

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LAND COURT

MISC. DOCKET NO. 08 MISC 383418

SOUTH MIDDLESEX NON-PROFIT
HOUSING CORPORATION
and
SOUTH MIDDLESEX OPPORTUNITY
COUNCIL, INC.,

Plaintiff,

v.

TOWN OF FRAMINGHAM,
SUSAN S. CRAIGHEAD, STEPHEN
MELTZER and KARL THOBER, as they are
Members of the TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS
and not Individually,

COMPLAINT

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LAND COURT
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Introduction

1. In this action, the plaintiffs challenge the decision of a local zoning board of appeals denying their administrative appeal and affirming the decision of the local building commissioner that the plaintiffs' proposed use of their property is not an exempt educational use subject to the protection of G.L. c. 40A, §3, otherwise known as the Dover Amendment. By this action brought pursuant to G.L. c. 40A, §17, G.L. c. 240, §14A and G.L. c. 185, § 1(j ½), the plaintiffs (1) appeal the decision of the local zoning board of appeals denying plaintiffs' administrative appeal and affirming the decision of the local building commissioner that the plaintiffs' proposed use of their property is not an exempt educational use subject to the protection of the Dover Amendment and, therefore, requires a Special Permit and Site Plan Review by the Planning Board; and (2) seek a determination that the application of Site Plan

Review and requirement of a Special Permit in connection with the plaintiffs' proposed project is impermissible under the Dover Amendment.

Parties

2. The plaintiff, South Middlesex Non-Profit Housing Corporation ("SMNPHC"), is a Massachusetts non-profit corporation with a usual place of business at 300 Howard Street, Framingham, Middlesex County, Massachusetts.

3. The plaintiff, South Middlesex Opportunity Council, Inc. ("SMOC"), is a Massachusetts non-profit corporation with a usual place of business at 300 Howard Street, Framingham, Middlesex County, Massachusetts.

4. The defendant, Town of Framingham, is a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business at 150 Concord Street, Framingham, Middlesex County, Massachusetts.

5. The defendant, Susan S. Craighead, resides at 17 Briarwood Road, Framingham, Middlesex County, Massachusetts, and is sued in her capacity as a member of the Town of Framingham Zoning Board of Appeals which has a usual place of business at 150 Concord Street, Framingham, Middlesex County, Massachusetts (the "Board").

6. The defendant, Stephen Meltzer resides at 10 Duggan Drive, Framingham, Middlesex County, Massachusetts, and is sued in his capacity as a member of the Board.

7. The defendant, Karl Thober, resides at 502 Grove Street, Framingham, Middlesex County, Massachusetts, and is sued in his capacity as an associate member of the Board.

The Proposed Project

8. SMNPHC owns the property located at 15 Blandin Avenue in Framingham, Massachusetts (the “Site”), which is located in the General Manufacturing District (“M District”).

9. The Site is approximately 204,343 square feet and contains a 19,175 square foot one-story concrete building previously used as NSTAR’s headquarters and a one-story metal garage. SMNPHC and SMOC (collectively “SMOC”) presently use the Site for warehouse use in conjunction with their non-profit educational purposes.

10. SMOC proposes to demolish the existing buildings at the Site to construct a three-story structure containing approximately 50,000 square feet for use as its administrative headquarters and operational space for certain of its educational and service programs (the “Project”). SMOC also plans to construct a 261 space parking lot in connection with the Project. The Project is intended to replace SMOC’s existing administrative headquarters located at 300 Howard Street in Framingham, Massachusetts.

SMOC and Its Mission

11. SMOC is a regional anti-poverty community action agency that was established in 1965 as part of the nation’s “War on Poverty” in connection with the Federal Economic Opportunity Act of 1964. It serves the greater Metrowest region and provides a broad range of social, rehabilitative, community development, economic development and educational services to disadvantaged and disabled adults and their children throughout the community. It also operates programs in central and western Massachusetts.

