11 Mass. App. Ct. 97, 99 (1980) ("Education has been long recognized in the courts of this Commonwealth as a broad and

comprehensive term"); Whitinsville Retirement Society v. Town of Northbridge, 394 Mass. 757, 759 (1985) ("[A]ccording to one of Webster's definitions, [education] is 'to prepare and fit for any calling or business, or for activity and usefulness in life.' 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"); Harbor Schools v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600, 605 (1977) (education means "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"); and Fitchburg Housing Auth. v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 875 (1980) (Education is "the process of developing and training the powers and capabilities of human beings" and preparing persons for activity and usefulness in life").

The Supreme Judicial Court has indicated that "the primary or dominant purpose of the [] facility [s]hould be educational." Whitinsville Retirement Society v. Town of Northbridge, 394 Mass. 757, 760 (1985), citing to Cummington School of Arts, Inc. v. Board of Assessors of Cummington, 373 Mass. 597, 603 (1977). "Merely an 'element of education,' provided not by a formal program or trained professionals, but only informally gleaned from the interplay among residents . . . is not within the meaning of 'educational purpose' pursuant to G.L. c. 40A, § 3." Id. at 761. Notwithstanding this caution, a facility may meet the requirements of an educational use even if it consists of live-in accommodations, primarily serves adults, the subjects taught are not within traditional notions of academic instruction, or the instructors are not certified by the state. See Harbor Schools, *supra*, 5 Mass. App. Ct. at 605; Fitchburg Housing Auth., *supra*, 380 Mass. at 873.

Based on what SMNPHC has provided to the Town to date, as well as what has been offered in the application, it is arguable that the information suggests that the primary purpose of the facility is for drug rehabilitation, not education. However, it is more likely than not that a court would find that a significant component of SMNPHC's proposed use is educational in that it is intended to prepare its residents "for activity and usefulness in life." See Commissioner of Code Inspection, 11 Mass. App. Ct. at 99. The Land Court and the Appeals Court broadly define "educational uses," as noted above. You also should remember in the case of Framingham that the Land Court specifically found that a methadone clinic with an ancillary counseling program satisfied the Dover Amendment requirement of an educational use. See Spectrum Health Sys., Inc. v. Framingham Zoning Bd. of Appeals, 9 LCR 113 (2001).

In conclusion, although it is arguable that SMNPHC's proposed use of the Property is primarily for use as a drug rehabilitation facility with only a secondary educational purpose, it is my opinion that it is more likely than not that a reviewing court would find that the proposed use of the Property as described by SMNPHC would constitute an educational use within the meaning of Section 3. In future instances where the applicant has not already provided so much information to the Town, I would advise that they provide the Town with proof that it is a corporation and that its Articles of Organization permit it to engage in educational activities in addition to the statement of the proposed use and supporting argument as to why the use meets the requirements of Section 3.

"Dedicated to excellence in public service"

3. Which requirements of Section IV.I. Site Plan Review should be considered pursuant to the limitations identified in Section 3 and by the Attorney General?

As a building already exists on 517 Winter Street, which was constructed on the site before the adoption of zoning by the Town, almost all of the above mentioned areas that may be "reasonably regulated" pursuant to Section 3, would no longer be within the scope of regulation by the Town. Even if dimensional deficiencies existed, the property and the associated structure are within the protections afforded by G.L. c. 40A, § 6, where no modification to the structure is proposed.

Because this is a pre-existing structure, this limits the application of site plan review to parking concerns. "[P]arking, as it affects physical conditions on and around an educational use, is a legitimate municipal concern and a proper subject of local zoning regulation." Trustees of Tufts College, 415 Mass. at 762. However, the caution should be made that the lack of a parking plan that fully complies with Framingham's zoning requirements in all respects would not probably be supported by the courts if used to prohibit the use altogether. See Spectrum Health Sys. v. Framingham, *supra*.

Whether the Planning Board should require compliance with the requirements for Traffic Impact and Environmental Impact Assessment and Standards will again depend on the facts of each individual application. However, as the outcome of a dispute over the application of these two provisions to Dover Amendment uses would be uncertain, I would advise that they be applied only if there is a supportable concern regarding these two areas. Again, this burden actually lies with the applicant and it should be stressed that if they can articulate a reasonable argument as to why they should not be applied, these provisions should either be waived or modified to fit the facts as provided.

4. Would the applicant be required to request waivers for the customary requirements?

"[L]ocal officials may not grant blanket exemptions from the requirements to protected uses. . . officials may, however, on an appropriate showing, decide that facially reasonable zoning requirements concerning bulk and dimension cannot be applied to an educational use occupying a particular site because application of the requirements would improperly nullify the protection granted to the use, or because compliance with the requirements would significantly impede an educational use, in either instance without appreciably advancing municipal goals embodied in the local zoning law." Campbell v. City Council of Lynn, 415 Mass. 772, 778 (1993). "The question of the reasonableness of a local zoning requirement, as applied to a proposed exempt use, will depend on the particular facts of each case." *Id.*

"Because local zoning laws are intended to be uniformly applied, an [applicant] will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project." Rogers v. Town of Norfolk, 432 Mass. 374, 383 (2000); Petrucchi v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818, 825 (1998); Campbell v. City Council of Lynn, 415 Mass. 772, 779, fn.9 (1993). An applicant may be able to overcome the application of reasonable

April 6, 2006
Page 6

regulations to its property if it can demonstrate that compliance with these requirements would "substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution's campus, without appreciably advancing the municipality's legitimate concerns." Id.

Case law strongly supports the conclusion that it is the applicant's burden to demonstrate that compliance with applicable reasonable regulations would "substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the institution's [facility], without appreciably advancing the municipality's legitimate concerns." Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 794, 798 (2003). Therefore, SMNPHC, or any other applicant claiming protections pursuant to Section 3, has the burden of establishing that it is a protected use and then to request waivers from those provisions of site plan review that do not appropriately apply because of its protected status.

In the current instance there is an existing conforming structure and continued use of that structure only requires modifications to parking. The structure itself has not been identified for change and the new use is similar in function to the prior use.¹ There are no identified environmental or traffic concerns that have been identified. There does not appear to be any appreciable legitimate concern that would be advanced by requiring these two reviews. The question of the reasonableness of a local zoning requirement, as applied to SMNPHC's proposed use, will depend on the particular facts that they present in their application. Because local zoning laws are intended to be uniformly applied, SMNPHC bears the burden of proving that the local site plan review requirements are unreasonable as applied to its proposed project. As indicated above, SMNPHC might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the property without appreciably advancing the municipality's legitimate concerns. Excessive cost of compliance with a requirement imposed by site plan review without significant gain in terms of municipal concerns, might also qualify as unreasonable regulation of an exempt use. See Petrucci v. Board of Appeals of Westwood, 45 Mass. App. Ct. 818, 825 (1998).

In consideration of the facts as they are known to me, and subject to revision based on the receipt of additional or contrary information, I would advise that the Planning Board limit its site plan review as applied to 517 Winter Street to Parking Impact Assessment and Standards.

¹ The Supreme Judicial Court has indicated in at least one instance that "[o]ur decision does not imply that any nonconforming structure for which an educational use is proposed will necessarily be free from the bulk and dimensional requirements of a local zoning law . . . Local zoning officials properly could refuse a building permit for alterations to a nonconforming structure where, for example, the failure to meet local zoning requirements raised safety concerns." Campbell v. City Council of Lynn, 415 Mass. 772, 779, fn 9 (1993).

5. Should the fee schedule be revised to incorporate a new category of project review?
6. Should the Board follow the normal 35-day review period by Town Departments prior to public hearing since the review is narrower than would be required by Section IV.I. in its entirety?

These two questions are procedural in nature and there is no guiding language in Section 3 or advice from related case law that suggests a Section 3 use should be treated with deference in regards to these issues. As such I would advise that the normal fee structure and review period be applied. Although an applicant might argue that they will not be subject to as lengthy or as intensive review as would uses not protected by Section 3, these applicants pose other legal considerations that may result in equivalent cost or expenditure of time by the Town and the Planning Board that make uniform application reasonable. As an example, it may be necessary for the Planning Board to request an opinion from this office as to whether the proposed use is in actuality a Section 3 use, such as what has occurred in this instance. There may be extra cost and time needed to decide what dimensional regulations or provisions of site plan review apply based on the facts provided by the applicant. Furthermore, it was the intent of the Town in amending Section IV.I.2 to uniformly apply site plan review to all uses. As such it would be in keeping with such intent to uniformly apply all provisions of site plan review to the proposed application of SMNPHC.

CONCLUSION

The language of Section 3 is silent as to the application of site plan review to Dover Amendment uses. However, the Appeals Court has provided some insight into what areas of review are appropriate and are not appropriate. Of these areas, consideration of Fiscal Impacts and Community Impacts has been expressly found to be inappropriate as applied to Section 3 uses. Normally an applicant claiming the protections of Section 3 should be required to prove that it is a corporation and that its Articles of Organization permit it to engage in educational activities, and should be required to provide a statement of the proposed use and supporting argument as to why the use meets the requirements of Section 3 as interpreted by supporting case law. In the current instance, SMNPHC has submitted supporting documentation and would probably be found by a reviewing court to be an educational use within the meaning of Section 3. As the structure that is proposed for use by SMNPHC is a lawful pre-existing structure which was constructed even before the acceptance of zoning by the Town, it appears that only Parking Impact Assessment and Standards are appropriate as applied to the proposed use in question. The courts have established that the burden is on the applicant to establish that a zoning or site plan review regulation should not be applied to a proposed Section 3 use. Therefore, the applicant should be required to request waivers from the customary requirements, except for Fiscal Impact and Community Impact, as consideration of these issues have been expressly precluded by the courts. The fee schedule should not be modified to incorporate a new category of project review and the review period should not be modified as it was the intent of Town Meeting in removing the exemption for Section 3 uses from Section IV.I.2. that such uses be treated uniformly to the extent permissible under law.

2006 01 01 Memo to Planning Board on Site Plan Review for 404 (cc: 3 and 100-105)

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Exhibit 41



FRAMINGHAM PLANNING BOARD

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John W. Grande, AICP, Director
Jessica A. Levengood, Senior Planner
MaryRuth Reynolds, Administrative Assistant

April 7, 2006

James D. Hanrahan, Esq.
Bowditch & Dewey, LLP
161 Worcester Road
Framingham, MA 01701-9320

Re: Site Plan Review for 517 Winter Street

Dear Mr. Hanrahan:

After consultation with Town Counsel, the Planning Board will require Dover Amendment-protected uses to submit waivers from the customary requirements of Site Plan Review, with the exception of the Fiscal Impact and Community Impact Statements, as consideration of those issues has been precluded by the courts. These uses must prove their status as a non-profit educational corporation and that the proposed use of the Property is for educational purposes as defined in relevant case law.

For the project proposed by SMNPHC at the 517 Winter Street location, Town Counsel finds that the materials submitted demonstrate that the applicant constitutes a non-profit educational corporation and that the use would be for educational purposes. Because proposed work activities relate only to the parking concerns and there are no modifications proposed to the existing structure, only the submission of a parking plan and Parking Impact Assessment is required at this point. However, it is essential to note that there remains a burden on the applicant to clearly demonstrate that the submission of other requirements is unnecessary, such as the general site plan review requirements and Environmental and Traffic Impact Assessments

A list of waivers with accompanying justification for each item requested should be submitted. Upon submission of this information, the application will be considered complete and can be filed.

Please contact me at (508) 532-5450 if you have any further questions.

Thank you

Jessica A. Levengood

Jessica A. Levengood
Senior Planner
Framingham Planning Board

cc: Planning Board
Christopher J. Petrim, Town Counsel

Exhibit 42



FRAMINGHAM PLANNING BOARD

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Jessica A. Levensgood, Senior Planner
MaryRuth Reynolds, Administrative Assistant

INTER OFFICE MEMORANDUM

TO: JOSEPH MIKIELIAN
Building Commissioner

FROM: JAY W. GRANDE
Planning Board Director

SUBJECT: Site Plan Review, 517 Winter Street

DATE: June 9, 2006

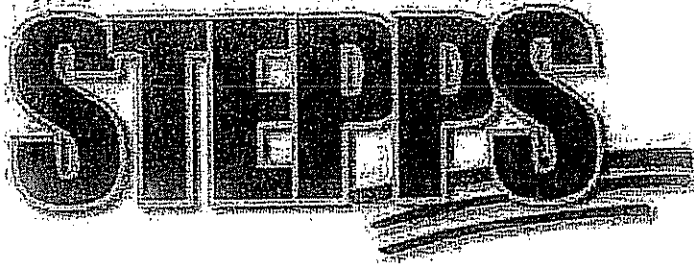
I received your departmental review comments dated May 22, 2006 and request further input from you on this use and the applicability of the Dover Amendment.

- Please be aware that the Applicant has requested certain waivers from the submittal requirements under Site Plan Review from the Planning Board stating the requirements are beyond the scope of a project subject to the Dover Amendment. Town Counsel has provided us with an opinion concerning the applicability of certain elements of the submittal requirements under Site Plan Review for uses under the Dover Amendment. However, additional input from you on the proposed use at 517 Winter Street as it relates to the Dover Amendment will assist the Board in their consideration of the Applicant's requested waivers.

The public hearing is scheduled for June 22, 2006.

cc. Planning Board

Exhibit 43



Town of Framingham
Bldg. Inspections

2006 JUN 12 AM 9:09

Stop Tax Exempt Private Property Sprawl
www.steps.info • info@steps.info

June 12, 2006

Framingham Building Department
150 Concord Street
Room 121
Framingham, MA 01702

Dear Sirs and Madam,

We write to you as interested parties in the upcoming June 22 Planning Board meeting regarding the South Middlesex Non-Profit Housing Corporation's plans to open a family residential drug treatment program (the Sage House) at 517 Winter Street.

In our preparations for this hearing, we have learned that there is confusion inside Town government over how this case will be handled. In particular, we asked three people who would make the official designation that this project would be considered a "Dover project" (i.e. "an educational use protected under M.G.L. Chapter 40A, §3) and whether this could be appealed, and received three different answers. Town Counsel is of the opinion that this designation should be made by the Building Commissioner because this is how the Town has always done it. The Zoning Board of Appeals says if this is true, we can appeal it. The Building Commissioner agrees that he will make the designation, but we might not be able to appeal, and in any even he cannot tell the Planning Board what to do. The Planning Board feels bound to do as Town Counsel advises.

We have read (in the Planning Board's letter to James Hanrahan of the South Middlesex Opportunity Council) that Town Counsel's opinion is that the proposed use is "probably" an educational use protected by the Dover Amendment. We feel that this was a hasty and overly cautious opinion and not in the best interests of the Town. We feel that there is a very strong case to be made that this is not a protected educational use, which must have education as the "primary or dominant purpose" (Whitinsville Retirement Society, Inc. v. Northbridge, 394 Mass. 757, 760), as opposed to a residential use with "incidental educational components" (Julia Ruth House, Inc. v. Board of Appeals of Westwood, 8 LCR 451).

We feel that the burden of proof should be *on the applicant* to show that they are Dover protected, and the clear intent of the new bylaw passed last August requiring all applicants to undergo site plan review was to enforce this burden of proof by having the determination made by the Planning Board in an open public meeting. We urge you, as the policymaking board of the Town, to clarify this situation within the Town and make it clear the Planning Board shall be the body making decisions regarding Dover protection under the new bylaw.

(continued)

Until this situation has been clarified, we believe that the Planning Board meeting on June 22 should be postponed. It is not fair to either party to enter into an official Town deliberation when the rules have not been clearly established.

We also strongly urge you, for the good of Framingham's long term interests, to encourage Town Counsel to reconsider his opinion that the proposed use is a protected educational use.

We feel that we have strong evidence and a very compelling argument that the Dover protections sought by South Middlesex Opportunity Council should not be granted as they do not qualify for this requested protection.

In addition, we are deeply concerned that the Town has been misled by South Middlesex Opportunity Council (SMOC) regarding the issue of licensing for lodging houses, including sober houses, transitional housing, and emergency shelters. The issue of licensing for lodging houses should be addressed immediately.

