

**COMMITTEE ON SPECIAL PERMITS
JULY 8, 2019 at 7:25 P.M.
WOBURN CITY HALL
COMMITTEE ROOM**

Voting members present: Chairman Richard Gately, Alderman Joanne Campbell, Alderman Mark Gaffney, Alderman Darlene Mercer-Bruen and Alderman Edward Tedesco.

Non-voting members present: President Michael Anderson, Alderman Robert Ferullo, Alderman Lindsay Higgins and Alderman Michael Concannon.

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VOTED to dispense with the reading of the previous meeting's Minutes and to approve, all in favor, 5-0.

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Motion made and 2nd to take the following two matters out of order, all in favor, 5-0.

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On the petition by Primrose Schools for a special permit to establish a Child Care Center at 168 Lexington Street and on the petition by Primrose Schools for a special permit for a use in the Groundwater Protection District at 168 Lexington Street. City Solicitor Ellen Callahan Doucette stated that the request is not for a waiver, that if reasonable regulations prohibit the proposed use the regulations become unreasonable, that this is not a waiver but a finding could be made that as applied to this case the regulations are unreasonable, that this is a triangular lot, that if the building was moved to the front of the lot the petitioner will lose parking, that the child play area will in the rear of the lot, that the petitioner must have an area that meets State regulations for children, that because this is a triangular lot the project cannot meet the 25 foot setback, that the city cannot deny the location of a day care center, that she recommends the approval be tied to the plans, that there should not be a blanket approval but the city does not want the petitioner to have to come back for minor in field changes, that there is not basement in the building, that the building will be further back from the street than the current building, that there will be no functions on weekends as the present use has, and that the Planning Department suggested non-transferability condition does not describe and actual transfer. Attorney Mark Lanza, 9 Damonmill Square, Suite 4A4, Concord, Massachusetts 01742 stated that the transferability restriction would be too restrictive, that if the business was sold it would have to be to a day care operated under State regulations, and that the condition is too restrictive with no benefit. City Solicitor Callahan Doucette stated that she wanted to be certain the City Council was aware of the Dover Amendment and its application in this matter, that the city cannot require the petitioner to obtain a variance, and that variances are difficult to obtain. Alderman Concannon stated that the petitioner could have a day care center and meet the setbacks with a smaller building. City Solicitor Callahan Doucette stated that a day care center is required to have a certain square foot area depending upon the amount of children on site. Alderman Concannon stated that if the petitioner wanted sixty students the day care center could be smaller. City Solicitor Callahan Doucette stated that the petitioner wants to have 150 students.

Alderman Concannon stated that he agrees that the petitioner wants 150 students but the city is not bound by the Dover Amendment to whatever amount of students the petitioner wants. City Solicitor Callahan Doucette stated that the petitioner may be able to show that a certain number of children are necessary for the operation. Alderman Concannon stated that the Dover Amendment said the city cannot prohibit the use but the city is not prohibiting the use by saying the project should be smaller. City Solicitor Callahan Doucette stated that the problem is the city requires a special permit for the use at all. Alderman Concannon stated that the requirement of a special permit is not prohibited, and that the petitioner could provide day care service in a smaller building. City Solicitor Callahan Doucette stated that the petitioner cannot come in with an arbitrary figure of 500 students but if the Office for Children indicates a certain amount of area for the operation then case law would not support forcing a downsizing of the building. Alderman Concannon stated that this is a business model that the petitioner wants but the city cannot be forced to accept any business model. Chair Gately stated that the lot is triangle shape. Attorney Lanza stated that the setbacks are a little over sixteen feet, that a fifteen foot setback is common for many of their facilities, and that this is not a tight setback. President Anderson stated if a petitioner said they would have no setback and no parking then City Council could deny the petition as being unreasonable. City Solicitor Callahan Doucette stated that the petition could be denied if no parking was provided, and that requiring parking would likely be deemed a reasonable requirement. Alderman Concannon stated that denying the petition would not necessarily be unreasonable but just would not meet the wishes of the petitioner. City Solicitor Callahan Doucette stated that there should be specific lines in the table of uses for these type of uses. Alderman Mercer-Bruen stated that the special permit should have a condition relative to fencing including the type of fence and that the petitioner must maintain the fence in perpetuity. Alderman Campbell stated that there should be conditions relative to hours of construction, hours of operation and dust control during construction. Alderman Tedesco stated that the Building Commissioner asked that a snow storage plan be filed. Alderman Gately stated that the plan indicates steel fencing along the retaining wall. Alderman Ferullo stated that there is a fence around the petitioner's location in Burlington. Attorney Lanza stated that the project engineer was not available for this meeting. Alderman Gately stated that the plan for the drainage system at the parcel is very good. Alderman Campbell stated that she is not certain she wants there to be a slat fence. City Solicitor Callahan Doucette stated that the City Council can speak to the project engineer at the meeting on July 16, 2019 about the fence. Attorney Lanza stated that he will have photographs of the fence available at the next meeting. Alderman Campbell stated that the City Council must be mindful of the impact on the neighboring properties. Public Comment: John Cashell, 173 Lexington Street stated that this is a single-family neighborhood, that the petitioner could only construct two single-family homes the meet the setbacks on the property, that there is currently a nonconforming use that is in poor condition, that a number of uses can go on the property, that a church would have to meet reasonable restrictions such as parking lighting and the like as well as reasonable required setbacks, that the city requires setbacks be met with only limited exceptions, that the proposed use is a good use of the property but each building should be well planned and not over saturate the property because the owner wants to do so with a particular business model, that there is concern that the property is categorized as a school, and does this become a school zone for vehicles on the street. Alderman Ferullo stated that no other child care centers in the city have school zones. Mr. Cashell stated that traffic needs to be slowed in that area. Motion made and 2nd that the special permit be granted, as amended, with the conditions as follows: 1. That the 25-foot side setback and 50% open space requirements of