12. SMOC's mission is to improve the quality of life of low-income and disadvantaged individuals and families by advocating for their needs and rights; providing services; educating the community; building a community of support; participating in coalitions with other advocates and searching for new resources and partnerships. Education, both traditional and non-traditional, is central to carry out this mission. SMOC's continuum of care assists people to improve the conditions of their lives. Lack of educational opportunities, low wages, unavailability of decent affordable housing, lack of childcare, substance abuse or mental illness, or a combination of these things, contribute to the condition which hold people back from reaching their full potential. SMOC works with each individual and family to correct these conditions and assist them to move to successful community living where they are able to contribute their energy and skills to the improvement of the quality of their own lives and to the betterment of the community at large. At every level of involvement, educating clients and teaching them the skills necessary to develop self-sufficiency is a primary component of all SMOC programs.

13. SMOC offers a complete continuum of care to those it serves which begins with emergency shelter and culminates in sober housing and independent, self-sufficient living. Beyond that, people in recovery are engaged in various levels of supportive programming and education – learning life skills, employment and educational skills that together will enable them to stabilize their lives, maintain recovery and obtain and retain employment. While clients access SMOC's services through multiple programs, the common thread is to provide supportive educational programs and services which help individuals and families reach their full potential as independent contributing members of the community.

SMOC's Educational Use of the Site

14. SMNPHC and SMOC are both non-profit educational corporations organized pursuant to G.L. c. 180, §3. SMNPHC's and SMOC's Articles of Organization permit them to engage in educational pursuits.

15. In connection with the Project, SMOC intends to relocate the central management, finance, property management and human resource offices for SMOC's programs as well as on-site educational service programs, including the following:

- **Behavioral Health:** Mental health, substance abuse, and family stabilization programs, including individual and group counseling, medication evaluations, psychological/social evaluations, driver alcohol education programs, independent living support, vocational support, rehabilitation, community education, and homelessness prevention, as well as the administrative offices for SMOC's behavioral health program.
- **Early development, child care and Head Start:** Administration and staff training for SMOC's early education programs, including administrative offices for Head Start, and family day care services. SMOC Head Start is a comprehensive community based program for income-eligible and disadvantaged three and four year old children and their families, with classroom sites located in Ashland, Framingham, Grafton, Hudson, Marlborough, Medway, Milford, Natick, and Northbridge, with the Framingham site located at leased space within blocks of the Property. This pre-school learning program provides services in early development, health and dental care, mental health, nutrition education, and social services. SMOC's family day care services, with classrooms throughout the community, provide early learning focused child care services, in contrast to custodial day care, to children of families participating in various SMOC programs. While classrooms for the children are off-site, teacher and staff training will occur at the Property as well as all administrative functions of this educational program, just as the Framingham school system locates its administrative headquarters in a building separate from its classroom functions.
- **Voices Against Violence:** Voices provides a 24 hour hotline, crisis intervention, counseling support, advocacy, information and referral, support groups, emergency shelter referral, education regarding legal and medical processes for battered individuals, sexual assault survivors and their families, coordination of the Framingham High-Risk Domestic Violence Case Response Team, as well as staff and community education.

- **Nutrition education and meal planning:** The Framingham/Waltham Women, Infants and Children Program (“WIC”) provides nutrition education and related services for pregnant and parenting mothers and fathers, infants and children; health education to parents of young children about the health risks associated with obesity; administration and staff for WIC on Wheels; and SMOC’s Elderly Nutrition Program, which provides nutrition educational programs to elders.
- **Economic development, career services, and adult education:** Adult education programs including:
 - daytime basic education classes to adult clients from other SMOC programs to assist clients in earning high school equivalency degrees;
 - the Metrowest Career Center, a Career Center open to the general public that offers workshops, career counseling, and participant access to a computer facility for training, career development, and access to other educational programs;
 - the Joan Brack Adult Learning Center, which provides free GED high school equivalency classes, mentoring, and mini-courses on job skill development;
 - Services for Education and Employment (“SEE”), which provides educational and employment support for Department of Mental Health clients;
 - the Knowledge, Empowerment, Hope and Accomplish Program (“KEHA”), a daily/educational program for individuals with psychiatric disabilities, which includes training and education in communication skills, social competency, job readiness career planning and employment support;
 - the Mobile Resource Team, operating out of SMOC’s Metrowest Career Center, which provides on and off-site specialized housing search, education and job search skill training, case management, and employment services to single adults throughout the state with the goal of assisting individuals in obtaining permanent housing and employment;
 - the Young Parents Program, which provides education classes for young parents to help them attain their high school equivalence degree, post-secondary education and permanent employment, as well as developing parenting skills;
 - the Serenity Office Skills Program, a one-month class for low income women to prepare them for jobs as office workers; and
 - the Ready, Willing and Able Program, a structured educational program designed to develop and supervise temporary employment opportunities in

local businesses for previously unemployed individuals. The program offers training to participants in job readiness and aims to acclimate participants to the culture of the work world.