We recommend the following actions:

1. The Board should move immediately to hire a Human Services Coordinator and join LOSCH, as recommended by both the official PILOT Committee report and the minority report. Having an expert devote full time to this is the only way to ensure further compliance by the social service industry with all Town and state laws. The ability of a corporation to mislead the Town for so long is strong evidence of the pressing need for the Town to hire an expert in the field, in the form of a Human Services Coordinator.
2. The Board should require a lodging house license for the Sage House, proposed for 517 Winter Street, and write to the Planning Board letting them know that this should be a requirement for the granting of any permits. SMOC itself accedes to the fact that Sage House is a lodging house in their own documentation, listing it under their "Sober Housing Continuum" in their response to the Department of Public Health's RFR #601413, Family Residential Substance Abuse Treatment Services (the Sage House).
3. SMOC has at least 26 lodging houses (392 units) in operation in Framingham, of which at least 19 are unlicensed (251 units). The Board should notify SMOC that they are out of compliance with Town law and that they will be issued fines per day, per unit until they are in full compliance with all licensing requirements of the Town.

We would like to arrange a meeting with Mr. Jay Grande, Mr. Joseph Mikielian, Mr. Christopher Petrini and any member(s) of the Board of Selectmen to present our evidence that the program shelter at 517 Winter St. does not qualify as an educational use as defined by M.G.L. C.40A s. 3.

Peter C.S. Adams
(on behalf of STEPPS)

222 Edgewater Drive
Framingham, MA 01702
(508) 872-2972

Exhibit 44



TOWN OF FRAMINGHAM
Inspectional Services Division
Department of Building Inspection
Memorial Building, Room B-10
150 Concord Street
Framingham, Massachusetts 01702-8368

596-00

Joseph R. Mikielian, C.B.O.
Director of Inspectional Services/Building Commissioner

Telephone: 508-532-5500
Fax: 508-628-1382
Email: Building.Dept@FraminghamMa.gov

To: John W. Grande, Planning Board Director

From: Joseph R. Mikielian, Building Commissioner/Director of Inspectional Services *JRM*

Cc: Julian M. Suso, Town Manager
Christopher J. Petrini, Town Counsel
Michael F. Foley, Assistant Director

Re: Site Plan Review, 517 Winter Street

Date: June 13, 2006

On June 12, 2006, the Department of Building Inspection received your memo from the Planning Board regarding the applicability of the Dover Amendment, i.e., Ch 40A, Section 3 Exemption to the upcoming Site Plan review of the Planning Board scheduled for June 22, 2006.

After a review of the applicant's submitted documentation with their building permit application concerning the non-profit status and proposed use as submitted by SMOC attorney Jim Hanrahan, it is my opinion the proposed use of the existing facility at 517 Winter Street would meet the legal standards as an exempt use under the Dover amendment.

Please note that this Zoning Review letter is for informational purposes only and does not supersede any requirements for Permits, Licenses, and Approvals required by any department or agency of the Town of Framingham or the Commonwealth of Massachusetts.

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06 JUN 13 9:50 AM
PLANNING BOARD

Exhibit 45

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Next message, by.. ([Author](#)) ([Date](#)) ([Subject](#)) ([Thread](#))

From "Steven W. Orr" <steveo@syslang.net>

Subject Re: Planning Board Hearing 517 Winter St. June 22, 7:45

Date Tue, 6 Jun 2006 13:49:02 -0400 (EDT)

[Part 1 text/plain US-ASCII (3.0 kilobytes)] ([View Text in a separate window](#))

On Tuesday, Jun 6th 2006 at 12:06 -0400, quoth CFraryRltr@aol.com:

=>

=>In a message dated 6/6/2006 10:18:53 AM Eastern Standard Time,

=>steveo@syslang net writes:

=>

=>Lock'n'load.^H^H^H^H^H^H^H^H^H^HThe public is invited.

=>Regardless of the position that any of us personally take on any issue,

=>I must say that this type of "encouragement" is particularly disturbing

=>to me. Perhaps it's only in my idyllic brain, but are not public

=>hearings supposed to be an opportunity for all members of the public to

=>present any and all viewpoints? If you had what you knew was a minority

=>opinion, would you want to stand up and speak in a room where folks were

=>"locked n' loaded"? It's one thing to be passionate, dedicated and

=>compelled - it's another to be intimidating and uncivil.

Charlene, You're 100% correct and I owe most of you an explanation (in lieu of an apology).

The use of the carat capital H is an old artifact of using the backspace key on old misconfigured computers. It implied execution of the operation of the backspace function without actually removing the offending text. So if you are an old geek like me and you see ^H you know to read it like it's a backspace. (Imagine the coughing scene in Animal House where they're being expelled because they were under double secret probation.)

So for all those people who have no idea what I just said, there was no intent to be intimidating and I would expect people to, as usual, behave in a civil manner. Having said that, I might as well be very clear on where I stand (others may disagree):

<http://steveo.syslang.net/cgi-bin/>

10/16/2007

* SNIOC's attempt to take over 517 Winter as a home for recovering substance abuse cases and their children is a gross abuse of the Dover Amendment and will place a continuing drain on property values in the town in general and the neighborhood in particular. It would further drain the resources of our educational system. The people who would partake of this potential resource would largely be coming from anywhere but Framingham.

* People who go to the Planning Board Hearing should not only behave themselves in an appropriate manner; they should also educate themselves in advance to understand what topics are relevant to this particular Hearing and to speak appropriately. e.g., if the only issue that the Board is legally allowed to focus on is parking then it is a waste of the Board's time to hear people get up and complain about any of the other items I mentioned above.

Charlene, I mention this second point specifically for you. Public Hearings are **not** supposed to be an opportunity for all members of the public to present any and all views. If we can all focus on what the Board is legally charged with then our unpaid volunteer Boards and Commissions have a chance of getting home before midnight without needless wasting of their time.

--

steveo at syslang dot net TMMP1 <http://frambors.syslang.net/>

Do you have neighbors who are not frambors?

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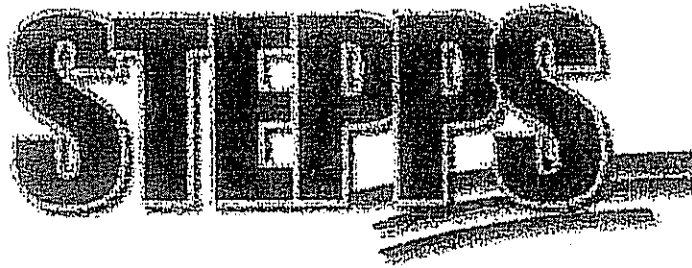
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Exhibit 46

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Exhibit47



*Received
P.B. Mt
9-7-06*

866-04

SMOC Site Plan Comments & Suggestions

517 Winter Street

Planning Board

Town of Framingham

Thursday, September 7, 2006

We apologize for the brevity of this analysis. SMOC waited until the last possible moment to file these documents with the Planning Board, giving little consideration to neighbors' need to examine the plans and respond. This is not surprising, considering their inability to notify the neighbors of their proposed use of the facility until it was already in the newspaper, waiting over a year to hold a neighborhood meeting, and then failing to follow up with a promised second neighborhood meeting.

Given that, it is hardly surprising that SMOC has made no effort in these plans to mitigate their impact on the neighborhood. Following are concerns and questions regarding SMOC's newest plans for 517 Winter Street.

Introduction

In their letter to the Planning Board, SMOC stated that they are "providing, as a courtesy to the Board, [a] proposed interior layout for the Sage House Program. Review of the interior layout of the building is not within the jurisdiction of the Planning Board. [...] The Applicant submits it as a courtesy only, but not as part of the formal submittal to the Planning Board under Site Plan Review."

This attitude is typical of SMOC, and in addition to being condescending, glosses over numerous legal points. The zoning bylaw changes approved by Town Meet-

ing in August 2005 were intended to give the Planning Board purview over all property use in town, whereas before the Board was specifically prohibited from examining so-called "educational" facilities. Town by law section IV.I.1 states that the purpose of site plan review is

To protect health, safety, convenience and general welfare of the inhabitants of the Town by providing for a **review of plans for uses and structures** which may have significant impacts on traffic, municipal and public services and utilities, environmental quality, community economics, and community values in the Town. (*emphasis added*)

Since the Planning Board has clear purview over the uses of a proposed facility, it would be inconsistent with Town law and the best interests of the Town for the Board to neglect the areas of fiscal and community impact. Examination of the interior plans of the facility and all aspects of the proposed use are the only way to do this.

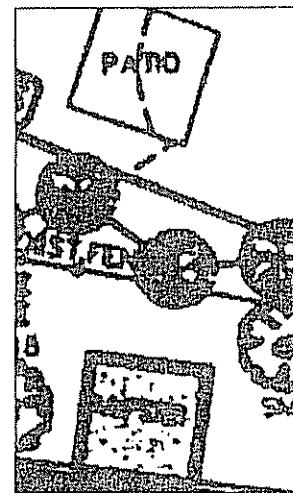
Landscaping

SMOC has made admirable efforts to retain trees, though there would be no logical reason for them to remove any. However, their submitted plan, while noting a tree on the southwest corner of the property, fails to note that it is a rare and historically important Copper Beech and its plans do not properly protect it. This tree extends over Ardmore Road where it curves away from Winter Street. Its size requires large vehicles (such as delivery trucks) to drive on the far side of Ardmore Road to avoid damaging the tree. Currently, residential delivery trucks and school buses travel from the direction of Bexley Road and remain on the correct side of the roadway without damaging the tree.

Facilities

The plan calls for the removal of an existing fence on the north side of the lot abutting property owned by Carney and placing a new fence closer to her home and only a few feet from her outdoor patio. Why has SMOC chosen to move its fence closer to the neighbor when it has no plans for using the space it gains?

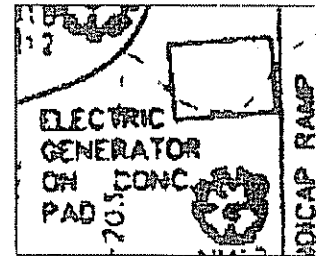
Adjacent to this, SMOC proposes to place a new asphalt pad on the north side of the property between the new driveway and the new fence line and move its dumpster there. What is the nature of the refuse SMOC will place in its dumpster? Is there a public safety issue in addition to the noise and smell



which the dumpster will generate? Why did SMOC choose to move it as close to a neighbor as possible? The new location appears to be less than 35' from the Carney home.

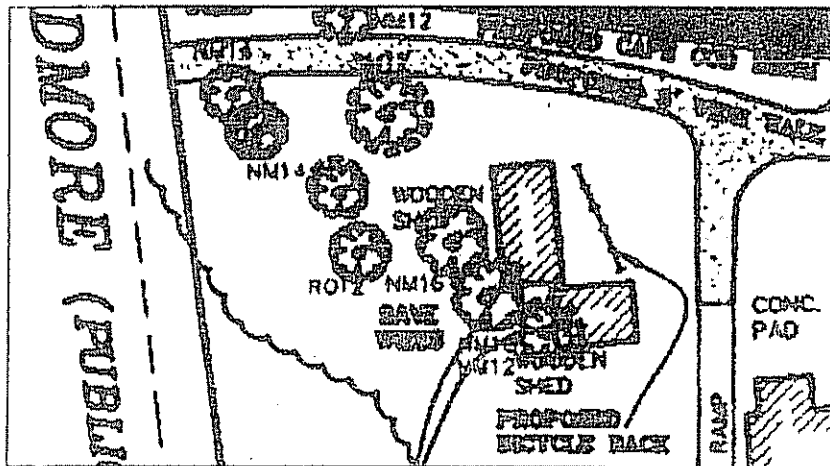
In addition, does the refuse truck have a back-up alarm to further infuse additional noise of a banging dumpster to the neighborhood?

An electric generator has been ^{retained} ~~added~~ on the northwest corner of the facility, facing the neighbors on Ardmore Road. What electrical needs does 517 Winter Street have that require a generator? Why has it been placed in a location near a playground and facing neighbors in closest proximity to the proposed shelter? A more logical location, if allowed at all, would be on the east side of the property.



SMOC's proposed smoking area is on the north side of the building. Leaving aside the propriety of SMOC allowing smoking at a facility for drug addicts, a more logical and appropriate location for this would be on the east side of the property.

SMOC proposes to place a bicycle rack on the north side of the property. Who would make use of this? SMOC has promised that residents of this shelter will not be allowed out of the facility. They also propose to add a new walkway extending from both entrances/exits,



including the north side of the property leading to Ardmore Road. Again, what is the purpose of this if residents are not be allowed out of the facility? What will be the impact of the walkway's use on the neighborhood?

SMOC's proposed children's playground is very close to the abutters properties on the west side of the property. SMOC's estimate of 2-3 children per drug addict means 30-45 children. This will cause additional noise pointed directly at neighbors.

Parking

SMOC proposes to add a new driveway leading to new parking on the north side of the property between the facility and the new fence line. They also propose four new land-banked parking spots immediately next to the new dumpster location. Their plan calls for all new parking to be alongside the north side of the facility, where it will have the most impact on the neighborhood, with only four spots on the front east side of the building. All parking will typically be along the residential north side of the building.

Does their van have a back-up alarm? All deliveries, garbage pickups, etc., will affect the neighbors, as currently configured. The neighbors would like to see the parking, as well as the entrance and exit, moved to the Winter Street (east) side.

Public Safety

There are no fire escapes on the second story of this facility and SMOC has not indicated any plans to add them. This will place an additional burden on Framingham public safety officers to respond urgently in case of fire.

The turning radius for any trucks from Winter Street onto Ardmore Road (from both directions) is too small for large trucks such as hook and ladder trucks needed to rescue residents from the top story. This will also be an issue with the delivery trucks which will be required for the facility, especially when cars on Ardmore are parked in the street or when school children are waiting for a bus. (There is a school bus stop at this location where there are many parents who currently pick up their children as witnessed by the traffic study.) Trucks turning from Winter Street onto Ardmore Road will have to make wide turns, presenting a dangerous safety hazard to school children and parents as well as normal vehicle traffic.

This is not currently an issue in a neighborhood consisting entirely of single family homes.

Ardmore Road and Bexley Road are not very wide, have no divider lines, frequently have cars parked in the road, and were not designed to allow larger trucks to safely turn on the roadways.

Conclusion

As you can see from the attached aerial view of the facility, 517 Winter Street dominates the neighborhood, yet all proposed changes occur at the most crowded section of the property.

All of SMOC's proposed changes are directed at the neighborhood abutters instead of towards more open space on the east side of the property. SMOC is entitled to curb cuts according to the Historic Road by-laws and should set their views on the use of this side of the property. The east side of the property is large enough to handle new entrances and exits along with providing a comfort/noise zone from abutters on Ardmore Road. The parking, children's playground, dumpster, bicycle routes, smoking stations and associated delivery routes would be better suited to be on the east side of the property thereby eliminating noise to the neighborhood.

SMOC needs to make more use of the Winter Street side of the property for the uses indicated above.

In addition, the Planning Board should request detailed information on hours and programmatic use of the facility in order to determine accurate trip generation statistics, including client visits to the methadone clinic. Another, more detailed, traffic analysis should be required. This is the only way to determine the noise and public safety impacts of the facility.



Almost all of
SMOC's additions
are concentrated
in this area.

Best placement
for entrance

Best placement
for exit



517 Winter Street (aerial view)

Exhibit 48

1
2
3
4

Planning Board Minutes Thursday September 7, 2006

5
6
7

Memorial Building
150 Concord Street, Ablondi Room

8 Those present: Ann Welles, Chair, Sue Bernstein, Carol Spack, Clerk, Andrea Carr-
9 Evans and Tom Mahoney. Also present: Jay Grande

10
11 Meeting was called to at 7 30 pm

12
13 Reading of agenda by Chair

14
15
16 I. Occupancy Permit for Melting Pot

17 In attendance was Melting Pot owner, Mike Stead. Suggestions for
18 additional plantings were made by Ed Fuller. *Sue Bernstein moved to*
19 *recommend a permanent occupancy permit. Tom Mahoney seconded*
20 *the motion. The vote was 5 in favor and 0 opposed.*
21 Jay will follow up with Descenza
22

23 II. Continued Public Hearing for Site Plan Review Approval and Public
24 Way Access Permit for 517 Winter Street, South Middlesex Non-
25 profit Housing Corp., The Sage House.

