



TOWN OF LINCOLN
MIDDLESEX COUNTY MASSACHUSETTS

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Daniel P. Walsh, Building Commissioner

July 8, 2016

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Michael C. Fee, Esq.
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11 Beacon Street, Suite 800
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Re: 16-22 Bypass Road, Lincoln, Massachusetts

Dear Ms. Tillotson and Mr. Fee:

This is in response to Ms. Tillotson's June 2, 2016 request for determinations about a proposed use of 16 and 22 Bypass Road in Lincoln MA (the Property) and Mr. Fee's response to the substance of Ms. Tillotson's request in behalf of a specified grouping of property owners in proximity to the Property. The request describes McLean Hospital Corporation's (McLean) intended use of the Property and asks whether it is exempt from zoning by way of Massachusetts General Law (MGL) 40A, §3, and if the proposed use is considered residential for the purpose of the Town's Zoning By-law dimensional requirements. Mr. Fee provides additional facts about McLean's proposed use and argues their proposed use of the Property does not fit §3 of MGL 40A as education is not the primary purpose, and the use is non-residential for purposes of the Town's Zoning By-law dimensional requirements.

According to the Town's Zoning By-law, the Property is located in the R-1, Single Family Residential District and Section 6.1 of the Zoning By-law, Uses Permitted includes subsection (g) which provides for "religious or educational uses governed by M.G.L. c 40A, s.3".

McLean's use and MGL 40A, §3:

The Town's Zoning By-law through Section 6.1 (g) allow uses governed by §3 of MGL 40A as opposed to McLean's use being exempt from zoning. McLean's proposed use of the Property is termed in the June 2, 2016 letter authored by Ms. Tillotson as "a transitional living program" for young adults and it describes the program objectives

which include the attendees acquiring a full repertoire of life management skills. The letter further says that Massachusetts case law supports McLean's use as educational for the purposes of §3 of MGL 40A and that the program will be licensed by the Department of Early Education and Care under 606 CMR 3.00. Mr. Fee contends McLean's use more closely resembles an in-patient psychiatric medical unit and no Massachusetts court has found the use consistent with an educational use benefitting from §3 of MGL 40A.

Given the complexity around determining educational uses on properties zoned residential, Massachusetts courts have been defining "education" uses that align with §3 of MGL 40A. Ms. Tillotson and Mr. Fee give contrary arguments as to what the common law has considered as factors having merit when determining whether a use is considered educational enjoying §3 of MGL 40A. In the one hand Ms. Tillotson asserts the courts support a broad interpretation of education which includes a group home use such as the one proposed. In the converse, Mr. Fee calling attention to the intended treatment functions maintains that the educational component is not the primary use of the property. The fact that both have cited the same Supreme Judicial Court case to support their respective points of view highlights that the issue is murky. Deciding what the cornerstone factors to consider when determining if, in this case of a non-profit corporation, provides proper services to consider it an educational use for the purpose of §3 of MGL 40A is not well-defined. As such Town Counsel has provided the Building Department guidance in this matter. All things having been considered, I conclude that sufficient information has been provided to determine the proposed use of the Property does fit Section 6.1 (g) of the Zoning By-law.

Dimensional requirements to the McLean use:

This too is not always seen as black or white and the complexity has been subject to judicial interpretation. McLean's proposed use has multiple objectives which include residential along with therapeutic and educational functions. One clear fact is that up to twelve young adults will be residing in a residential structure for several months at a time. Understood is the Courts have favored disability classes in a way which requires the town to treat housing intended for folks with disabilities similar to those without. Although the Town's by-law includes Section 19.1 (e) which affords §3 of MGL 40A uses a process to request exemption from dimensional regulations, the Building Department has also been advised by Town Counsel that McLean's use as represented by Ms. Tillotson benefits from federal and state anti-discrimination law considerations. As such treating McLean's use of the Property must be viewed as residential for the purpose of this dimensional difference in the Zoning Bylaw.

Respectfully,



Daniel P. Walsh, C.B.O.
Building Commissioner