- **Self sufficiency programs:**

- the Metrowest Helpline, a telephone hotline and drop-in program, staffed during business hours, which provides educational information and referral services for self-advocacy, with no income or geographic limits;
- the Russian Outreach Program, an educational information and referral service for self-advocacy for the Russian immigrant community;
- the Family Self-Sufficiency Program, which provides classes, educational case management, employment search support, parenting and budgeting classes for Section 8 housing residents. The program uses self-sufficiency action plans for participants with the goal of developing financial stability, budgeting skills and improved employment, with a goal of transitioning participants from public housing in three to five years;
- the Weatherization Program, which provides client education on energy conservation and efficiency, and home maintenance training to low income households to assist participants in addressing the economic impact of the current oil and energy cost crisis; and
- the Home Center, which offers First Time Homebuyer classes, and other services aimed at helping people become homeowners. These evening classes include a series of sessions taught by area accountants, realtors, attorneys, and lenders to individuals and families trying to achieve home ownership for the first time. Tenants, landlords, prospective buyers and current homeowners can access information through the Home Center to maximize housing stability, strengthen investments, and minimize disputes.
- the Foreclosure Center, which offers clients education and related services on how to avoid or prevent foreclosure, as well as credit counseling.

- **Criminal justice and re-entry programs:** Administration of the Women's Transition Program, Fresh Start Program, and the Re-entry Housing Program, which provide case management, education, employment and health services for men and women recently released from correctional facilities, and administration of re-entry preparation classes.

- **Housing:** The use of the Property will include administration for SMOC's housing programs, including program supported educational housing providing rehabilitation, sobriety education, violence prevention, homelessness prevention, vocational readiness, and training in parenting and self-sufficiency skills.

16. SMOC will also house a small number of client services which are secondary, though central, to its educational mission at the Site, including the Metrowest Harvest food program as well as its rental assistance and the energy voucher programs.

The Dover Amendment

17. General Laws Chapter 40A, § 3, known as the Dover Amendment, provides, in pertinent part, as follows:

No zoning ordinance or by-law shall regulate or restrict... the use of land or structures...for educational purposes on land owned or leased...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 in determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

Use Provisions of By-law

18. Pursuant to Section III.G.3.a. and Section III.C.1.b(2) of the Town of Framingham Zoning By-law (the "By-law"), professional or administrative offices are an allowed use by right in the M District. Any such use with greater than 8,000 square feet of gross floor area requires a Special Permit for the Planning Board.

Special Permit Provisions of By-law

19. Section V.E.3.a of the By-law requires the Board to make the following findings in order to approve any application for a Special Permit:

- (1) The specific site is an appropriate one for such a use or structure.
- (2) Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. Except for residences requiring fewer than five stalls, adequacy of proposed off-street parking facilities shall be determined by the Planning Board, in accordance with the provisions of Section IV.A., IV.B., IV.C. and V.E. of this By-Law.

- (3) The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.
- (4) The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law.
- (5) All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.

Site Plan Review Provisions of By-law

20. Pursuant to Section IV.I.7.b of the By-law, the Board shall approve an application for Site Plan Review if the Board finds that the proposed development is in conformance with the By-law, after considering whether the proposed development will comply, to the extent feasible, with the standards set forth in Sections IV.I.6(a) – (e).