26 Tom Mahoney will not be sitting in because of the potential appearance of
27 a conflict due to his wife's professional association with SMOC

28 Discussion on changes: to the entrances to increase the curb radii, the 17
29 parking spaces that were shown which included 4 land-banked parking
30 spaces, the relocation of the dumpster and playground areas. Lighting
31 potentially for parking and entrance were also addressed. The Board will
32 need to follow up with Fire Dept. concerning reducing the driveway
33 entrance width.

34 Resident concerns were: Tom O'Neil, Precinct 8. Standing Committee on
35 Planning and Zoning inquired about the driveway dimension criteria. Ellen
36 Casey, Ardmore Road was concerned about lack of lighting in the parking
37 lot - thought lights should be on a motion sensor. Kathy Vassar, Precinct
38 1, noted that the appearance of that property has deteriorated enormously
39 since ownership change. Larry Hendry, Ardmore Road, noted dumpster
40 problem, emptied at 5 am, and that lots of stuff was being dumped weekly
41 in the dumpster by SMOC trucks. There was general concern about
42 deliveries to the property and how delivery trucks would be scheduled.
43 Cynthia Laurora, felt that the proposed use was more intensive. She also

1 thought they should push for curb cuts out on Winter Street and wondered
2 if there were any guarantees that no other activities will be added to this
3 facility and to take into consideration further development of 4 ANR lots
4 Mr. Silverman felt that this was inappropriate site for a facility of this
5 kind, etc. The applicant will need an application for A Public Way Access
6 Permit; show bike racks added to the plans and determine ownership of
7 existing fence. Clarification needs to be received by the Board from the
8 Building Commissioner that the use is entitled to be considered an
9 educational use and what basis was used to determine Dover Amendment
10 status.

11 *This hearing was continued to 7:35 pm on October 12, 2006.*
12

13 **III. 159 Prospect Street Reconsideration**

14 *Andrea Carr-Evans moved to reconsider the vote to closed the hearing*
15 *for 159 Prospect Street. Carol Spack seconded the motion. The vote was*
16 *1 in favor and 3 opposed and 1 abstention (Carol Spack)*
17

18 **IV. Continued Public Hearing for Definitive Plan Review for Planned unit**
19 **Development, entitled Sudbury River Landing, off RiverPath Drive**
20 **and Danforth Street, Pulte Homes of New England**

21 In attendance were Ted Gowdy, Peter Barbieri, Architect, Dave Griffin.
22 Michael Davis of Bergmeyer Associates. The Board discussed
23 Architecture and site design. Resident comments, Linda Segal, was
24 concerned that the Wellington was the closest to conservation area. Norma
25 Schulman was concerned with lack of diversity of buildings
26 *This hearing was continued to September 21st at 9 pm*
27

28 **a. Miscellaneous Administrative**
29

30 a. Petsmart sign review ~ Sue Bernstein moved to approve the
31 front sign for Petsmart as shown by Kieffer for store 1582. Andrea
32 Carr-Evans seconded the motion. The vote was 5 in favor and 0
33 opposed.

34 Sue Bernstein moved to approve rear sign for Pethotel except
35 that the sign shall be black and amended sign detail submitted to
36 Jay for administrative approval. Andrea Carr-Evans seconded
37 the motion. The vote was 5 in favor and 0 opposed.

38
39 { Andrea Carr-Evans moved to conduct Board business after 11:00 pm }
40 { Tom Mahoney seconded the motion. The vote was 5 in favor and 0 }
41 { opposed }

42
43
44 b. Construction extension for Wayside and Doeskin ~
45 Discussion ensued, noted that they are subject to new bond

1 estimate and they should be supplemented accordingly.
2 Wayside Circle, Tom Mahoney moved to extend to September 30,
3 2007 subject verification of bond estimate and supplement as
4 necessary Sue Bernstein seconded the motion. The vote was 5 in
5 favor and 0 opposed
6

7 Carter Drive Doeskin II, Tom Mahoney moved to extend to
8 September 30, 2007 subject to verification of bond estimate and
9 supplement as necessary Sue Bernstein seconded the motion
10 The vote was 5 in favor and 0 opposed
11

12 c Jay needs to send a letter to ZBA in opposition to variance
13 requested for sign at Trolley Square Plans should not have been
14 accepted since the plans do not show dimensions of the variance
15 applied for Specific intent of the sign by-law is that variances
16 granted in rare incidences

17 *Sue Bernstein moved to send a letter in opposition to the*
18 *requested variance. Carol Spack seconded the motion. The vote was*
19 *4 in favor, 1 abstained.*
20

21 V. Meeting Adjournment

22 *Andrea Carr-Evans moved to adjourn. Carol Spack seconded the*
23 *motion. The vote was 5 in favor and 0 opposed. The meeting adjourned*
24 *at 12:05 a.m.*

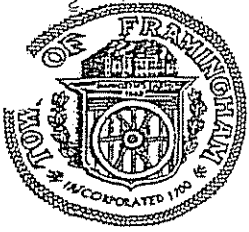
25
26 Respectfully submitted,
27 Mary Reynolds
28 Recording Secretary
29

30 ****THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE**
31 **PLANNING BOARD MEETING OF JULY 19, 2007.**
32

33
34 Ann V Welles, Chair
35

Exhibit 49

896-02



FRAMINGHAM PLANNING BOARD

MEMORIAL BUILDING • ROOM B-37 • 150 CONCORD STREET • FRAMINGHAM, MA 01702-8373
TELEPHONE [508] 532-5450 • FAX [508] 872-0523 • EMAIL: planning.board@framinghamma.org

Planning Board Members:

Ann V. Welles, Chair
Thomas F. Mahoney, Vice Chairman
Carol J. Spack, Clerk
Andrea Carr-Evans
Susan P. Bernstein
Sidney Gorovitz, Associate Board Member

Planning Board Staff:

John W. Grande, AICP, Director
Jessica A. Levengood, Senior Planner
MaryRuth Reynolds, Administrative Assistant

INTER OFFICE MEMORANDUM

TO: JOSEPH MIKIELIAN
Building Commissioner

FROM: JAY W. GRANDE
Planning Board Director

SUBJECT: Site Plan Review, 517 Winter Street

DATE: September 18, 2006

At the continued public hearing for 517 Winter Street (The Sage House) at the September 7th Planning Board Meeting, the Board requested me to find out how your office verified that the use was exempt under MGL c.40A, §3. Further, the Board would like to know how you will monitor The Sage House in the future to determine that the use remains exempt or not.

The continued public hearing is scheduled for October 12th.

cc. Planning Board

Exhibit 50



TOWN OF FRAMINGHAM
Inspectional Services Division
Department of Building Inspection
Memorial Building, Room 203
150 Concord Street
Framingham, Massachusetts 01702-8368

Joseph R. Mikielien, C.B.O.
Director of Inspectional Services/Building Commissioner

Telephone. 508-532-5500
Fax: 508-628-1362
Email: Building.Dept@FraminghamMa.gov

To: Christopher J. Petrini, Town Counsel

From: Joseph R. Mikielien, Building Commissioner/Director of Inspectional Services *JRM*

Cc: Julian M. Suso, Town Manager
John B. Grande, Planning Board Director
Michael F. Foley, Assistant Director

Date: September 21, 2006

Re: Planning Board memo

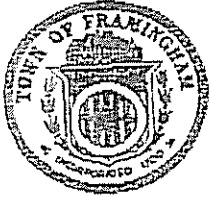
I have attached a memo from Jay Grande, Planning Board Director regarding the Planning Board's request to provide information regarding how the Building Inspection Department would monitor the proposed Sage House for compliance under MGL c.40A, Sec. 3 on a continuing basis. This project is currently under review by the Framingham Planning Board under the recently amended Zoning By-Law.

I have serious concerns about the legality of any monitoring process that could appear to discriminate against social services agencies and any long-term ramifications to the Town of Framingham. Could any monitoring review be allowed that does not also include every facility and use that receives similar protection, e.g. Churches, Schools, etc. under the Dover amendment?

In addition, if all currently exempt facilities were monitored, a substantial increase in inspectional staff would be required to perform this monitoring that to the best of my knowledge is not performed by any other inspectional service in the State.

Due to the unique nature of their request, I am requesting your opinion as Town Counsel on this matter before their next scheduled public hearing on this project, October 12, 2006.

Exhibit 51



TOWN OF FRAMINGHAM
Massachusetts
Office of the
TOWN COUNSEL
Christopher J. Petrini

Town Office:
Office of the Town Council
Memorial Building
150 Concord Street, Room 127
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The Meadows
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Facsimile (508) 665-4313
E-mail: cpetrini@petrinilaw.com

MEMORANDUM

To: Joseph R. Mikielian
Building Commissioner

From: Christopher J. Petrini
Town Counsel

cc: Board of Selectmen
Planning Board
Julian M. Suso, Town Manager
John W. Grande, Planning Board Director
Michael Foley, Assistant Building Commissioner
Barbara J. Saint André, Esq., Petrini & Associates, P.C.

Date: September 29, 2006

Re: 517 Winter Street – Response to Your September 21, 2006 Request for an Opinion
re the Planning Board Director's September 18, 2006 Memorandum Seeking
Information Regarding Verification and Monitoring of Dover Amendment Uses for
Sage House

INTRODUCTION

You have requested an opinion as to a September 18, 2006 inquiry you received from the Planning Board relative to the proposed use of 517 Winter Street as the Sage House, to be operated by South Middlesex Opportunity Council ("SMOC"). The Planning Board is currently holding a public hearing on a site plan review application from SMOC to change the existing use of 517 Winter Street from a nursing home to a non-profit educational use group facility. Namely, SMOC states that it wishes to use 517 Winter Street as a facility to house, educate and train individuals recovering from substance abuse, and their families. Based on materials and information provided by SMOC previously, including Articles of Incorporation and a description of the proposed program to be operated at the Sage House, you previously determined that the

September 29, 2006
Page 2

proposed use of 517 Winter Street is an educational use within the exemption of G.L. c. 40A, sec. 3, the so-called "Dover Amendment." In a September 18, 2006 memorandum from the Planning Board Director, the Planning Board inquired as to how your office verified the proposed use was an exempt educational use, and further asked how your office planned to monitor the Sage House in the future to determine that the use remains exempt. You have requested an opinion as to the legality of a monitoring program directed at a social services agency operating an exempt educational use, and whether any such monitoring program would have to be applied to all educational and religious uses exempt under G.L. c. 40A, sec. 3, including schools and churches.

For the reasons described below, it is my opinion that the establishment by you as the Town's zoning enforcement officer of a program for monitoring the Sage House for compliance with the Zoning Act and Zoning By-law, could subject the Town to potential liability for violation of the Federal Fair Housing Act, and potentially other federal and state laws prohibiting discrimination. In my opinion, the procedure for enforcing compliance with zoning should be uniform with respect to all properties in town. Thus, even if you were to establish a program for monitoring all exempt religious and educational uses, but not all other uses in town, the fact that other exempt uses in addition to the Sage House were subject to specialized monitoring would not cure the potential for discrimination claims. Nothing in this opinion would prevent your office from continuing to investigate citizen complaints as they arise regarding zoning uses for particular uses, or for potential violations of the nuisance bylaw, as your office has routinely done in the past, both for Dover-protected uses and non-Dover protected uses.

ANALYSIS

As Building Commissioner, you are charged with enforcing the provisions of the Zoning By-law under Section V.A.1. As set forth in prior opinions, the Building Commissioner is charged under Chapter 40A with determining whether a use or proposed use has satisfied the requirements of the Dover Amendment. Section V.A.1. of the By-law provides with respect to enforcement:

If the Building Commissioner shall be informed or has reason to believe that any provision of this By-Law or of any permit or decree thereunder has been, is being, or is likely to be violated, he shall make or cause to be made an investigation of the facts, including an inspection of the property where the violation may exist, and, if he finds any violation, he shall give immediate notice in writing....

There currently is no provision in the By-Law providing for ongoing "monitoring" of properties throughout the town to ensure that no zoning violations are occurring. In my opinion, there is no basis for concluding that nonprofit educational organizations are any more "likely" to violate the Zoning By-laws than any other entities in town, and therefore Section V.A. provides no support for the establishment of a monitoring program. As noted below, however, the Building Commissioner is allowed and required under Section V.A.1. to investigate a complaint that the Zoning By-Law has been or is being violated, so long as Dover-protected uses are not targeted or treated differently than other uses.

September 29, 2006

Page 3

Establishing a procedure for periodic monitoring or inspection of certain educational uses, such as the proposed Sage House, without establishing a similar monitoring program for other non-protected uses, could be deemed to violate the federal Fair Housing Act ("FHA") if challenged in court. See 42 USC §3604(f). The FHA makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a handicap of that person or a person residing in or intending to reside in the dwelling. This provision prohibits local zoning decisions and practices which discriminate against those with a handicap. See Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775 (2002). In addition, the Americans with Disabilities Act and the Federal Rehabilitation Act also prohibit a town from zoning practices which discriminate against handicapped persons.

"Handicap" is broadly defined under the FHA to include a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such impairment, or being regarded as having such an impairment. See 42 USC §3602(h). Persons recovering from alcohol and drug addiction, who are no longer using illegal drugs, are considered to be within the definition of "handicapped". Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179 (E.D.N.Y. 1993).

Under the FHA, exempt educational uses which include a residential component and which provide services to handicapped persons, as defined by the Act, may not be discriminated against by a municipality by virtue of that handicap in zoning decisions and practices. In my opinion, the singling out of one educational use, or even an entire category of educational and/or religious exempt uses, for increased monitoring for potential zoning violations, could be viewed as a form of prohibited discrimination.

Apparently the question of Dover Amendment verification and ongoing monitoring arose during the Planning Board's Site Plan Review for the Sage House under Section IV.I of the Zoning By-law. The scope of the Planning Board's review of an exempt educational use under this section is limited. The Town amended the Site Plan Review By-Law at the August, 2005 Special Town Meeting, deleting language which specifically exempted Dover-protected uses. Although the By-Law amendments were approved by the Office of the Attorney General pursuant to G.L. c. 40, sec. 32 as valid on their face, the Attorney General's November 16, 2005 approval letter specifically cautioned the Town on pages 4 and 5 that the Town may not apply the Site Plan requirements in violation of the protections accorded under the Dover Amendment. A copy of the Attorney General's letter is attached hereto as Exhibit A. If the Planning Board interprets the limited site plan review it is entitled to conduct under Section IV.I. to permit it to conduct an inquiry as to whether the facility is entitled to Dover Amendment protection, such an inquiry would run afoul of the Attorney General's caution and could result in the imposition of liability against the Town if challenged in court.

In addition, in a memorandum dated April 6, 2006, I responded to a number of questions from the Planning Board as to the allowed scope of its Site Plan Review for exempt uses. A copy of my April 6, 2006 Memorandum is attached as Exhibit B. As the attached memorandum

September 29, 2006
Page 4

explains in detail, the scope of the Planning Board's review is limited by G.L. c. 40A, §3. As set forth in the memorandum, with regard particularly to the Sage House, the scope of review is limited to Parking Impact Assessments and Standards and possibly Traffic Impact and Environmental Impact Assessment (upon the showing of demonstrated concerns in these areas), as no exterior changes are contemplated to the existing structure. See Exhibit B, p. 5.

Violations of the federal statutes discussed herein would result in an award against the Town for damages, treble damages, attorneys' fees, costs, and injunctive relief. As you are aware, there presently are two civil rights lawsuits pending in the United States District Court against the Town, one involving the denial of a public way access permit to Wayside Youth and Family Services and the second involving the denial of special permits to Great Brook Valley Health Center to establish a health center in downtown Framingham. This office and/or counsel appointed by the Town's insurer, Massachusetts Interlocal Insurance Association ("MIIA"), will vigorously defend the Town and its positions in these lawsuits. If either of these lawsuits is successful, however, they will result in the imposition of substantial liability against the Town. It is unclear whether insurance coverage will be available to indemnify the Town against any judgment, damages or attorney's fees that may be issued against the Town in either of these actions, as MIIA has issued a reservation of rights letter in the Wayside case disclaiming coverage and so far has not agreed to assume the defense of the Town in the GBVHC civil rights lawsuit.

