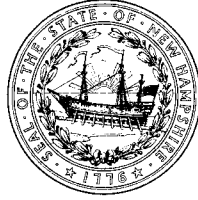


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March 20, 2015

Mark Lucy, Chair
Zoning Board of Adjustment
Town of Madison
P.O. Box 248
Madison, NH 03849

RE: *Becket Academy, Inc.*
12 Doe Drive and 1690 East Madison Drive, Madison, NH
Case Nos. 15-01 and 15-02

Dear Chair Lucy and the Honorable Members of the Zoning Board of Adjustment:

This letter is in response to a recent Administrative Decision issued by the Town of Madison Zoning Board of Adjustment regarding two proposed community residences to be located at 12 Doe Drive and 1690 East Madison Drive in Madison, New Hampshire.

Becket Academy, a private nonprofit corporation, has contracted with the Department of Health and Human Services ("DHHS") to operate these two community residences. The two residences will provide homes for individuals with developmental disabilities or mental illnesses under RSA 126-A:19 as "Community Living Facilities."

As I am sure you are aware, pursuant to RSA 126-A:19:

The commissioner shall develop a statewide program of community living facilities for persons with developmental disabilities or mental illnesses. The commissioner shall be responsible for the selection, certification, and monitoring of such community living facilities in accordance with rules adopted by the commissioner pursuant to RSA 541-A. The commissioner shall also be responsible for prior approval for all individual residential placements and shall adopt rules relative to monitoring the care, treatment, and habilitation provided to all residents of community living facilities.

The State, through DHHS, has established, and continues to develop and maintain, a comprehensive program of residences for developmentally disabled and mentally ill individuals.

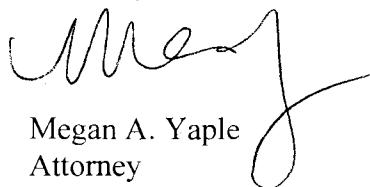
Additionally, pursuant to RSA 126-A:20, rules have been adopted to govern the certification of these community living facilities. See He-M 1000. Specifically, the rules set forth, among other things, the requirements for the initial certification process with the State (He-M 1001.11), the required qualification of employees and operators of the residences (He-M 1001.03; He-M 1001.04), and the services required to be provided (He-M 1001.5). Moreover, the rules setup a system whereby the State and its area agencies conduct periodic quality assurance visits to the community residences (He-M 1001.09). As such, Becket Academy, under RSA 126-A:19, acts as an agency of the State performing certain legitimate State functions, as set forth by statute, and is highly regulated by the State.

The New Hampshire Supreme Court has determined that zoning restrictions are inapplicable to the State, or its agencies specifically carrying out a State function, “unless the legislature has clearly manifested an intent that they shall.” City of Portsmouth v. John T. Clark & Son, Inc., 117 N.H. 797, 798 (1977). Because there is no such intent to apply local law to community living facilities set forth in RSA 126-A, the Court has extended this holding specifically to nonprofit corporations that are carrying out the State function of establishing community residences for individuals with developmental disabilities or mental illnesses. See Region 10 Client Management v. Hampstead, 120 N.H. 885, 888 (1980); see also Northern New Hampshire Mental Health Hous. v. Conway, 121 N.H. 811, 814 (1981).

Given that Becket Academy is carrying out a State function under RSA 126-A, it is likely that the local zoning ordinances do not apply. Requiring Becket Academy to obtain a Special Exception permit for each property would be contrary to the holdings in Region 10 Client Management v. Hampstead and Northern New Hampshire Mental Health Hous v. Conway.

I encourage the Town of Madison to work cooperatively with Becket Academy to develop a compatible plan that is satisfactory to the Town, while still allowing Becket Academy the ability to provide such important services for the State.

Sincerely,



Megan A. Yapple
Attorney
New Hampshire Attorney General's Office
Civil Bureau

Cc: Nathan R. Fennessy, Esq.
Preti Flaherty

John B. Martin, Manager
Bureau of Licensing and Certification
New Hampshire Department of Health and Human Services