21. Section IV.I.6.a of the By-law sets forth the following traffic impact standards:

- (1) The “level of service” (LOS) of all impacted intersections and streets shall be adequate following project development, or the total value of off-site traffic improvements required or approved by the Planning Board as a condition of approval in any location within the Town affected by the proposed project shall be equal to a minimum of three per cent (3%) of the total development cost of the project. For purposes of this standard:
 - (i) **“level of service”** (LOS) shall be determined according to criteria set forth by the Transportation Research Board of the National Research Council;
 - (ii) **“impacted”** means intersections projected to receive at least five per cent (5%) of the expected traffic generated by the proposed development, either based upon the total anticipated peak hour traffic generated by the proposed project, or based upon the total anticipated average daily traffic counts generated by the proposed project;
 - (iii) **“adequate”** shall mean a level of service of “B” or better for rural, scenic and residential streets and for all new streets and intersections to be created in connection with the project; and “D” or better for all other streets and intersections; and

(iv) “**total development cost**” shall mean the total of the cost or value of land and all development-related improvements, and shall be determined on the basis of standard building or construction costs, such as published in the Engineering News Record or other source acceptable to the Planning Board, for the relevant type of structure and use.

(2) The proposed site plan shall minimize points of traffic conflict, both pedestrian and vehicular. The following guidelines shall be used to achieve this standard:

- (i) Entrance and exit driveways shall be so located and designed as to achieve maximum practicable distance from existing and proposed access connections from adjacent properties.
- (ii) Where possible, driveways shall be located opposite similar driveways.
- (iii) Sharing of access driveways by adjoining properties and uses is encouraged.
- (iv) Left-hand turns and other turning movements shall be minimized.
- (v) Driveways shall be so located and designed as to discourage the routing of vehicular traffic to and through residential streets.
- (vi) Pedestrian and bicycle circulation shall be separated from motor vehicle circulation as far as practicable.

22. Section IV.I.6.b of the By-law sets forth the following environmental impact standards:

- (1) The proposed development shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, or water pollutants, or any other similar significant adverse environmental impact.
- (2) The proposed development shall not increase the potential for erosion, flooding or sedimentation, either on-site or on neighboring properties; and shall not increase rates of runoff from the site to the satisfaction of the Town Engineer and Board of Public Works. Provision for attenuation of runoff pollutants and for ground water recharge shall be included in the proposal. The proposed development shall comply with the latest accepted state and federal Best Management Practices for water quality mitigation and management.

- (3) The design of the proposed development shall minimize the destruction of unique natural features.
- (4) The location and configuration of proposed structures, parking areas and open space shall be designed so as to minimize any adverse impact on temperature levels or wind velocities on the site or adjoining properties.
- (5) Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spillover to neighboring properties.
- (6) Proposed structures, and existing structures adjoining the project site shall be free from shadows created by the proposed development from 9:00 a.m. to 3:00 p.m. on December 21. Proposed development within the Central Business District shall be exempt from this standard.
- (7) All outdoor lighting shall be designed and located so that a line drawn from the height of the luminaire along the angle of cutoff intersects the ground at a point within the development site; except that this requirement shall not apply to (a) low-level intensity pedestrian lighting with a height of less than ten feet, or (b) security lighting directed off the wall of a principal structure.

23. Section IV.I.6.c of the By-law sets forth the following fiscal impact standards:

- (1) Projected positive net fiscal flow for first five years after design year of occupancy.

24. Section IV.I.6.d of the By-law sets forth the following community impact standards:

- (1) Design elements shall be compatible with the character and scale of neighboring properties and structures.
- (2) The design of the development shall minimize the visibility of visually degrading elements such as trash collectors, loading docks, etc.
- (3) The design of the development shall be consistent or compatible with existing local plans, including plan elements adopted by the Planning Board, Conservation Commission, Parks Commission, and other Town bodies having such jurisdiction.

- (4) The design of the development shall minimize earth removal and volume of cut and fill. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.
 - (5) The design of the development shall minimize the area over which existing vegetation is to be removed. Tree removal shall be minimized and, if established trees are to be removed, special attention shall be given to the planting of replacement trees.
25. Section IV.I.6.e of the By-law sets forth the following parking standards:
- (1) The facility will not create a hazard to abutters, vehicles or pedestrians.
 - (2) Appropriate access for emergency vehicles will be provided to the principal structure.
 - (3) Adverse impacts on the abutters, residents, or businesses in the area or on the character of the neighborhood will be mitigated satisfactorily.