Nothing in this opinion would prevent your office from continuing to investigate citizen complaints for enforcement under Section V.A.1. as they arise regarding zoning uses for particular uses, or for potential violations of the nuisance bylaw, as your office has routinely done in the past, both for Dover-protected uses and non-Dover protected uses. The Building Commissioner has investigated citizen complaints regarding claimed zoning violations or violations of the nuisance bylaw for a number of years as one of his/her core functions. The Building Commissioner and the Department of Inspectional Services can continue to investigate such requests for enforcement and act accordingly, so long as such investigations are conducted in a non-discriminatory fashion, regardless of whether or not the complaints pertain to a Dover-protected use or to a use not protected by the Dover Amendment. Needless to say, the Building Commissioner or the Town cannot use its zoning investigatory function as a proxy or other means to discriminate against Dover-protected uses. The key touchstone in the analysis is that protected and non-protected uses are treated the same way by the Department.

I hope this opinion is of assistance to you and answers the questions you have raised. If you or Mr. Foley has any questions regarding the foregoing, please do not hesitate to contact me. Thank you.

Exhibit 52

*Privileged and Confidential
Attorney-Client Communication/Work Product*

Memo

To: Framingham Planning Board

From: James D. Hanrahan, Esq.
Marisa L. Pizzi, Esq.

Date: October 5, 2006

Re: South Middlesex Non-Profit Housing Corporation
517 Winter Street, Framingham, Massachusetts

South Middlesex Non-Profit Housing Corporation ("SMNPHC") submits this Memorandum in support of its Application for Site Plan Review with respect to the property located at 517 Winter Street, Framingham, Massachusetts (the "Property"). Specifically, SMNPHC submits this Memorandum in response to questions raised at the Planning Board's public hearing on September 7, 2006 regarding the Planning Board's ability to seek additional information regarding the status of SMNPHC's proposed use as an educational use under G.L. c. 40A, § 3, the Dover Amendment, and the future monitoring of that use by the Building Commissioner.

Factual Background

1. SMNPHC's Change of Use Application and Building Commissioner's Denial

On July 12, 2005, SMNPHC submitted a Change of Use Application (the "Application") for the Property to the Building Commissioner. According to records of the Town of Framingham, the prior use of the Property as a nursing home was considered an I-2 use pursuant to 780 C.M.R. 308.3. In connection with the Application, SMNPHC described its intended educational use of the Property and sought to change the use category of the Property from an I-2 use to an R-2¹ on the grounds that this was the most appropriate category for SMNPHC's use.

¹ 780 C.M.R. 310.4 describes an R-2 use as follows: "all multiple dwellings having more than two dwelling units, except as provided for in 780 C.M.R. 310.5 for multiple single dwelling units, and shall also include all boarding houses in similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(See Letter from Bowditch & Dewey, LLP to Building Commissioner dated July 12, 2005 attached hereto as Exhibit A).²

COPY
in pertinent

On August 11, 2005, the Building Commissioner denied the Application, in pertinent part, because the Building Commissioner determined that SMNPHC's proposed use of the Property required Site Plan Review pursuant to § § III.A.1.i and IV I.2 of the Town of Framingham Zoning By-law (the "By-law"), as amended.³ (See Letter from Building Commissioner to SMNPHC dated August 11, 2005 attached hereto as Exhibit C).

2. The Attorney General's Directive Regarding Site Plan Review of Uses Protected by the Dover Amendment and SMNPHC's Application for Site Plan Review.

By letter dated November 16, 2005 to the Town of Framingham, the Attorney General, in its review of the Zoning By-law Amendments adopted at the Framingham Special Town Meeting, convened on August 3, 2005, issued the following directive:

As stated in more detail above, G.L. c. 40A, § 3, provides exemptions for the use of land or structures for religious purposes and educational purposes. While Section IV I.2 no longer expressly exempts uses protected under G.L. c. 40A, § 3, any application of the site plan review process to such uses may only be applied to the extent allowed under G.L. c. 40A, § 3, 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. It is only in those instances in which site plan review may be utilized...we caution the town that it may need to modify its site plan requirements and process in order to avoid a challenge that the town is applying unreasonable regulations to a protected use. For example, requiring the submittal of a lengthy, detailed site plan application or requiring an application to wait nine to twelve months for a site plan review may be found to be an unreasonable regulation of a protected use, and thus, inconsistent with G.L. c. 40A, § 3. (Emphasis added).

(A true and accurate copy of the Attorney General's November 16, 2005 letter is attached as Exhibit D).

Accordingly, on January 11, 2006, SMNPHC submitted its Application for Site Plan Review to the Building Commissioner for purposes of seeking the Building Commissioner's

² At the Building Commissioner's request, SMNPHC provided the Building Commissioner with a more detailed description of its intended educational use of the Property by letter dated August 19, 2005 (See Letter from Bowditch & Dewey, LLP to Building Commissioner dated August 19, 2005 attached hereto as Exhibit B).

³ At the time of the Building Commissioner's determination, the Attorney General had not yet approved the By-law amendments. SMNPHC appealed the Building Commissioner's denial of its Change of Use Application to the Zoning Board of Appeals on or about September 9, 2005, but subsequently withdrew its appeal after the Attorney General approved the majority of the By-law amendments.

determination pursuant to Section IV.L(4)(a) of the By-law as to the pertinent sections of the By-law applicable to Site Plan Review for a change of use to a non-profit educational use subject to the provisions of G.L.c. 40A, § 3.

COPY

3. Town Counsel Issues Legal Opinion to Planning Board Regarding SMNPHC's Site Plan Review Application.

On April 6, 2006, Town Counsel issued a Memorandum to the Planning Board in response to certain questions posed by the Planning Board regarding SMNPHC's Site Plan Review Application. In relevant part, Town Counsel advised the Planning Board as follows:

- ...it is my opinion that it is more likely than not that a reviewing court would find that the proposed use of the Property as described by SMNPHC would constitute an educational use within the meaning of Section 3

...I would advise that the Planning Board limit its site plan review as applied to 517 Winter Street to Parking Impact Assessment and Standards.

(A true and accurate copy of Town Counsel's Memorandum is attached as Exhibit E).

4. Building Commissioner Determines that SMNPHC's Proposed Use is Educational Within the Meaning of the Dover Amendment.

By Memorandum dated June 13, 2006 from the Building Commissioner to the Planning Board, the Building Commissioner made the following determination regarding SMNPHC's proposed use:

After a review of the applicant's submitted documentation with their building permit application concerning the non-profit status and proposed use as submitted by SMOC attorney Jim Hanrahan, *it is my opinion the proposed use of the existing facility at 517 Winter Street would meet the legal standards as an exempt use under the Dover Amendment.* (Emphasis added).

(A true and accurate copy of the Building Commissioner's June 13, 2006 Memorandum is attached as Exhibit F).

5. Planning Board Raises Dover Amendment Questions at Public Hearing.

Despite the Building Commissioner's determination that SMNPHC's proposed use is educational under the Dover Amendment and Town Counsel's well documented opinion, the Planning Board nonetheless raised certain questions at its public hearing on September 7, 2006 regarding its ability to seek additional information on the status of SMNPHC's proposed use as an educational use and the future monitoring of that use by the Building Commissioner.

In a Memorandum from Jay W. Grande, Planning Board Director, to Joseph Mikelian, Building Commissioner, dated September 18, 2006, the Planning Board made the following request:

COPY

At the continued public hearing for 517 Winter Street (The Sage House) at the September 7th Planning Board Meeting, the Board requested me to find out how your office verified that the use was exempt under MGL c.40A, §3. Further, the Board would like to know how you will monitor The Sage House in the future to determine that the use remains exempt or not.

(A true and accurate copy of the Planning Board Director's September 18, 2006 Memorandum is attached hereto as Exhibit G)

ARGUMENT

I The Building Commissioner's Determination that SMNPHC's Proposed Use is Protected by the Dover Amendment Cannot be Challenged.

As the Town of Framingham's zoning enforcement officer, the Building Commissioner is vested with the authority to determine whether SMNPHC's proposed use is an allowed use under the By-law or by statute. G.L. c. 40A, § 7.⁴ Any person aggrieved by the Building Commissioner's decision, including the Planning Board, may appeal to the Zoning Board of Appeals within thirty (30) days from the date of the order or decision which is being appealed. G.L. c. 40A, §§ 8, 15.⁵ Compliance with this statutory procedure is "jurisdictional," and failure to file a timely appeal deprives the Zoning Board of Appeals of the power to hear it. Greely v. Zoning Board of Appeals of Framingham, 350 Mass. 549, 551-552 (1966).

On June 13, 2006, in a written memorandum to the Planning Board, the Building Commissioner determined that SMNPHC's proposed use is protected by the Dover Amendment (See Exhibit F). In order for the Planning Board to challenge the Building Commissioner's decision, it was required to appeal the Building Commissioner's decision to the Zoning Board of Appeals within thirty (30) days, or by July 13, 2006, which the Planning Board failed to do. The Planning Board cannot now second guess or unilaterally reverse the Building Commissioner's decision. In the absence of a timely appeal of the Building Commissioner's decision to the Zoning Board of Appeals, the Building Commissioner's decision is binding.

In addition, Town Counsel has directly advised the Planning Board that a reviewing court would likely find that SMNPHC's proposed use of the Property constitutes an educational use within the meaning of the Dover Amendment. (See Exhibit E). The use at issue is virtually

⁴ G.L. c. 40A, § 7 states, in pertinent part, that "[t]he inspector of buildings, building commissioner or local inspector... shall be charged with the enforcement of the zoning ordinance or by-law..."

⁵ G.L. c. 40A, § 8 provides, in relevant part, that "[a]n appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by... any person including an officer or board of the city or town... aggrieved by an order or decision of the inspector of buildings..." G.L. c. 40A, § 15 requires that such an appeal "shall be taken within thirty days from the date of the order or decision which is being appealed." Under Section V D 2 a of the By-law, the Zoning Board of Appeals is empowered to hear and decide appeals in accordance with G.L. c. 40A, § 8.

identical to the uses that Massachusetts courts have found to be protected under the Dover Amendment. See, e.g., Watros v. Greater Lynn Mental Health and Retardation Association, Inc., 421 Mass. 106 (1995) (proposed use of barn as a residence for three mentally handicapped adults is protected use for educational purpose); Campbell v. City Council of Lynn, 415 Mass. 722 (1993) (group residence for elderly and mentally ill persons is educational use); Gardner-Athol Area Mental Health v. Zoning Board of Appeals, 401 Mass. 12 (1987) (residential care facility for adults with mental disabilities which teaches daily living and vocational skills to prepare residents for independent living is educational use); Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869 (1980) (facility that houses adults with mental difficulties and trains residents for independent living is engaged in educational purpose); Brockton Coalition for Homeless v. Tonis, 17 Mass. L. Rep. 554 (2004) (renovation of former nursing home to operate temporary shelter for homeless families is educational); Spectrum Health Systems, Inc. v. Framingham Zoning Board of Appeals, 9 LCR 113 (2001) (facility providing treatment, counseling and educational services for persons with mental health and substance abuse problems is educational use); Caldeira v. Zoning Board of Appeals for the City of Taunton, 3 LCR 195 (1995) (home for adolescent victims of sexual and/or physical abuse is educational use); Congregation of the Sisters of St. Joseph of Boston v. Town of Framingham, 2 LCR 125 (1994) (facility that combines housing with training for single mothers, AID's counseling, and assistance to homeless families recovering from addiction is educational use).

The Planning Board's continued efforts to question SMNPHC's proposed educational use and request that the Building Commissioner monitor the use in the future, as demonstrated by the Planning Board's recent September 18, 2006 Memorandum (see Exhibit G), exceed the Planning Board's jurisdictional limits. The Planning Board does not have the authority to make any determinations regarding SMNPHC's proposed educational use and may not question the Building Commissioner's determination where the time to do so has passed. The Planning Board's request for additional information regarding SMNPHC's proposed educational use is well beyond the scope of its authority and suggests a discriminatory animus toward SMNPHC and the people it intends to serve at the Sage House.

In addition, SMNPHC is not aware of any other single instance in which the Planning Board has directly asked the Building Commissioner to monitor a use to determine its compliance with the use provisions of the By-law. The monitoring of such uses is exclusively within the Building Commissioner's jurisdiction as zoning enforcement officer and the Planning Board's request, at a minimum, raises serious questions as to whether SMNPHC's project is being treated in a discriminatory manner.

II. The Planning Board May Reasonably Regulate, But May Not Prohibit, SMNPHC's Proposed Use

It is well-settled that "pure" site plan approvals, not requiring the issuance of a special permit, involve the "regulation of a use rather than its prohibition." Y.D. Dugout, Inc. v. Board of Appeals of Canton, 357 Mass. 25, 29-31 (1970). In fact, there are two limited grounds for outright denial of site plan approval. First, "[a] board may lawfully reject a site plan that fails to furnish adequate information on the various considerations imposed by the by-law as conditions of the approval of the plan." Prudential Insurance Company of America v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278, 283, n. 9 (1986). Second, there may be cases in which the "site plan as proposed may be so intrusive on the interests of the public in one regulated aspect or another that rejection by the board would be tenable." Id. This is consistent with the By-law's

Site Plan Review provision, which contains identical language with respect to the Planning Board's authority to disapprove a site plan. See, Section IV.I.7.c. of the By-law.

COPY

The limitation on the Planning Board's authority to deny site plan approval is especially true of uses protected under the Dover Amendment. With respect to Dover Amendment uses, a municipality is limited to the application of "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." G.L. c. 40A, § 3. The Attorney General correctly directed the Town that site plan review may only be applied to check for compliance with the reasonable regulations enumerated in the Dover Amendment. (See Exhibit D)

In the instant case, SMNPHC has furnished the Planning Board with the necessary information under the By-law and the proposed site plan is in no way intrusive on the public interest. SMNPHC does not propose any physical changes to the Property and has provided the Planning Board with a Parking Plan, which sets forth the compliance of the existing building on the Property with the dimensional requirements of the By-law, and also sets forth the proposed parking. Parking is the only legitimate area that the Planning Board may reasonably regulate. Even Town Counsel has acknowledged the limited nature of the Planning Board's review in the instant case and has specifically advised the Planning Board that the application of Site Plan Review is limited to parking concerns:

In the current instance, there is an existing conforming structure and continued use of that structure only requires modifications to parking. The structure itself has not been identified for change and the new use is similar in function to the prior use. There are no identified environmental or traffic concerns that have been identified. There does not appear to be any appreciable legitimate concern that would be advanced by requiring these two reviews.⁶

In consideration of the facts as they are known to me, and subject to revision based on the receipt of additional or contrary information, *I would advise that the Planning Board limit its site plan review as applied to 517 Winter Street to Parking Impact Assessment and Standards.* (Emphasis added)

(See Exhibit E, pg. 6).

III. Federal Law Prohibits Municipalities from Discriminating Against Persons with Disabilities Through Land Use and Zoning Decisions and Regulations.

The Fair Housing Act (42 U.S.C. § 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3604(f) (collectively, the "Fair Housing Act") protects persons such as those SMNPHC plans to serve at the Sage House from discriminatory exclusion from housing opportunities. The law defines discrimination to include not only traditional

⁶ As Town Counsel also correctly notes, the governing case law on the Dover Amendment precludes application of the Fiscal Impact and Community Impact Standards of the By-law. (See Exhibit E, pg. 2).

discriminatory practices, but also "refusal to make reasonable modifications in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use or enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). This provision implements the Act's ban on discrimination against those with a handicap applicable to local land use and zoning decisions and practices, as Congress intended:

The Act is intended to prohibit the application of special requirements through land use regulation, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land use in a manner which discriminates. . . Such discrimination often results from false or overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.

H.R. Rep. No. 711, 100th Congress, 1st Sess. 18, 24 (1988); see also, Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775 (2002) (City failed to provide a reasonable accommodation when it refused to grant to group home for six developmentally disabled individuals, a variance from the requirement in its zoning code that prohibits the siting of such facilities within 2,500 feet of each other); Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179 (1993) (Town failed to make reasonable accommodation when it refused to modify the definition of "family" in its zoning code to include recovering alcoholics and drug addicts living together in a group home).