Section 6.1 of the 1985 Woburn Zoning Ordinances, as amended are unreasonable as applied to the petition for construction of a child care facility at 168 Lexington Street, and that the special permit(s) be granted based upon the plan of record showing the side yard setbacks at 16.2 feet and 16.4 feet with open space of 43.3%.; 2. That the plans of record shall be the plans entitled “Site Development Plans for Primrose Schools” Sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, L-1 and L-2 dated 05/15/2019 prepared by Bohler Engineering; “ALTA/NSPS Land Title Survey Primrose Schools Support Center” Sheets 1 and 2 dated 4-24-2019 prepared by Control Point Associates, Inc.; “Primrose Schools: Woburn, MA – Exterior Elevations” Sheets A-4.0 dated 04/23/19 prepared by ADA Architects, Inc.; Primrose Schools: Woburn, MA – Fixture Plan” dated 12/19/18 prepared by ADA Architects, Inc.; “Primrose Schools: Woburn, MA – Site Plan” Sheet CP-1.0 dated 11/1/17, revised 04/17/19 prepared by ADA Architects, Inc.; and “Primrose Schools: Woburn, MA – Fixture Plan” dated 12/19/18, revised 01/30/19, revised 02/11/19 and revised 04/11/19 (hereinafter “Plans of Record”).; 3. The Petitioner shall construct and improve the Site as substantially described on the Plans of Record set forth in Condition 2 herein although design adjustments and modifications generally associated with: (i) preparing so-called "working drawings" or (ii) site conditions shall be permitted so long as such changes do not constitute substantial changes from said plans as determined by the Building Commissioner. In the event that the Building Commissioner determines that the building plans filed with the building permit application are not in substantial conformance with the Site Plan, the Petitioner may request a review of said plans by the City Council Committee on Special Permits by direct petition to the Committee on Special Permits who shall make a final determination. If the Special Permits Committee makes a determination that the proposed plans are not in conformance with the Site Plan, the Petitioner shall be required to file a Special Permit Petition seeking approval to modify the Site Plan.; 4. That the Petitioner be required to file all Plans of Record with the Office of Inspectional Services.; 5. That the petitioner shall file a snow storage plan with the Building Commissioner; and 6. That the petitioner shall filed a construction pest control plan with the Board of Health, 3 in favor, 2 opposed (Campbell, Mercer-Bruen opposed). Alderman Campbell stated that she will offer additional conditions at the public hearing. Alderman Mercer-Bruen stated that the non-transferability condition should be included, that the petitioner may be a good operation but the city does not want the petition to go to someone else with the City Council involved in the approval.

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Motion made and 2nd to return to the regular order of business, all in favor, 5-0.

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Motion made and 2nd to take the following two matters collectively, all in favor, 5-0.

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On the petition by Seaver Properties LLC for a special permit to allow modification of special permit dated June 8, 2017 (“Decision”) to allow for: 1. Approval of plan entitled “Retaining Wall Modification Plan, Approved Layout Shannon Farms Woburn, MA” dated February 12, 2019 prepared by ALAN Engineering, L.L.C. (“Retaining Wall Plan”); and 2. That Retaining Wall Plan be made part of the “Site Plan” referenced in Condition 1 of the Decision, at 299 Lexington Street and on the petition by Seaver Properties, LLC request for review of Utility Connection Plans to make a determination that the proposed

plans are not in conformance with the Site plan at 299 Lexington Street. Alderman Higgins stated that she has had discussions with the petitioner, and that Matt Maggiore indicated Eversource is to send a letter indicating they will not allow certain work under the Eversource easement but she has not seen the letter. Attorney Joseph R. Tarby, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 stated that the conduit was to run under the driveway, that the Superintendent of Public Works wanted a direct connection, that the city sewer main is on the property, that there is a concern about the impact on the sewer main, and that there are landscape amendments that must be made. Chair Gately stated that the Superintendent of Public Works has not approved the utilities, that the petitioner will offset the utility line and have the plan approved by the Superintendent of Public Works, that he met with the engineer and the petitioner to discussed the twenty foot wide easement, that the sewer pipe is not within the middle of the easement, that if the retaining wall is close to the easement or the sewer main there would be no ability to get equipment into the area without removing the retaining wall, and that the retaining wall should be moved back but will be steeper. Alderman Higgins stated that the petitioner should meet with city officials to find a solution for these issues. Chair Gately stated that there should be no further meetings with the City Council until the Superintendent of Public Works and City Engineer approve the plans. No further action was taken.

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Motion made and 2nd to adjourn, all in favor, 5-0. Chair Gately adjourned the meeting at 8:14 p.m.

A TRUE RECORD ATTEST

William C. Campbell
Clerk of Committees, Pro Tem