SMOC's Request for Dover Amendment Determination and Building Commissioner's Denial

26. On March 10, 2008, SMOC submitted a letter and supporting materials to Michael Foley, Building Commissioner for the Town of Framingham, requesting a determination that the Project is a non-profit educational use subject to the protection of the Dover Amendment. SMOC requested this determination in anticipation of filing a building permit application for the Project.

27. In addition to its detailed letter describing the Project, SMOC also submitted to the Building Commissioner a conceptual plan of the Project, proposed floor plans, a proposed front elevation plan, a survey plan and certain supplemental information that is required for all applications seeking exempt use status under the Dover Amendment.

28. By letter dated April 9, 2008, the Building Commissioner informed SMOC that “[t]he proposed new structure and its use(s) as Administrative Headquarters and Operational

space for SMOC and SMNPHC does not qualify for exempt use status for zoning purposes” and that “this office would not be prepared to issue any building permits without prior approval of Site Plan Review (see § IV.I.2.b) from the Planning Board for the change in use from Warehouse to Non-Medical Office Building and a Special Permit for a Non-Residential Use greater than 8,000 square feet gross floor area within the M Zoning District (see § III.G.3.a).”

SMOC's Appeal

29. On May 7, 2008, SMOC appealed the Building Commissioner's determination of April 9, 2008 to the Board on the grounds that (1) SMOC is a non-profit educational corporation within the meaning of the Dover Amendment; (2) SMOC's proposed use of the Site will be for educational purposes within the meaning of the Dover Amendment and, as such, (3) the requirement of a Special Permit and Site Plan Review for a Dover Amendment protected use, such as SMOC's, is impermissible and a direct violation of the Dover Amendment.

30. On June 10, 2008, the Board opened the public hearing on SMOC's appeal. At SMOC's request, the public hearing was continued to June 17, 2008.

31. At the public hearing on June 17, 2008, SMOC explained, in detail, its educational mission generally and the Project in particular. SMOC also submitted a lengthy memorandum with accompanying exhibits further outlining SMOC's proposed educational programming at the Site. SMOC's educational use of the Site includes classes that fit within the traditional model of education such as GED, Head Start, Driver Alcohol Education, Serenity Office Skills classes and First Time Homebuyer classes. In addition, SMOC's proposed use of the Site includes non-traditional education such as training individuals and families in skills designed to maximize their capacity to live independently and productively in the community by

developing skills in daily living, job search, housing search, parenting, sobriety, energy conservation, health, nutrition, violence prevention, financial self-management and other self-sufficiency skills. These educational services are aimed at developing skills and supports to allow participants to live productively outside an institutional setting. Finally, SMOC's proposed use of the Site also includes those uses which are directly related to the functioning of SMOC and are incidental, though central, to the main educational purpose of SMOC, such as administration and finance, information technology, human resources, housing administration, business development, maintenance and operations, shelter group management and common areas.

32. At the June 17 public hearing, the Building Commissioner, Michael Foley, defended his determination that the Project was not an exempt educational use subject to the protection of the Dover Amendment. Mr. Foley expressed his belief that the proposed use was primarily an office use and that his decision would not be any different even if the applicant were an educational institution such as a college or university proposing to locate its administrative offices at the Site.

33. The public hearing was continued to July 22, 2008, at which time the Board closed the public hearing. At a public meeting on August 12, 2008, the Board voted to deny SMOC's administrative appeal and to affirm the Building Commissioner's determination that SMOC's proposed use does not qualify as an exempt non-profit educational use under the Dover Amendment. The Board further found that SMOC's proposed use is subject to the Building Commissioner's zoning determination that, as a non-exempt use, a Special Permit and Site Plan Review from the Planning Board is required.

The Decision

34. The decision of the Board was filed in the office of the Framingham Town Clerk on August 14, 2008 (the "Decision"). A true and accurate copy of the Decision is attached hereto as Exhibit A.

35. The Decision, in pertinent part, gave the following reasons for denying SMOC's administrative appeal and affirming the Building Commissioner's decision that SMOC's proposed use of the Site is not for an educational purpose within the meaning of the Dover Amendment:

During their deliberations the Board determined that the primary use of the building would be administrative offices and not educational. The Board noted that a review of the Applicant's mission statement describes a broad based social service agency that provides a variety of social service programs such as housing, family and nutritional services, health services and energy and financial assistance programs. Only some of the Applicant's programs can be considered educational. The Board concluded that the determination made by the Building Commissioner was the correct one.