Individuals recovering from alcohol and drug addiction, who are no longer engaging in the illegal use of drugs, have been determined to be "handicapped" under the Fair Housing Act. See, Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 11882 (E.D.N.Y. 1993) ("[I]t is well established that individuals recovering from drug or alcohol addiction are handicapped under the FHA."); 24 C.F.R. § 100.201(a)(2) (defining "handicap" under the Fair Housing Act to include drug addiction, other than addiction caused by current, illegal use of a controlled substance, and alcoholism).

The Americans With Disabilities Act (42 U.S.C. § 12101, et seq.) provides similar protections to persons with disabilities. The Americans With Disabilities Act extends to all activities of state and local governments, including any of its departments, agencies or other instrumentalities, whether or not they receive federal funds. 42 U.S.C. §§ 12131(1)(A) and (B). Persons recovering from or receiving treatment for addiction to alcohol or drugs are disabled individuals for purposes of the Americans With Disabilities Act. 42 U.S.C. §§ 12210(b) and (c). In addition, the zoning decisions of municipalities have been held to be an "activity" of municipal government for purposes of the Americans With Disabilities Act. Innovative Health Systems v. City of White Plains, 931 F.Supp. 222 (S.D.N.Y. 1996).

The protections of the Fair Housing Act and the Americans With Disabilities Act extend to those persons that SMNPHC intends to serve at the Sage House. Any discriminatory practices, including the failure to make "reasonable accommodation" for such persons in the application of zoning regulations and land use decisions, is a violation of Federal law.

COPY

Conclusion

In summary, the Planning Board is bound by the Building Commissioner's determination that SMNPHC's proposed use is an educational use within the meaning of the Dover Amendment. The Planning Board has neither authority to make an independent determination regarding the applicant's proposed educational use, nor authority to seek additional information concerning the educational use in the scope of a limited Site Plan Review. Further, the Planning Board has been advised of this by the Attorney General, the Building Commissioner, Town Counsel and the applicant, and the time for the Planning Board to have challenged the Building Commissioner's proper determination has passed. Should the Planning Board choose to ignore its jurisdictional limits and attempt to conduct an independent inquiry on the proposed educational use, such further inquiry would suggest a discriminatory motive on the part of the Planning Board.

As the Attorney General directed, the Planning Board may only regulate SMNPHC's proposed use by reviewing compliance with reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking and building coverage requirements. Consistent with this directive, Town Counsel advised the Planning Board that its review of SMNPHC's project should be limited to parking concerns. Any review by the Planning Board that exceeds this scope is not permissible for a project which proposes a use which the Building Commissioner has determined to be an educational use under the Dover Amendment. Should the Planning Board insist on requiring further information with respect to the non-profit educational use, or impose conditions in its Site Plan Review decision which go beyond the reasonable dimensional regulations referenced above, such conditions would exceed the scope of the Planning Board's authority over a Dover Amendment protected project. Such actions would also raise serious questions as to whether the Planning Board was treating the project in a discriminatory manner in violation of state and federal law.

Exhibit 53

*Bowditch
& Dewey*
ATTORNEYS

Direct telephone: (508) 416-2400
Direct facsimile: (508) 929-3016
Email: jhanrahan@bowditch.com

October 5, 2006

HAND DELIVERED

Christopher J. Petrini, Esq.
Town Counsel
Town Office
150 Concord Street
Memorial Building
Room 129
Framingham, MA 01702

Re: 517 Winter Street, Framingham, MA

Dear Chris:

Enclosed is a copy of a memo which was submitted to the Planning Board today. Please note that it has not changed from the previous version except for the date.

Should you have any questions, please contact me.

Very truly yours,

James D. Hanrahan
James D. Hanrahan
(JDM)

JDH/smm

Enclosure

INDICATED BUT NOT READ

Exhibit 54

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2
3
4

Planning Board Minutes Thursday October 12, 2006

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7

Memorial Building
150 Concord Street, Ablondi Room

8 Those present. Ann Welles, Chair, Sue Bernstein, Carol Spack, Clerk, Andrea Carr-
9 Evans, and Tom Mahoney, Vice Chair Also present: Jay Grande

10
11 Meeting was called to order at 7.41 pm

12
13

14 I. Continued Public Hearing for Site Plan Approval Review, 517 Winter
15 Street South Middlesex Non-Profit Housing Corp.

16 In attendance are Jim Hanrahan, Jim Cuddy and Bob Mishow.

17 Ann asked the applicant summarize how this project is meets the Dover
18 Amendment areas of review Jim stated that there were questions on the
19 educational uses of the property and the possible monitoring of the use by
20 the Building Commissioner; he has submitted a memo addressing those
21 issues and noted that the town counsel has also issued a memo to the
22 building commissioner regarding those issues. Jim also stated that at the
23 last hearing they were asked to revise the parking plans, relocate the
24 dumpster, add landscaping around the playground area and add additional
25 lighting. They have done this with two parking Plans A&B which have
26 been submitted to the Board Jim briefly reviewed those plans pointing out
27 the differences in the parking layout.

28 Board member comments were: Carol had concerns with pedestrian access
29 to building from Winter Street, grading of the parking spaces near the
30 abutting properties, Sue prefers to see the parking on the East side of the
31 building, wondered if the existing driveways not being used will be
32 grassed over, preferred to see evergreen screening for the parking field,
33 Andrea would like less parking along the front of the building and putting
34 some along the side, would also like to see a sidewalk out to Winter Street,
35 wants details on bike rack and would like it under the car port, Ann would
36 like the lighting to point down, likes the idea of masking the parking with
37 shrubs, shrubs should be left natural Public concerns were. Peter Adams
38 requested a chance at the following hearing to submit a response to the
39 new plans submitted He noted that they have not seen any determination
40 being made on the Dover status and had the Board voted to waive the
41 fiscal and community impact reports

42 Jim Hanrahan responded to the Dover question Jim stated that they had
43 supplied memos with the application and that letters to the Planning Board
44 from Town counsel had been also submitted He also quoted

Massachusetts Attorney General's approval conditions on the Framingham Zoning by-law change. He referenced a letter dated June 3, 2006 from the Building Commissioner which stated that it was his opinion that the proposed use of this facility would meet the legal standards as an exempt use under the Dover Amendment. A letter from Jay Grande to the Building Commissioner requesting information on how he had made the determination on Dover Use and how he would monitor the educational use activities. A letter from Town Counsel dated September 29, 2006 indicated that the project had been determined to be a Dover amendment protected use and the impropriety of specifically monitoring Dover amendment uses. He went on to describe what is allowed under the Dover amendment use. Jim added that the fiscal and community impacts reports are not proper areas of review under the Dover amendment and noted that this was supported by a letter from town counsel. A discussion on the compliance of parking needs ensued however the Board needs confirmation from the building department.

Cynthia Laurora requested a plan C showing an entrance out to Winter Street and walkway to Winter Street. She is concerned that green screening along Ardmore Road is not being addressed, and possibly moving the playground on the south side, and will the handicap ramp be accessible to the playground. Jim responded to the concerns raised by residents by stating that the playground is in the appropriate location related to the program within the residence, they don't feel that the Winter Street access is necessary, they have added some landscaping but don't feel they should add screening which would segregate this residence from the neighborhood.

Ann recapped the open issues that need answers for the next hearing, entrance on Winter Street, fence details, confirmation of the number of Sage house residents with cars. Carol inquired about another parking calculation under institutional business formula which is based on 1 space per 200 sq ft of floor area including all floors and thought that this should be look into. The Board chose option B parking on the East. These are the plans that the applicant will submit for departmental review.

This hearing was continued to November 9, 2006 at 7:35 pm.

II. Continued Public Hearing for Site Plan Review Approval, Special Permit for Use, Special Permit for Dimensional Relief from Off-street Parking Design Standards, and Public Way Access Permit, 598 Worcester Road, Middlesex Savings Bank.

In attendance are Jim Hanrahan, Bruce Weisberg, Brian, Alan and Liana Moore, Danny Nau, Framingham Tree Warden and Ed Fuller, the Planning Board 593 Consultant. Jim stated that in response to Board and department comments they have revised the plans accordingly. Danny Nau gave a brief summary of the issues with the work in the right of way. He stated that there are currently three (3) 6" Norway maples that are failing and he recommends that they be removed. He also recommended that 5 to

1 7 small to medium trees can be planted in that area and agrees with the
2 species chosen. Ed Fuller agreed with removal of the 3 trees and the
3 species chosen however he thought that 5 would be a better number of
4 trees. The Landowner will maintain the trees perpetuity, as long as they re
5 there. Jim raised a point of order noting that part of this hearing is for a
6 Special Permit and that Sid Gorovitz was a member sitting on the hearings
7 and Carol was not sitting because she hasn't been there for previous
8 hearings, so they (the Applicant) would have to waive the absent of Sid to
9 proceed and Carol can not participate in the voting. The applicant did
10 agree to go forward with only 4 Board members voting. The applicant
11 reviewed the revised plans, noting that they would be providing new water
12 and sewer service, storm water drainage overflow and a new drain
13 manhole. A pedestrian walkway was also added from Route 9 and the
14 sidewalk in front of the building was widened with the addition of a grass
15 area. Ed Fuller stated that most of his issues were resolved when he
16 received the list of waivers, however there is still an issue with a fence
17 which is dependant on an easement. He felt that the plan meets the
18 concerns of the Board but noted there is still a discrepancy on the plans
19 and the Board needs to have the set with the raised planters, and he
20 recommended that the grass strip along the front is too small and should
21 be decorative pavers instead. Jim stated that after several conversations
22 with abutting property owners it seems unlikely that they are going to
23 grant the easement to allow the installation of the fence. The Board voted
24 4 in favor to not having the fence. The landscape architect will see the
25 final construction plans for review. Ann noted that there are no more
26 landscape or architectural issues and they will schedule the next hearing
27 for decision review.

28 *This hearing was continued to November 9, 2006 at 8:30.*

29 **III. Miscellaneous Administrative**

30
31 a. **Bishop Street trees** ~ Danny Nau summarized for the Board what is
32 happening at Bishop Street. He stated that during routine street
33 maintenance they noticed a tree crew working on Bishop Street for Mr
34 LeBeau removing Town shade trees, and at that time he had them stop the
35 work. As a result of conversation with Jay Grande he discovered that there
36 was a misunderstanding of what permissions were given and what work
37 was allowed. Danny noted that he met with Mr. LeBeau, Paul Scott and
38 Jay Grade and agreed upon mitigation of a 2 to 3 ratio because of the
39 violation. He then informed Mr. LeBeau that the remainder of the trees
40 needed to be posted and that they would need to come before the Planning
41 Board to decide on the remaining trees. Danny has asked for a planting
42 scheme and because of the number of trees removed and the size of the
43 area other trees will need to be used in different parts of town to benefit
44 residents. Mr. LeBeau has agreed to set up an account to fund these
45 plantings.

46 *Carol Spack moved that the Framingham Planning Board support the*

1 *Tree Warden's recommendation concerning the Bishop Street re-*
2 *vegetation and the fund and dollar amount he recommends to mitigate*
3 *damage done by the applicant before us on Bishop Street and that the*
4 *funds be deposited and a planting plan need to come before the Board*
5 *prior to any issuance of occupancy permits. Andrea Carr-Evans*
6 *seconded the motion. The vote was 5 in favor and 0 opposed.*
7

- 8 IV. Informal 700 Worcester Road. Steve Weitz discussed with the Board a
9 proposed change of use at the site. Jay noted that because of the change in
10 use and that the building is over 8000 sq ft this will require site plan
11 review. The applicant stated that they want to change the use to an Asian
12 super market. They are concerned over the amount of landscaping
13 improvements that the Board may require them to make. The Board
14 discussed the site, numerous site access and internal traffic issues
15 surrounding it. Jay stated that the Board needed to determine what the
16 objectives of the site plan review for this site may be and they would need
17 to decide to hire any consultants. This application should follow site plan
18 review and the applicant needs to decide what they want to do.

19 V. Miscellaneous Administrative

20 a. Have minutes reissued electronically to the Board
21

22 b. 67, 75 and 87 Swift Road, Jay stated that he has a building permit
23 signoff for these lots and is looking for direction from the Board. These
24 lots appear not to trigger any review and he recommends that he be able to
25 sign off form that approval is not required. The Board agreed.
26

27 *Tom Mahoney moved to suspend the Planning Board regulations to do*
28 *business after 12:00 am. Andrea Carr-Evans seconded the motion. The*
29 *vote was 5 in favor and 0 opposed.*
30

31 e. Carol Spack noted that the Lowes site has rocks deposited along the
32 access driveways and hopes that they are not going to stay as accents. Sue
33 noted that she and Ed Fuller had walked the site and that there are many
34 problems with that site. Lowes will be coming in to discuss these issues
35
36

37 VI. Executive Session

38 *Tom Mahoney moved to go into executive session to talk about litigation*
39 *and return into regular session for the purpose of adjourning. Andrea*
40 *Carr-Evans seconded the motion. The roll call vote all yes.*

41 I. Meeting Adjournment

42 *Andrea Carr-Evans moved to adjourn. Carol Spack seconded the motion. The*
43 *vote was 5 in favor and 0 opposed. The meeting adjourned at 12:25 pm.*
44

1 Respectfully submitted,
2 Mary Reynolds
3 Recording Secretary
4

5 ****THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE**
6 **PLANNING BOARD MEETING OF JANUARY 4, 2007**

7
8
9 Ann V. Welles, Chair

10

Exhibit 55

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Planning Board Minutes Thursday November 9, 2006

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Memorial Building
150 Concord Street, Ablondi Room

8 Those present: Ann Welles, Chair, Sue Bernstein, Carol Spack, Clerk and Andrea Carr-
9 Evans Thomas Mahoney, Vice Chairman arrived at 9 00 pm. Also present: Jay Grande

10
11 Meeting was called to at 7.32 pm
12
13

14 I. Continued Public Hearing for Site Plan Approval Review, 517 Winter
15 Street South Middlesex Non-Profit Housing Corp.

16 In attendance were Jim Hanrahan, and Jim Cuddy. (All presentation
17 comments are made by Jim Hanrahan and referred to as "Jim" in the
18 following narrative) Jim reminded the Board that at the last hearing he
19 presented the updated alternative plan and based on a consensus of the
20 Board they have finalized that plan with minor changes. The Plans have
21 been circulated and he noted that the only comment received was from the
22 Fire Department. Jim stated that he spoke with Fire Marshal Mauro who
23 was satisfied with the changes with the exception of the chained gate at
24 the end of the driveway. Jim noted that they are willing to go with the
25 wishes of the Fire department and/or the Board on the gate issue. Jim
26 noted that the interim building commissioner has submitted another
27 determination, at the request of the Town Manager that the property is
28 subject to protection under the Dover Amendment. Jim reviewed the
29 minor requested plan changes that were not on the last version of plans
30 presented to the Board. These changes included the moving of the bike
31 rack to be under the car port, the additional plantings, and the No Turn
32 sign was missed but will be added. Jay confirmed the indication of
33 acceptance from the Fire Department but has not received a formal letter
34 to date. Jim explained the reasoning behind the additional application filed
35 for Public Way Access. This application was filed in response to the
36 changes requested to the driveways by the Fire Department to increase the
37 turn radius. Resident concerns were over the traffic generated by this
38 project and request additional information. Jim responded to the concern
39 noting that he would look into the traffic study and provided clarification.
40 Concerns over the Dover Amendment determination were still prevalent
41 among the residents. Abutting residents want privacy screens, the
42 playground moved and an entrance on Winter Street, and questioned the
43 possible need for two playgrounds. Cynthia Laurora requested 1 hour time
44 to present the neighborhood view. The Board agreed and will allow the

1 presentation at the next hearing. Andrea felt there is still a need for a
2 pedestrian walkway. She would also like to see fence samples and added
3 that the screening along Ardmore is not sufficient to buffer noise. Carol
4 raised issue with questions raised at the October 12th meeting and that she
5 has not received a response from the applicant regarding whether
6 institutional use is determined. Jim stated that the determination was made
7 under the use category of non-profit educational to calculate the parking.
8 Carol wants pedestrian areas shown on the plans and a sidewalk out to
9 Winter Street, parking controlled numbers and no parking on the lawn, a
10 restriction that the mature trees remain on the site unless proven to be a
11 hazard, and to reconsider the location of the playground and the possibility
12 of two small areas.

13 *This hearing was continued to December 7, 2006 at 7:35 p.m.*
14

15 II. Continued Public Hearing for Site Plan Review Approval. Special
16 Permit for Use, Special Permit for Dimensional relief from Off-street
17 Parking Design Standards, and Public Way Access Permit, 598
18 Worcester Road, Middlesex Savings Bank.

19 In attendance are Jim Hanrahan and Bruce Weisberg. Jim stated that since
20 the last hearing they have drafted two decisions. One being for the Special
21 Permit for the Drive-Through and the other for Site Plan Review, the
22 waivers, Special Permit for Dimensional Relief for Parking and the Public
23 Way Access Permit. He added that there has been a comment letter that
24 had come in from DPW and that they called other departments for
25 additional comment request and that he doesn't believe there are any other
26 outstanding is departmental issues.

27 The Board reviewed the decision documents 1066-06 and 1067-06 making
28 edits and changes as necessary. The Board voted on each waiver
29 separately.

30 *Tom Mahoney moved that the Framingham Planning Board grant the*
31 *waiver for the provisions in sections 4.B.2.b for parking and required*
32 *setbacks. Andrea Carr-Evans seconded the motion. The vote was 4 in*
33 *favor 0 opposed (Carol Spack not voting).*
34

35 *Tom Mahoney moved that the Framingham Planning Board grant the*
36 *waiver for the provision in sections 4.B.2.c for the set back of the*
37 *building prohibiting the location of any parking space within 5 feet of*
38 *the building. Andrea Carr-Evans seconded the motion. The vote was 4 in*
39 *favor 0 opposed (Carol Spack not voting).*
40

41 *Tom Mahoney moved that the Framingham Planning Board grant the*
42 *waiver for the provision in sections 4.K.8.i for landscaping adjacent to*
43 *the building prohibiting the location of any parking space within 5 feet*
44 *of the building. Andrea Carr-Evans seconded the motion. The vote was 4*
45 *in favor 0 opposed (Carol Spack not voting).*
46

1 Tom Mahoney moved that the Framingham Planning Board grant the
2 waiver for the provision in sections 4.B.3 footnote 13 design standards
3 requiring end stalls restricted on one or both sides by curbs walls fences
4 or other obstructions to have a minimum width of 10 feet and
5 maneuvering space on the isle end of at least 5 feet in depth and 9 feet in
6 width. Andrea Carr-Evans seconded the motion. The vote was 4 in favor
7 0 opposed (Carol Spack not voting).

8
9 Tom Mahoney moved that the Framingham Planning Board grant the
10 waiver for the provision in sections 4.G.6.b open space and set back
11 requiring a landscape open space of 10 feet in depth along the entire
12 width of the lot along the front lot line in any district where the front set
13 back is required. Andrea Carr-Evans seconded the motion. The vote was
14 4 in favor 0 opposed (Carol Spack not voting).

15
16 Tom Mahoney moved that the Framingham Planning Board grant the
17 waiver for the provision in sections 4.K.8.f.1 landscape buffer strip.
18 Andrea Carr-Evans seconded the motion. The vote was 4 in favor 0
19 opposed (Carol Spack not voting).

20
21 Tom Mahoney moved that the Framingham Planning Board grant the
22 waiver for the provision in sections 4.I5.a.9 contains and scope of
23 application requiring drainage computation and limits of flood ways
24 shown where applicable. Sue Bernstein seconded the motion. The vote
25 was 4 in favor 0 opposed (Carol Spack not voting).

26
27 Tom Mahoney moved that the Framingham Planning Board grant the
28 waiver for the provision in sections 4.K.8.f.2.a landscape buffer strip
29 specific standards requiring landscape buffer strips to be 1/3 of the
30 distance between the street, right of way and building line but not less
31 than 15 feet in depth. Sue Berstein seconded the motion. The vote was 4
32 in favor 0 opposed (Carol Spack not voting).

33
34 Tom Mahoney moved that the Framingham Planning Board grant the
35 waiver for the provision in sections 4.K.8.f.2.a landscape buffer strip
36 specific standards requiring landscape buffer strips to be 1/3 of the
37 distance between the street, right of way and building line but not less
38 than 15 feet in depth. Andrea seconded the motion. The vote was 4 in
39 favor 0 opposed (Carol Spack not voting).

40
41 Tom Mahoney moved that the Framingham Planning Board grant the
42 waiver for the provision in sections 4.K.8.f.2.c.1 landscape buffer strip
43 arrangement of the bylaw requiring the planting of at least one tree of
44 every 27 linear feet of street frontage. Andrea seconded the motion. The
45 vote was 4 in favor 0 opposed (Carol Spack not voting).

1 Tom Mahoney moved that the Framingham Planning Board grant the
2 waiver for the provision in sections 4.K.8.f.2.c.2 landscape buffer strip
3 arrangement of the bylaw requiring the planting of at least 4 shrubs per
4 100 square feet of landscape area in the buffer zone. Andrea seconded
5 the motion. The vote was 4 in favor 0 opposed (Carol Spack not voting).
6

7 Sue Bernstein moved that the Framingham Planning Board approve the
8 application for Middlesex Savings Bank for Site Plan Review, Public
9 Way Access Permit, Special Permit for Dimensional Relief to Off-Street
10 Parking Design Standards pursuant to 4.B.3.g. as well as section 5.E.
11 and waivers from certain provisions of the by-law for the property at 598
12 Worcester Road dated November 9, 2006 as amended this evening
13 document numbered 1066-06. Tom Mahoney seconded the motion. The
14 vote was 4 in favor and 0 opposed (Carol Spack not voting).
15

16 Tom Mahoney moved that the Framingham Planning Board approve
17 the application of Middlesex Savings Bank for Special Permit for Drive-
18 through banking window for 598 Worcester Road as discussed tonight
19 subject to the provision in the Site Plan Review decision that have to be
20 carried over as modified tonight and inserted into document 1067-06.
21 Sue Bernstein seconded the motion. The vote was 4 in favor and 0
22 opposed (Carol Spack not voting).
23

24 III. Continued Public Hearing for Definitive Subdivision Plan Review and
25 Public Way Access Permit for 597 Old Connecticut Path. The Paulini
26 Loam, LLC. Waterfield Design Group, Inc

27 In attendance are Jeff Roelofs and Mike Rademacher

28 The Board discussed the issues around the length of the subdivision road
29 and how the measurement is calculated. The Board reviewed the Decision
30 for the Definitive Subdivision document 1046-06 making edits and
31 changes as necessary. Due to the extensive amount of changes made to the
32 decision documents Board members were not comfortable voting at this
33 time and requested an extension until December 7, 2006 to allow for time
34 to review and prepare the decision documents. The applicant agreed to the
35 extension

36 Tom Mahoney moved to close the public hearing. Carol Spack seconded
37 the motion. The vote was 5 in favor and 0 opposed.
38

39 This hearing was continued to November 30, 2006 to review the
40 decision.

41 Tom Mahoney moved to suspend the Planning Board rules and conduct
42 business after midnight. Andrea Carr-Evans seconded the motion. The
43 vote was 5 in favor and 0 opposed.

44 IV. Approval of Minutes

45 The Board reviewed the Minutes for July 13, 2006. Sue Bernstein moved
46

1 to approve the minutes of July 13, 2006 as amended. Andrea Carr-Evans
2 seconded the motion. The vote was 5 in favor and 0 opposed

3 I. Meeting Adjournment

4 Tom Mahoney moved to adjourn. Carol Spack seconded the motion. The vote
5 was 5 in favor and 0 opposed. The meeting adjourned at 11:58 p.m.

6
7 Respectfully submitted,
8 Mary Reynolds
9 Recording Secretary

10
11 **THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE
12 PLANNING BOARD MEETING OF JANUARY 4, 2007

13
14 _____
15 Ann V Welles, Chair

16

Exhibit 56

Planning Board Meeting Minutes for Tuesday, December 7, 2006

Memorial Building
Framingham, Massachusetts

Members Present: Tom Mahoney arrived 9:30 p.m., Ann Welles, Sue Bernstein, Carol Spack, Andrea Carr-Evans

Staff Present: Jay Grande, Planning Board Director

I. Meeting Called to Order

The meeting was called to order at 7:35 p.m.

II. Agenda

Reading of agenda by Ann Welles, Chair

III. Continued Public Hearing for Site Plan Review Approval, 517 Winter Street, The Sage House, South Middlesex Non-Profit Housing Corp.

Jim Hanrahan updated the Board. He addressed the presentation in terms of going beyond 8 dimensional issues under the Board's jurisdiction, and referenced how the Planning Board has been admonished on what can be addressed and that issues that go beyond the 8 dimensional issues would violate Fair Housing Act and American with Disabilities Act

IV. Public Hearing for Public Way Access Permit, 517 Winter Street, The Sage House, South Middlesex Non-Profit Housing Corp.

Ann Welles read the public hearing notice for the Public Way Access Permit into the record.

Motion by Carol Spack that the information submitted by SMOC for Site Plan Review be entered into the record for their Public Way Access Permit. Second Andrea Carr-Evans Unanimous vote in favor

The Planning Board consolidated public hearings. STEPPS power point presentation by neighborhood Judy Lear presented the power point presentation. Cindy Laurora also assisted in the presentation on neighborhood requests

Carol Spack questioned the access on to Winter Street and power point presentation in regard to existing trees

Judy Lear, Precinct 11, stated that there is a dead tree located where the driveway is proposed on Winter Street. Historic aspects are keeping the property in good repair. Peter Adams, precinct 11, requested maintenance bond for property. Ted Cosgrove, Precinct 11, stated change in grade needs to be discussed with neighbor concerning crosswalk, but crosswalk is something that should really be explored and with great signage and street marking would help, since Winter Street is perilous. Barry Argell, 18 Ardmore Rd., referenced the historic nature of home and that prior owners put addition that did not replicate original nature of the building with Spanish Tile.

Andrea Carr-Evans questioned security lighting request in the presentation being contradictory to but neighbors' complaint that lighting was too high and too much light. Carr-Evans would like to know more about how high? On the building or not? On the parking lot? Confused by the fence and relocation? James Hanrahan stated there was never a proposal to move fence. SMOC has agreed to discuss with Mrs. Carney about replacement of the fence in her response for replacement of the fence. They are agreeable to installing a similar fence subject to Mrs. Carney's approval.

Cynthia Laurora of Winter Street, precinct 11, stated that the fence was erected and owned by Mrs. Carney. She would like to see low lighting at least, since worried about security. Plans submitted by neighborhood or any plan should show green plantings such as evergreens, as many as possible, along entrance and parking area.

Andrea Carr-Evans, stated it looks like two playgrounds are on the plan and is concerned about closeness to Ardmore and Winter Street.

Judy Lear, precinct 11, playgrounds from original site plan and only moved slightly forward from Ardmore Road and more to the side of the building versus rear of building. One playground. Snow removal areas possibly?

Cynthia Laurora, requested proper landscaping and fence it can look like an estate fence.

Ellen Casey, resident, stated that the nursing home had a spot light and it never bothered her because she was concerned about safety. Very dark and very secluded area. Afraid of who will be lurking out there. Want motion light on north side in parking area. Some kind of lighting.

James Hanrahan responded that they agreed to a maximum number of 40 residents and the location of the playground. No expansion was called for with this program. The playground would be located as shown on the last iteration or located left area on front of driveway in snow disposal area, and that for offsite improvements they would not agree to them and not called for with this application. Mr. Mishu made a presentation and applicant's position is that the movement of the historic location of the driveway is not called for, would be less safe and not warranted for this use. They accept condition that trash for the dumpster will be from the site only. Lighting is bollard lighting and the idea of motion sensors strikes Hanrahan as unnecessary and if the Board wants one high light he would agree, but tried to reduce lighting while making the parking area safe.

Regarding the issue of sidewalk from Winter Street, the concerned is that it is a sidewalk to nowhere and that there is no interconnection and therefore serves no purpose for the residents or ties into any meaningful walkway and therefore the applicant would object. The last questions on traffic, Mr. Mishu was here to address them

Andrea Carr-Evans noted there are sidewalks on Winter Street and is a little concerned Ann Welles asked if there is a designated smoking area. James Hanrahan stated that they have never had a designated smoking area and discriminatory to establish a designated smoking area Smoking is allowed in building

Diane Montgomery, precinct 7 and lives next to a SMOC program on Badger Road. Do not have jurisdiction over smoking in home or telling them how they can operate

Diane Harkness, precinct 4 town meeting member, disagreed with not needing sidewalks Poor people walk. The 10 foot fence and perimeter of lights and trees seems to create a fortress. If you are going to be paranoid you should put security lights in

Peter Adams, precinct 11, commented about smoking and stated previous speaker has misspoken on lighting and landscaping and shocked that residents are going to smoke

Ann Welles reviewed neighbors' request for access off Winter Street and traffic and asked the Applicant's Counsel and Principal to give a complete response. Not intending to further study Winter Street responded James Hanrahan. Ann Welles requested input from Applicant's Counsel on preference to Framingham Residents. The Planning Board asked that the Traffic Roadway and Safety Committee review the neighborhood presentation and plan 2 and crosswalk for Winter Street

Barry Arschell, 18 Ardmore Road stated it depends on which mid-block you want the crosswalk to be located and disagree with most of the comments representing the neighborhood and concerned with the proper pruning and maintenance of the Beech Tree at the corner

Ned Price of the Standing Committee on Planning and Zoning stated 2 acres is appropriate size and reasonable compromise for this facility

Larry Hendry, Ardmore Road, the widening of Ardmore is getting dangerously close to 90 degree and bring further to the east to prevent it getting closer to the particular curve. Requested schedule from Applicant on facility programs and activities

Ann Welles stated that the continued public hearings will be on January 4, 2007 at 8.30 pm

V. Occupancy Permit Request for 571 Worcester Rd. Nissan

Thomas Mahoney arrived to the meeting.

Review of façade changes by James Hanrahan. He requested release of bond. Susan Bernstein moved to reduce the bond and hold \$5,000 for one year to December 1, 2007. The motion was seconded by Carol Spack. The vote was 5 in favor, 0 opposed.

Susan Bernstein moved that pursuant to March 27, 2001, Decision, Condition 6, that the Planning Board approve the revised façade change subject to the signs complying with the sign by-law and submitting said plan for the Planning Board records. The motion was seconded by Thomas Mahoney. The vote was 5 in favor, 0 opposed.

VI. Public Hearing to Amend or Modify a Site Plan Review Approval, 297 Union Ave. McGowan Realty Trust

Reading of public hearing notice by Ann Welles

Presentation by Paul Galvani, Attorney for the Applicant. Nobody spoke in opposition to the amendment.

Carol Spack move to amend decision dated May 1989 for McGowan, title of decision, as follows to have paragraph 5 a in its entirety replaced starting with "Any use to" deleting b and d in entirety. The motion was seconded by Andrea Carr-Evans. The vote was 0 in favor, 5 opposed. The motion failed.

Susan Bernstein moved to delete section A and replace with a new section A. stating that any change in use to another use category in the Zoning By-Law that will require new off-street parking and will require a new approval from the Planning Board. The motion was seconded by Andrea Carr-Evans. The vote was 5 in favor, 0 opposed.

VII. ANR Plan Review for 37 Cavanaugh Street

Bob Drake presented the plan to the Planning Board.

Thomas Mahoney moved that the Planning Board endorse the plan of land in Framingham on the north side of Cavanaugh Street for the lots shown as 9a and 10a prepared by Bob Drake, dated October 2006. The motion was seconded Susan Bernstein. The vote was 5 in favor, 0 opposed.

VIII. ANR Plan Review for 815-819 OCP

Thomas Mahoney moved that the Planning Board endorse the plan of land in Framingham for the creation of 3 lots prepared by R. W. Hart Associates, dated October 22, 2006. The motion was seconded by Carol Spack. The vote was 5 in favor, 0 opposed.