36. The Board did not make any findings in support of its conclusion that the proposed use requires a Special Permit and Site Plan Review from the Planning Board.

COUNT I

(G.L. c. 40A, §17 Appeal)

37. The plaintiffs repeat and incorporate their allegations in paragraphs 1-36, herein.

38. The plaintiffs are persons aggrieved by the Board's Decision.

39. The Decision is legally untenable, arbitrary, capricious, whimsical, and in excess of the authority of the Board for several reasons which include, but are not limited to, the following:

- a. The Board's decision that SMOC's proposed use of the Site for its administrative headquarters and operational space for certain educational and service programs is not an educational use within the meaning of G.L. c. 40A §3 is contrary to applicable law and is legally untenable.
- b. The Decision violates the Dover Amendment by improperly regulating and restricting SMOC's use of land for an educational purpose through the application of improper standards and criteria.
- c. The Decision is inconsistent with and contrary to the law governing educational uses under the Dover Amendment. Specifically, the law governing educational uses under the Dover Amendment, such as SMOC's Project, forbids the application of the Site Plan Review and Special Permit provisions of the By-law to the Project.

COUNT II

(Judicial Determination; G.L. c. 240, §14A; G.L. c. 185, §1(j½))

40. The plaintiffs repeat and incorporate their allegations in paragraphs 1-39, herein.
41. SMNPHC is the owner of a freehold estate in possession in land; to wit, the Site.
42. The application of the Special Permit and Site Plan Review provisions of the By-law to the Project purports to restrict or limit the present or future use, enjoyment, improvement or development of the Site or future structures thereon.
43. The application of Site Plan Review to the Project and requirement of a Special Permit for the Project is impermissible under the Dover Amendment. As such, the Site Plan Review and Special Permit provisions of the By-law, as applied to the Project, are invalid.

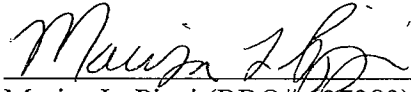
44. The application of the Special Permit and Site Plan Review provisions of the By-law to the Project exceed the permissible scope of regulation under the Dover Amendment. As such, the Special Permit and Site Plan Review provisions of the By-law do not apply to the Project.

REQUESTS FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that the Court:

1. As to Count I, annul the Decision of the Board and issue an order providing that SMOC's proposed use of the Site is for an educational purpose within the meaning of G.L. 40A, §3 and, as a result, is exempt from regulation or restriction;
2. As to Count II, determine and adjudge that the application of Site Plan Review to the Project and the requirement of a Special Permit for the Project is impermissible under the Dover Amendment and, accordingly, such provisions of the By-law are invalid as applied to the Project;
3. As to Count II, determine and adjudge that the application of the Special Permit and Site Plan Review provisions of the By-law to the Project exceed the permissible scope of regulation under the Dover Amendment and, accordingly, such provisions of the By-law do not apply to the Project; and

4. Grant such other and further relief as the Court deems appropriate.



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(508)879-5700

Dated: 9/3/08



**Town of Framingham
Massachusetts
Zoning Board of Appeals**

**Memorial Building
150 Concord Street, Room B2
Framingham, Massachusetts 01702-8325**

2008 AUG 14 P 3: 08
TOWN CLERK
Tel: 508-532-5456
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**TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS CASE NO. 08-24
PETITION OF SOUTH MIDDLESEX NON-PROFIT HOUSING CORP.
DATE OF DECISION: AUGUST 12, 2008**

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the application of SOUTH MIDDLESEX NON-PROFIT HOUSING CORP. (SMNPHC) (hereinafter the Applicant), for property located at 15 BLANDIN AVENUE. This Decision is in response to an Appeal of the zoning determination by the Building Commissioner regarding the proposed use of the premises which Applicant claimed would be an exempt educational use (hereinafter the Application). SMNPHC appealed the finding by the Building Commissioner that the proposed use of the property is not an educational use subject to the protection of G.L. c. 40A sec. 3 (the "Dover Amendment") and that it requires a Special Permit and Site Plan Review from the Planning Board to construct an office building.