IX. ANR Plan for 567 Winter Street

Rubian Mergovian presented the plans. Thomas Mahoney moved that the Planning Board endorse the plan of land on the corner of Crest Road and Winter Street for the division of land creating 4 lots on the south side of Crest Road for the owner John Materese. The motion was seconded by Carol Spack. The vote was 5 in favor, 0 opposed.

X. Discussion. 747 Water Street. Heritage House

Paul Galvani, Attorney for the Applicant and Donald Block, Chair of the Heritage House Board were present. Mr. Block stated that he resigned from the Finance Committee to avoid a conflict of interest and that the Assisted Living Facility is not tax exempt. Mr. Galvani reviewed the proposal to expand the building and stated the need to go to ZBA. Mr. Galvani said they are scheduled for next Tuesday night before the ZBA. If approved, this proposal will come formally before the Planning Board. It is before the ZBA for setback, height and density variances. The Floor Area Ratio is .264. They are proposing 12 new units, 2 will be demolished resulting in a net gain of 10.

XI. Release of Bond, 2-18 Beacon Street

Susan Bernstein moved to release the bond for 2-18 Beacon Street. The motion was seconded by Carol Spack. The vote was 5 in favor, 0 opposed.

XII. Release of Bond for Murray Hill Estates

Susan Bernstein moved to release the bond for Murray Hill Estates. The motion was seconded by Carol Spack. The vote was 5 in favor, 0 opposed.

XIII. Miscellaneous Administrative

Site issues with tree buffer raised in letter to the Board concerning 759-761 Worcester Road and staff needs to contact the owner.

Susan Bernstein mentioned that the Eastern Bank site on Cochituate Road has a for sale sign on it.

Ann Welles requested that Jessica email another copy of the Land Disturbance By-Law.

XIV. Executive Session

Thomas Mahoney moved that the Planning Board go into executive session to talk about the ongoing Nexum Litigation and re-enter regular session for the sole purpose of adjourning. The motion was seconded by Carol Spack. Ann Welles requested a roll call vote. Andrea Carr-Evans, yes. Thomas Mahoney, yes. Ann Welles, yes. Susan Bernstein, yes. Carol Spack, yes.

XV. Meeting Adjournment

Motion to adjourn by Andrea Carr-Evans. The motion was seconded by Carol Spack
The vote was 4 in favor, 0 opposed, 0 abstaining Meeting adjourned at 12:25 a.m.

Respectfully submitted,

John Grande
Recording Secretary

****THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE
PLANNING BOARD MEETING OF FEBRUARY 28, 2007**

Ann V. Welles, Chair

Exhibit 57

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Planning Board Minutes Thursday January 4, 2007

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Memorial Building
150 Concord Street, Public Hearing Room

8
9
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11

Members Present: Ann V. Welles, Chairperson, Thomas F. Mahoney, Vice Chairperson,
Carol Spack, Clerk, Andrea Carr-Evans, and Susan P. Bernstein and Associate Board
Member Sidney Gorovitz Staff Present: Jay Grande, Planning Board Director.

12
13

Meeting was called to order at 7:35 p.m.

14
15

I. Reading of Agenda

16
17

Ann Welles, Chair, reviewed the agenda.

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24

Thomas Mahoney moved to have the Planning Board go into Executive Session to discuss
ongoing litigation with Great Brook Valley Community Health Center and then leave
executive session to go back into regular session. The motion was seconded by Susan
Bernstein. A roll call vote requested by Ann Welles, Chair: Carol Spack, yes; Susan
Bernstein, yes; Thomas Mahoney, yes; Andrea Carr-Evans, yes; Sidney Gorovitz, yes
and Ann Welles, yes.

25
26
27
28

II. Continued Public Hearing for Special Permit for Use, Special Permit for
Reduction in the Required Number of Parking Spaces and Public Way Access
permit and to Amend or Modify a Site Plan Review Approval for 1 Hamilton Street,
Walgreen's North Framingham Plaza Realty Trust

29
30
31
32

Paul Galvani, Attorney for the Applicant; Jim Gordon, Gordon Realty Trust; Joe Sullivan
of McCarthy and Sullivan Engineering and Richard Hunt, the Applicant's Architect.

33
34
35
36

The first Conservation Commission public hearing was held according to Joe Sullivan and
the Commission seemed happy with the improvements. Also, Mr. Sullivan stated that he
was requesting on the Applicant's behalf a reduction in parking.

37
38
39

MaryBeth Murphy of the BSC Group, the Board's consultant, presented review
comments submitted to the Planning Board, document number 122-07.

40
41

The Chair, Ann Welles, referenced documents received on this Application.

42
43
44
45

Thomas Mahoney asked where the floodplain is located on the site. The building is out of
the floodplain according to Joe Sullivan. Thomas Mahoney asked if they considered new
construction. Jim Gordon mentioned leases are at issue and other factors.

1 Susan Bernstein mentioned the site lines brought up at the last hearing and looked at it and
2 found the vehicles parked along the curve is obstructing the line of site. How are you
3 addressing the dumpster issue? Richard Hunt stated that there are problems with parking
4 and drives and changes would lose 10 to 12 parking spaces in addition to the 10 to 15
5 being considered by Mr. Sullivan

6
7 Andrea Carr-Evans stated that she is looking at eliminating one of the curb cuts on School
8 Street, due to the proximity of the proposed curb cut and existing driveway opening on
9 School Street

10
11 Carol Spack said that her biggest concern is pedestrian safety on the site. Dunkin Donuts
12 near Saab Dealership has drive-thru on front of the site and hoping it was not too late for
13 relocating drive-thru for this project and where presently located is not a workable
14 location. Look at the Dunkin Donuts site design. Carol Spack said that there is a need to
15 walk on three sides of the building.

16
17 Ann Welles received an email from Audrey Hall and hopes the email will go into the
18 record. Jim Gordon said he welcomes comments and opinions and couple of good ideas
19 will be considered

20
21 Ann Welles requested Applicant to provide parking data from similar developments to
22 justify reduction to improve landscaping, vehicle and pedestrian safety.

23
24 Hank Moran, precinct 3 Town Meeting Member, responding to landscaping and this
25 whole area was a concern with respect to site line and concerned about planting of tall
26 trees which could block site lines, since it is a blind turn. Second, in the back side
27 confusion about the landscaping and trucks, the dumpster trucks, drive-thru, pedestrian
28 traffic and parking spaces creating a lot of activity and the trade offs are not favorable to
29 having a drive-thru back there and like to see other solutions. Thirdly, the drive-thru itself
30 may impact on the number of parking spaces needed. Still think the impact of the drive-
31 thru on parking should be looked at more carefully

32
33 Ann Welles, mentioned MaryBeth Murphy's recommendation, the need for cone studies.
34 The Applicant should look at the use pattern in the rear of the building.

35
36 Greg Doyle, resident of 126 Meadow Street, stated it would be great to give this shopping
37 plaza a major overhaul. I would echo Mr. Mahoney's comments and ask Mr. Gordon to
38 strongly consider a building and investment in the community. That would resolve a lot of
39 the other issues. Also, the issue with the site lines and the need to tighten up the
40 intersection (School Street and Hamilton Street) and create a real "T" intersection and
41 pursue Queen Street access option. I do not believe a drive-thru is warranted at this site

42
43 Thomas O'Neil, precinct 8, the formula you use is 1 parking space per 200 square feet.
44 Can you reduce the square footage of the building by 5000 square feet? Deeply concerned
45 with the reduction in parking and congestion.

1 Paul Galvani wants to get some reading on the drive-thru issue and Walgreens will not go
2 through with this project without the drive-thru This is not a fast food chain.

3
4 Linda Panzeera, precinct 3, stated she has great safety issues. Hoped that they would go
5 through with their project without the drive-thru Hope to see green space. Target date
6 for completion?

7
8 Jim Gordon stated the construction time could take up to a year and could vary.

9
10 Susan Bernstein would like to see a complete sign package and that the signage on the
11 various businesses should be of a uniform style

12
13 Ann Welles stated that the continued public hearing will be February 8, 2007 at 8:30 pm
14 Topics are to be reduction in parking and start of architecture discussion

15
16 **III. ANR Plan Review for 31 Crestwood Road**

17
18 Jim Troops, Professional Land Surveyor in the Commonwealth of Massachusetts,
19 reviewed purpose of the plan

20
21 Thomas Mahoney moved that the Framingham Planning Board endorse the Plan of Land
22 in Framingham prepared by James Troops for the owners to create Parcel A on a plan
23 dated December 2, 2006 Andrea Carr-Evans seconded the plan. The vote was 5 in
24 favor.

25
26 **IV. Occupancy Permit Request, Hess, 1701 Worcester Road**

27
28 Andy Lauten Bacher from Hess and Mr. Fealtmen were present representing Hess. Mr
29 Bacher referencee Ed Fuller's letter Susan Bernstein mentioned that there was no street
30 number on the sign The by-law specifically states that the street number needs to be on
31 the sign. The fire suppression nozzles are suspended above the pumps Please consider
32 wall pack lighting on the building stated Thomas Mahoney Thomas Mahoney moved
33 that the Planning Board approve the temporary occupancy permit to June 1, 2007 subject
34 to the street number installation Andrea Carr-Evans seconded the motion The vote was
35 5 in favor. 0 opposed

36
37 Thomas Mahoney left the meeting

38
39
40
41 **V. Discussion of Modification to Approved Site Plan for 517 Worcester Road**

42
43 Babar Khan with Gunter Design Group representing owner and Paul Galvani attorney for
44 the owner were present. Overview was provided by Jay Grande Babar Khan went over
45 the changes Mr. Decas the operator of the store was also in attendance Thomas
46 Mahoney stated he is disappointed in the time it has taken to get these improvements

1 made. Agrees with the improvements except for a change to the crosswalk and the big
2 issue is the last car in the queue. Like the idea of moving the order board, but will go
3 back to the traffic issue. Paul Galvani mentioned Steve Cronin, Traffic Safety Officer, is
4 having an untrained person doing traffic control. More signage was the request of Carol
5 Spack. Walkway and steps requested by Susan Bernstein. There was a consensus of the
6 Board to have improvements made on a trial basis.

7
8 Thomas O'Neil stated that the neighborhood would reject a driveway entrance from
9 Lockland Avenue to the site. The proposal is an effort, not a solution.

10
11 The Applicant will submit a narrative with plan of interim improvements for the Board to
12 accept. The Board will monitor the improvements and if successful will direct the owner
13 to submit an application to amend or modify an approved site plan.

14
15 **VI. Continued Public Hearing for Site Plan Review Approval and Public Way**
16 **Access Permit for 517 Winter Street, South Middlesex Non-profit Housing Corp.,**
17 **The Sage House.**

18
19 Susan Bernstein moved to start a hearing after 10:00 p.m. The motion was seconded by
20 Andrea Carr-Evans. The vote was 4 in favor, 0 opposed. Thomas Mahoney left the
21 meeting at 10:48 p.m. and he is not participating in the public hearing.

22
23 James Hanrahan, Applicant's Attorney and Mr. Bob Conyer, Chief Operating Officer were
24 present.

25
26 James Hanrahan reviewed his memo to the Board, document number 120-07, responding
27 to questions raised at the last hearing. Susan Bernstein passed out regulations Under 808
28 CMR 1.00 Commonwealth of Massachusetts and asked about participation in a pilot
29 payment. James Hanrahan stated that the Applicant will not discuss it in the context of
30 Site Plan Review.

31
32 Report from Jay Grande on Traffic Roadway and Safety Committee Meeting.

33
34 Suggest crosswalk down near Winter Park or other appropriate location approved by
35 Traffic Roadway and Safety Committee as a condition according to Susan Bernstein.

36
37 William LeBarge, precinct 16 Town Meeting Member and Chair, ask that in the future
38 SMOC institute a moratorium in Framingham until they can show that they are opening
39 programs in abutting communities and other communities.

40
41 Ned Price, precinct 17, there is about a two acre parcel with 40 people spread out equates
42 to x number of housing and since Dover states you can only address reasonable bulk and
43 area standards and believes that the lot area of the site is reasonable for this proposal.

1 Larry Hendry stated that three issues were addressed by the Traffic Roadway and Safety
2 Committee, sidewalk, driveway off Winter Street and driveway on Ardmore How they
3 voted will be recorded in the minutes

4
5 Peter Adams, 222 Edgewater, stated this is the first time he has seen the plans and one of
6 the identified tree species is Norway Maple which is an invasive species Cynthia Lauora,
7 precinct 11, presented 15 to 18 neighborhood requests and want SMOC to respond
8 individually to each as a checklist before the hearing closed.

9
10 Ms Dawn Harkness TM precinct 4 stated that she supports sidewalks

11
12 James Hanrahan stated that the suggestion that the entire site be used would be an
13 unreasonable imposition since it would exceed the requirements under zoning

14
15 Ann Welles stated that the continued public hearing will be on Thursday January 25th at
16 8:30 p m The Board asked the Planning Board Director to have the new Social Services
17 Director review decision and make recommendations and also Town Counsel.

18
19 Motion by Andrea Carr-Evans to conduct business after midnight The motion was
20 seconded by Susan Bernstein The vote was 4 in favor (Tom Mahoney absent)

21 22 VII. Approval of Minutes

23
24 Motion by Andrea Carr-Evans to approve Minutes of October 12, 2006 as modified
25 herein. Second by Susan Bernstein The vote was 4 in favor, 0 opposed (Tom Mahoney
26 absent)

27
28 Motion by Andrea Carr-Evans to approve Minutes of June 29, 2006 as modified herein
29 Second by Susan Bernstein The vote was 4 in favor, 0 opposed (Tom Mahoney absent).

30
31 Motion by Andrea Carr-Evans to approve Minutes of November 9, 2006 as modified
32 herein. Second by Susan Bernstein The vote was 4 in favor, 0 opposed (Tom Mahoney
33 absent)

34
35 Motion by Andrea Carr-Evans to approve Minutes of September 21, 2006 as modified
36 herein. Second by Susan Bernstein The vote was 4 in favor, 0 opposed (Tom Mahoney
37 absent).

38
39 Motion by Andrea Carr-Evans to approve Minutes of October 5, 2006 as modified herein
40 Second by Susan Bernstein. The vote was 4 in favor, 0 opposed (Tom Mahoney absent)

41 42 VIII. Miscellaneous Administrative

43
44 1. Susan Bernstein recommended the Master Plan consultant make the survey for the
45 Master Plan available for Town Meeting

2 Susan Bernstein mentioned issues with the Dennison Triangle Project such as field completion and demonstrate value, artificial turf field vacuum cleaner, maintain park next to railroad track, \$50,000 cash for Butterworth Park, Committee formed, replace or install curbs and sidewalks on both sides of Clinton Street Asked staff to talk to Building Commissioner and double check next week.

3. Goldstein and Storr schedule for Natick Mall and ask them to come in to present project to Board.

4 Have Applicants for 234 Union Avenue address Fire Department correspondence

5. Eliminate the 9.30 hearing on January 18th, the Walgreens project

6 Andrea mentioned that she is meeting with bicycle/pedestrian meeting on bike/ped regulations.

7 Carol Spack mentioned that the tire display is back out at Long Motors, 350 Worcester Road

IX. Meeting Adjournment

Andrea Carr-Evans moved to adjourn Carol Spack seconded the motion. 4 in favor, 0 opposed (Tom Mahoney absent)
Meeting Adjourned at 12.24 a m

Respectfully Submitted

John Grande

****THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE
PLANNING BOARD MEETING OF MAY 14, 2007**

Ann V Welles, Chair

Exhibit 58

1
2
3 **Town of Framingham Planning Board Meeting**
4 **January 25, 2007**
5

6 **Memorial Building**
7 **Framingham, Massachusetts**
8

9 **Planning Board Members Present:** Ann V. Welles, Chairperson, Thomas F. Mahoney,
10 Vice Chairperson, Carol Spack, Clerk, Andrea Carr-Evans, and Susan P. Bernstein.

11
12 **Staff Present:** Jay Grande, Planning Board Director.

13
14 Meeting was called to order at 7:41 p.m.

15
16 **I. Reading of Agenda**

17 Ann Welles, Chair, reviewed the agenda.

18 **II. Continued Public Hearing for Definitive Plan Review for Planned Unit**
19 **Development entitled Sudbury River Landing (Danforth Green), off**
20 **RiverPath Drive and Danforth Street, Pulte Homes of New England**

21 Paul Brinkman of SEA and William Sedewitz, Town Engineer, provided an update on
22 water and sewer improvements. Peter Barbieri, the Applicant's Attorney, Ted Gowdy of
23 Pulte Homes and Steve Chouinard of VHB were also present. Dennis Dale landscape
24 architect was present from the Waterfield Group.

25 Peter Barbieri provided an update on the status of the project. Paul Brinkman explained
26 that they are waiting for further information and have not done a full review. A lot of
27 additional information is required. Looking for water demand data to be submitted by the
28 Applicant. Carol Spack asked about off-site issues that still require Town Review and
29 Board consideration, such as water and sewer lines and the proposed pumping station. She
30 stated that the original plan showed the sewer line hanging from the bridge over the
31 Sudbury River. A bridge crossing is one, replied Paul Brinkman. Thomas Mahoney asked
32 about the Stormwater plan. Peter Barbieri said it was to come. Andrea Carr-Evans asked
33 about monitoring wells, if going to pursue it. Paul Brinkman responded he will discuss it
34 with others. Bill Sedewitz said they will be keeping a close eye on it. Ann Welles told
35 Peter Barbieri to have your people meet with the representative of Walgreens and then
36 town staff concerning road improvements at the intersections of Hamilton and School and
37 Concord and School, since mitigation has not been set for Walgreens.

38 Steve Chouinard of VHB reviewed RiverPath Drive improvements and construction detail
39 with the Planning Board. Andrea Carr-Evans felt gas station access onto Old Connecticut
40 Path was okay, but not RiverPath Drive. Thomas Mahoney prefers that access onto
41 RiverPath Drive. Ann Welles said to let GPI look at this issue. Steve Chouinard said they
42 are proposing a 4-foot high retaining wall and fence and guardrail on the north side of

1 RiverPath Drive Thomas Mahoney wants to see a couple of cross sections on RiverPath
2 Drive

3 Dennis Dale presented overview of landscaping plan for RiverPath Drive Panel and
4 picket fencing will be utilized along RiverPath Drive Tom Ryan, the Board's Consultant,
5 said it would be good to see the other things on the match line to see the rhythm and
6 continuity and also a profile going down the road. The retaining wall has a geogrid
7 material that would cause cutting of trees. Other products are available that do not require
8 cutting into tree roots. The PUD entrance sign looks a little bit short. May want higher
9 sign panel to screen headlights in the gas station. He likes the fence, but doesn't like 4
10 different types of fence. He suggested Pulte may not want green and may want it more
11 prominent No white pines on the plan maybe they should be Andrea Carr-Evans stated
12 concerned with the fence varieties and looking for more consistency Thomas Mahoney
13 stated there is no symmetry on the walls Use scored concrete or flush median to define in
14 and out on roadway and different material for crosswalk Susan Bernstein said it would be
15 helpful to have material and styles to review for all the walls and fencing to review
16 Recommend wooden guardrail Carol Spack said that she objects to the sidewalk being
17 constructed on the curb line and has a fundamental problem with the placement of
18 landscaping Question of alarm for her, if widths are appropriate for these sidewalks and
19 need for pedestrian resting points Ann Welles stated size of plant stock are undersized
20 She dislikes vinyl fences Wants concrete sidewalk Handicap access does not line up
21 with sidewalk at gas station

22 Zee Wan resident of Hialeah Lane and concerned about traffic Gordon Chan of 7 Hialeah
23 Lane wants topics listed ahead of time Schedule looks ridiculous and there should be
24 limits on time for presenters More pictures and images are needed to let everyone
25 understand what you are talking about Greg Doyle of Meadow Street had general
26 comments or concerns on the amount of landscaping and screening behind the existing
27 residences Greg asked whether the Developer met with each of the homeowners? Make
28 the walls and other improvements less massive Use wrought iron fence Greg suggested
29 Wood faced guardrail with steel behind it and alternative road layouts Ted Gowdy stated
30 that they have met with some of the property owners in the past and will contact others in
31 the future

32 Ann Welles stated that the continued public hearing will be Thursday, February 8, 2007 at
33 7:30 p.m. The Board will be covering the presentation for the recreational element and
34 Stearns Street road access Ann Welles made a formal request to National Development
35 for the entire settlement agreement at least to the extent of site plan issues we should be
36 taking into account

37 Thomas Mahoney recused himself from the 517 Winter Street review.

38 **III. Continued Public Hearing for Site Plan Review Approval and Public Way**
39 **Access Permit for 517 Winter Street, South Middlesex Non-profit Housing**
40 **Corp., The Sage House.**

41 Jay Grande updated the Board on the Social Services Director's review of the project
42 James Hanrahan, Attorney for the Applicant and Gerry Desilets Applicant were present

1 Susan Bernstein said that the Board should ask Alexis to come in and put issues on the
2 table and have some dialogue on what aspects she can or cannot provide advice on.

3

4 Susan Bernstein brought up residential groups under the code of Mass Regulations (CMR)
5 and said it seems that this project most appropriately falls into category R-5 and surprised
6 it was not considered this. Never been classified as R-5 in the Commonwealth according
7 to James Hanrahan.

8 Andrea Carr-Evan asked when we would consider the response by James Hanrahan on the
9 STEPPS memo.

10 Ted Cosgrove, precinct 11, commented on the classification appropriate to the project
11 under CMR, and under the local building regulations. There has been a historic concern
12 with the number of people in facilities for group living. He sees 25 as the maximum and if
13 children a maximum of 18. Peter Adams, precinct 11, 105 CMR referenced definition of
14 resident. Clearly it says maximum total residents. William LeBarge, precinct 16 Chair,
15 asked in the future concerning the Dover Amendment that it be applied even-handedly
16 among all the communities, question of fairness. Larry Hendry, 11 Ardmore Road, remind
17 the Board of correspondence from Applicant concerning change of use from nursing home
18 to the new use. Cynthia Laroura asked how the neighbors' comments will be addressed.
19 Ned Price, precinct 17, Requested that the entire lot be dedicated for the intended use.
20 Laurie Lee, precinct 1 raised two points: that the license from DPH is a halfway house and
21 specific regulations apply, and why they have not been applied. Halfway houses should
22 only accommodate 25 people.

23 James Hanrahan responded that they would not provide a curb cut and sidewalk on Winter
24 Street. Under Dover Amendment the Board's review is limited to eight dimensional
25 regulations and these are not within those regulations. Interpretation of building code is
26 not under the purview of this Board.

27 Carol Spack moved to close the public hearings for Site Plan Review Approval and Public
28 Way Access Permit. The motion was seconded by Susan Bernstein. The vote was 3 in
29 favor, 1 opposed (Ann Welles).

30 The Board began to review the draft decision document number 215-07. The Applicant
31 was going to review the compressor in the rear of the property according Susan Bernstein.
32 James Hanrahan stated how they were going to screen. Ann Welles said that Board
33 member answer 1, 2 and 3 in the bylaw regarding B. Parking Standards. Traffic Roadway
34 and Safety Committee information in this section C. Public Way Access Permit.
35 Appropriate emergency access needs to be added in per Carol Spack. Problems
36 subsection e. 3. Come up with language that expands the findings per Ann Welles.
37 Andrea Carr-Evans wanted to identify the Beech Tree and other trees to protect. Ann
38 Welles and add generator to be screened. Left turn only sign requirement belongs with
39 Public Way Access Permit stated Susan Bernstein. Clarification of fence around
40 playground and varied height stated Andrea Carr-Evans and is it on the plan. Email to
41 Building Commissioner concerning whether or not there will be the issuance of an
42 occupancy permit sent by Susan Bernstein. If the snow removal areas are not sufficient

1 that snow will be removed off-site as a standard condition according to Andrea Carr-
2 Evans. Upgrade to safety system to building and assuming some level of review at the
3 completion of that work stated James Hanrahan.

4 **IV. Miscellaneous Administrative**

5 Genzyme Corporation: A stop sign and stop line backed up by town departments and
6 combine funds for Waveny at a minimum Motion to approve the temporary occupancy
7 permit for the CUB and look at decision to review Second by Andrea Carr-Evans 4 in
8 favor

9 Master Plan discussion should be scheduled for February 22nd Look at master plan
10 survey requested Ann Welles

11 Joel Winett inquiry concerning general bylaws stated Ann Welles

12 Susan Bernstein requested staff to get publish a notice for the Boards proposed land
13 disturbance bylaw in Metrowest Daily News.

14 Release of Lowes funds for the Route 30 Study and what is the Planning Board roll asked
15 Susan Bernstein Funds will be under the Board's control

16 Susan Bernstein noted that the Board's Senior Planner position opening should be on
17 mass planners list serve

18 Post ZBA hearing for February 6th Our consultants are supposing to be there and to
19 confirm that they will appear and produce a written document in advance supporting the
20 P.U.D. height issue and context

21 Carol Spack, letter from resident Serious public safety issue Get back to the Board on
22 who and how to respond

23 **V. Meeting Adjournment**

24
25 Andrea Carr-Evans moved to adjourn the meeting The motion was seconded by Carol
26 Spack The vote was 5 in favor, 0 opposed The meeting adjourned at 11:40 p.m.

27
28 Respectfully Submitted

29 _____
30 John Grande

31
32
33 ****THESE MINUTES WERE APPROVED WITH AMENDMENTS AT THE**
34 **PLANNING BOARD MEETING OF JULY 12, 2007.**

35
36 _____
37 Ann V. Welles, Chair

Exhibit 59



TOWN OF FRAMINGHAM
Inspectional Services Division
Department of Building Inspection
Memorial Building, Room 203
150 Concord Street
Framingham, Massachusetts 01702-8368

Michael F. Foley, C B O
Assistant Director of Inspectional Services
Acting Building Commissioner

Telephone: 508-532-5500
Fax: 508-628-1362
Email: Building.Dept@FraminghamMa.gov

TO: Julian Suso, Town Manager

cc: Christopher Petrini, Town Counsel

FROM: Mike Foley, Acting Building Commissioner

DATE: November 1, 2006

Re: 517 Winter Street
20 Vernon Street
Dover Amendment Exempt Use Status, MGL c. 40A sec. 3.

I will attempt to provide answers to the following with regard to these applications and proposals

1. Review the information within this office as to the Dover Use Exemption,
2. How the determination had been made
3. Is the Use Exemption applicable

517 Winter Street

1. REVIEW OF INFORMATION

On July 13, 2005 a building permit application was filed with this office to change the use of this property from an "existing nursing home" to a "non-profit educational use group facility".

On August 11, 2005, in a letter of Denial of this application, Commissioner Mikielien cited that the change in use required Site Plan Review pursuant to an amendment to the zoning by-laws adopted by Town Meeting August 3, 2005. He further required the submission of additional information and documentation on the Articles of Organization for the non-profit, a description of the faculty or instructor positions likely to be working on site and a description of the program and its educational activities. Where the application did not include floor plans or parking plans, these were also requested to comply with the change in use as noted within the Mass State Building Code 780 CMR § 3400.3, and a parking plan complying with the required number of spaces for a Residential Care Facility as provided for in the Zoning By-Law § IV B 1

In an August 19, 2005 letter from Attorney James Hanrahan a list of educational programs was provided along with an attachment of the Articles of Organization for South Middlesex Non-Profit Housing Corporation per MGL c. 180. The Articles of Organization indicate that one of the stated purposes of corporation is "to mobilize and utilize resources, both public and private, in order to provide opportunities for education, training, vocational rehabilitation, care and treatment and shelter for individual and families, regardless of race, creed, color and age."

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2 DETERMINATION

In a memo to John Grande dated June 13, 2006, Commissioner Mikielien made the determination that "it is my opinion the proposed use of the existing facility at 517 Winter Street would meet the legal standards as an exempt use under the Dover Amendment. It is evident from the information submitted and documentation that a non-profit corporation status has been established. The educational and training programs proposed to be offered do appear to be consistent with what should be seen as educational uses, and the educational use is the dominant proposed use of the facility, and therefore qualify for as an exempt educational use, in accordance to MGL c. 40A § 3."

3 IS THE USE EXEMPTION APPLICABLE

Based on the information provided to date, which describe a proposed program to be housed at 517 Winter Street in the future, I concur with Commissioner Mikielien that the application and use as proposed is exempt from use requirements as they pertain to zoning by-laws pursuant to the provisions of the Dover Amendment set forth in G.L. c. 40A, § 3. The proposed programs appear to be educational and training programs offered by qualified people and most (if not all) of such programs will be offered on site.

As outlined in the letters, documents and other correspondence submitted by the South Middlesex Non-Profit Housing Corporation, the proposed use of the property will be residential housing for 15 families where educational training programs will be provided with professional staff twenty-four hours each day, seven days per week, three hundred sixty five days per year. The letter, from Attorney James Hanrahan to Commissioner Mikielien, dated August 19, 2005, indicates that the Clinical Director and Family Therapist will be Master's level professionals and the type of programs provided, methods of assessment, treatment and training. A schedule of proposed staffing indicates that other staff members will include Recovery Specialist, Child Services Coordinator, Administrative Assistance and Child Service Assistant.

The Off Street Parking Regulations of the Zoning By-law, § IV B 1, does not clearly isolate a use classification for educational including residential housing. Again, I concur with Commissioner Mikielien in his determination that the Residential Care Facility classification governs the parking requirements for this use. The by-law in this same line category, Nursing Home or other Residential Care Facility; Assisted Living Housing, requires the same number of parking spaces. Assisted Living Housing is the only use that is provided a definition within the by-law.

20 VERNON STREET

1 REVIEW OF INFORMATION WITHIN THIS OFFICE AS TO THE DOVER EXEMPT USE

The existing use of this facility has been a nursing home and the proposed use will house 8 people with mental disabilities and staff to assist in their training and education. The applicant, Advocates, Inc., has appeared and received approval for the proposed exterior renovation to the building from the Framingham Historic Commission.

2 HOW THE DETERMINATION HAD BEEN MADE

The records indicate that Commissioner Mikielien wrote a letter on May 11, 2005 in response to a request from Advocates. In this letter, Mr. Mikielien determined that, based on the information submitted and the Articles of Organization submitted by Advocates, that and it was his opinion that the proposed activity for this facility is exempt under MGL c. 40A § 3.

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3 IS THE USE EXEMPTION APPLICABLE

The Articles of Organization show a non-profit corporation with education as one of its purposes. Information, description and plans provided by Advocates or its attorney detail that the facility will be occupied and designed to provide 9 independent living, sleeping, sanitary and cooking area's in addition to the common living, cooking, and sanitary area of the building. Eight of the independent areas will be for people with disabilities and they will share and socialize in the common area. The 9th living area is for the staff that will provide education and training. The letter from attorney Nagler states that Advocates will provide mandatory on-site educational programs.

For the foregoing reasons, it is my opinion that the proposed use of Advocates at 20 Vernon Street is entitled to use protection under the provision of G. L. c. 40A, § 3 prohibiting discrimination against people with disabilities who are living in a congregate housing arrangement. Advocates are also seeking a determination of use exemption under the Dover Amendment on the grounds that it is a non-profit corporation that will offer educational services at the facility. I find that sufficient information has not been submitted, such as programs to be offered, schedule of programs and qualifications required by program providers and I need not reach this determination at this time.

SUMMARY

These two projects are both entitled to zoning use exemptions pursuant to MGL 40A, § 3, 517 Winter Street as an educational use and 20 Vernon Street for congregate housing for people with disabilities. Where both propose changing the use of existing buildings, they are further required to seek Site Plan Review from the Planning Board pursuant to the Town of Framingham Zoning By-law § IV 12 d.

I would also like to clarify that the building official is making a determination on proposed projects based on the information submitted. If after a use is approved/permitted and a complaint is filed, alleging that what has been approved is different than what has been permitted, and upon investigation by the building official and upon a finding that non-compliance with the approved permit, only then may the building official take enforcement action. It is nearly impossible to undertake enforcement of the provisions of a by-law, regulation and permit without evidence of what is not being complied with.