2. Applicant

South Middlesex Non-Profit Housing Corporation
300 Howard Street
Framingham, MA. 01702

3. Location

Property is located at 15 Blandin Avenue and is shown on Assessors' Plan Sheet 111, Block 222, as Lot 9 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on August 12, 2008 the Board voted to DENY the APPEAL. The Board voted that the proposed use of the property is not an exempt educational use subject to the protection of G.L. c. 40A sec. 3 (the "Dover Amendment") and therefore requires a Special Permit and Site Plan Review by the Planning Board. The decision was by a unanimous vote of three (3) members sitting on the Application. The record of the vote is stated as follows:

Dedicated to excellence in public service.

SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES
KARL THOBER	YES

5. Proceedings

The Application was received by the Board on May 7, 2008 pursuant to MGL, Ch. 40A, § 8 and the Framingham Zoning By-Law. The public hearing was opened by the Board at a duly noticed public hearing of the Board on June 10, 2008 at 9:00 P.M. in the Blumer Community Room of the Memorial Building. Board Members Susan S. Craighead, Stephen Meltzer and Karl Thober were present throughout the proceedings. Chairman Philip Ottaviani recused himself from the proceedings and Vice Chairman, Susan S. Craighead acted as Chair. The Board continued the public hearing at the Applicant's request to the Board's regularly scheduled meeting on June 17, 2008 when the Applicant's initial presentation began. The Board continued the public hearing to July 22, 2008 at which time it closed the public hearing. The Applicant agreed to the request of the Board to grant an extension of time for the Board to take final action on this Application until August 29, 2008. The extension is on file with the Town Clerk. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1 Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk.
- 6.2 Filing fee in the amount of \$250.00.
- 6.3 Correspondence dated April 9, 2008 from Michael Foley, Building Commissioner.
- 6.4 Additional information submitted by the Applicant on June 12, 2008 and June 16, 2008.
- 6.5 Architectural floor plans submitted by the Applicant on June 17, 2008.
- 6.6 Correspondence from the Applicant, dated July 30, 2008, agreeing to an extension of time through August 29, 2008 for the Board to issue its written decision.
- 6.7 Documentation from the Applicant's website regarding its mission statement.

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the Manufacturing zoning district.
- 7.2 On April 9, 2008 correspondence was issued by the Framingham Building Commissioner, Michael Foley, in response to the Applicant's building permit application.
- 7.3 On May 7, 2008, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of Appealing the issuance of the April 9, 2008 zoning interpretation.

- 7.4 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on May 26, 2008 and June 2, 2008 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. Several persons spoke regarding the Application.
- 7.5 The Applicant's Attorney, Ms. Marisa L. Pizzi, Esq., representing South Middlesex Non-Profit Housing Corporation (SMNPHC) introduced herself and Charles Gagnon, Chief Operating Officer of SMNPHC. The Applicant stated that SMNPHC was before the Board to Appeal the Building Commissioner's April 9, 2008 denial of the proposed use of the property located at 15 Blandin Avenue as an exempt educational use under the Dover Amendment, M.G.L.c. 40A § 3 and that SMNPHC was challenging the Building Commissioner's decision that the proposed use for the property requires a Special Permit and is subject to Site Plan Review by the Planning Board. The Applicant explained that SMNPHC is proposing to relocate their program headquarters from the current location of 300 Howard Avenue to 15 Blandin Avenue and stated that the property would specifically be used for direct educational programming that would be provided on site as well as for necessary administrative office support for the programming that takes place on and off the site.
- 7.6 Attorney Pizzi explained that the building that SMNPHC plans to construct would be a 50,000 sq. ft., 3-story structure. The Applicant cited SMNPHC's mission which is to improve the quality of life of low income disadvantaged individuals and families. The Applicant commented that SMNPHC's mission is the primary component of all of their programs and that SMNPHC offers a complete continuum of care that is focused on assisting individuals and families in achieving self sufficiency. The Applicant stated that in order for SMNPHC to provide a complete continuum of care each and every component of SMNPHC's organization serves a critical and necessary purpose. The Applicant stated that the 15 Blandin Avenue program headquarters would include operational space for it's on site educational programs and related services. The Applicant commented that in combining all of the relevant elements or principles of the case it should be clear that SMNPHC's proposed use of 15 Blandin Avenue falls within the broad concept of education and that many of its programs fit into the traditional model such as GED classes, Head Start, Driver Alcohol Education, Serenity Office Skills classes, and First Time Home Buyer classes. The Applicant stated that the uses of the property will also include those uses that are directly related to the functioning of SMNPHC and secondary functions incidental to the main educational purpose of SMNPHC such as administration and finance, information technology, human resources, housing administration, business development, maintenance and operations, shelter group management and common areas.
- 7.7 In his letter dated April 9, 2008, the Building Commissioner, Michael Foley, determined that while the articles of organization do appear to qualify SMNPHC as an organization that meets the criteria established in M.G.L. c. 40A, sec. 3, the plans submitted identify the proposed new structure and it uses(s) as administrative headquarters and operations space for SMNPHC and therefore does not qualify for exempt use status for zoning purposes. The background information provided indicates the intended use of the property will be for offices for administrators and support staff for certain programs and upon review of the documents submitted, the Building Commissioner finds that the proposed primary use is not educational

under the Dover Amendment. In his opinion, the change in use of the property for the proposed new use as a 3 story, 50,000 square foot office building, with 208 employees, 261 parking spaces, on a 204,533 s.f. lot within the General Manufacturing (M) zoning district requires a Special Permit from the Planning Board for permitted uses greater than 8,000 square feet in gross floor area and Site Plan Review for the change in use. The Building Commissioner noted that since he has determined that the proposed use does not qualify as an exempt educational use, he would not be prepared to issue any building permits without prior approval of Site Plan Review (see § IV.I.2.b) from the Planning Board for the change in use from Warehouse to Non-Medical Office Building and a Special Permit for a Non-Residential Use greater than 8,000 square feet gross floor area within the M Zoning District (see § III.G.3.a).

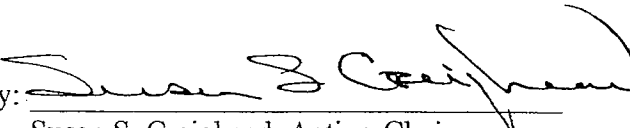
- 7.8 In his presentation, Mr. Foley stated that he did recognize SMNPHC as a non-profit educational organization. However, based on the plans that were submitted and the description of the programs to be offered, Mr. Foley stated that he had a hard time recognizing the primary purpose of 15 Blandin Avenue to be educational. Mr. Foley commented on the 280 people who would be employed as administrators within the programs SMNPHC offers in order to service their clients. Mr. Foley stated the plans show that there would only be two classrooms on the second floor to be used as a place for life skills to be taught. Mr. Foley stated that the Parking Plan is based on a non-medical office use.
- 7.9 During the public meetings, the Board raised and discussed a number of questions and issues including details regarding the proposed uses of the building and mission of the Applicant. The authority of the Board to waive or exempt the Applicant from the Planning Board's special permit and site plan review process was also discussed.
- 7.10 There was considerable input from interested residents who attended the meetings. Some spoke in support of the proposed use. Others raised questions about how a corporate headquarters qualifies as a non profit educational use. Issues of handicapped accessibility were raised and some speakers expressed concern that the zoning bylaws be enforced, that the Zoning Board support the interpretation of the Building Commissioner and that the project description was essentially that of an office building.
- 7.11 During their deliberations the Board determined that the primary use of the building would be administrative offices and not educational. The Board noted that a review of the Applicant's mission statement describes a broad based social service agency that provides a variety of social service programs such as housing, family and nutritional services, health services and energy and financial assistance programs. Only some of the Applicant's programs can be considered educational. The Board concluded that the determination made by the Building Commissioner was the correct one.
- 7.12 Therefore, the requested APPEAL of the Building Commissioner's determination that the proposed use does not qualify as an exempt nonprofit educational use is DENIED and the Building Commissioner's determination is therefore upheld. The Board also finds that the proposed use is subject to the Building Commissioner's zoning determination that, as a non exempt use, a Special Permit and Site Plan Review from the Planning Board is required.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: _____


Susan S. Craighead, Acting Chairman