



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

RECEIPT FORM

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

11
RM
JV

APPLICATION NO. 98-46

RECORD OWNER'S NAME WAYLAND SCHOOL DEPARTMENT

ADDRESS OF PROPERTY AFFECTED 41 COCHITUATE ROAD

DEED RECORDED: BOOK 215 PAGE 50

CERTIFICATE OF TITLE NO. _____ BOOK _____ PAGE _____

This is to certify that the attached is a true copy of the decision of the Board of Appeals of the

Town of Wayland granting: 1. No special permit is required under By-law § 198-901.1.7.5, and the Applicant can conduct the proposed "child care facility" as a matter of right. The board further finds that the Applicant meets the requirements for a special permit. 2. The site plan submitted to the Board is approved. 3. The Applicant may locate a sign on the property of the dimensions and in the location depicted on Sheet LL of the site plan. 4. A special permit under By-law §§ 198-1701.1 and 198-1703.4 is granted, provided that the proposed parking lot expansion and drainage plan receives approval from the Conservation Commission.

filed with the Town Clerk of Wayland on March 9, 1999

that twenty days have elapsed since the filing, and no appeal has been filed.

[Signature]
Town Clerk/Asst. Town Clerk - Wayland
Date June 30, 1999

_____ 19__ at _____ o'clock and _____ minutes _____

M

Received and entered with the Register of Deeds in the County of Middlesex

_____ Book _____ Page _____

ATTEST

Register of Deeds

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1077
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06/30/99
01:17:25
050



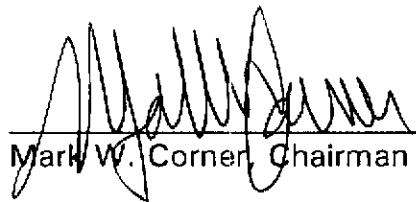
TOWN OF WAYLAND
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TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600
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DECISION 98-46

APPLICANT: Wayland School Department

I, Mark W. Corner of the Board certify that, in accordance with Massachusetts General Laws, Chapter 40A, Section 11, notice was published in the Town Crier, a newspaper of general circulation in Wayland on February 4, 1999 and on February 11, 1999, and that notice by mail, postage prepaid, was sent to the Applicant, abutters, owners of land directly opposite on any public or private street or way, and abutters to abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list and to the Wayland Planning Board, on February 4, 1999. I further certify that notice of the Decision was mailed to each of the parties in interest as above designated on March 9, 1999.


Mark W. Corner, Chairman

The record and decision was received and recorded as a public record on 3/9/99 by the TOWN CLERK, WAYLAND, MASSACHUSETTS.


TOWN CLERK/ASSISTANT

RECEIVED
TOWN OF WAYLAND
TOWN CLERK

99 MAR -9 AM 9:39



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

DECISION NO. 98-46

NAME OF APPLICANT:

WAYLAND SCHOOL DEPARTMENT

APPLICATION FOR:

Permits and approvals necessary to conduct a child care facility in the existing unoccupied second floor of the Town Building, including a Special Permit pursuant to Town of Wayland Zoning By-law §§198-901.1.7.5 to operate a day care facility, Site Plan Approval pursuant to By-law §198-606 *et seq.*, Floodplain Protection District permits under By-law §198-1701 *et seq.*, Watershed Protection District permits under By-law §198-1703.4, and for signage, on property located at 41 COCHITUATE ROAD, which is in a SINGLE RESIDENCE DISTRICT.

DATE OF HEARING: February 23, 1999.

BOARD CONDUCTING HEARING AND RENDERING DECISION:

Mark W. Corner, Mary Ann McDougall, Carolyn Klein, Lawrence Glick and Linda Segal.

DECISION:

1. No special permit is required under By-law §198-901.1.7.5, and the Applicant can conduct the proposed "child care facility" as a matter of right. The Board further finds that the Applicant meets the requirements for a special permit.
2. The site plan submitted to the Board is approved.
3. The Applicant may locate a sign on the property of the dimensions

WAYLAND SCHOOL DEPARTMENT

DECISION 98-46

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and in the location depicted on Sheet LL of the site plan.

4. A special permit under By-law §§198-1701.1 and 198-1703.4 is granted, provided that the proposed parking lot expansion and drainage plan receives approval from the Conservation Commission.

VOTE OF THE BOARD: Unanimous

CONDITIONS:

1. Construction and landscaping shall be substantially in accordance with the plans submitted to the Board, prepared by Knight, Bagge & Anderson, Inc. and dated December 23, 1998 (unless otherwise indicated), specifically:
 - a. Sheet T1, entitled "Additions and Renovations to the Wayland Town Hall for the Children's Way, 41 Cochituate Road, Wayland, MA 01778."
 - b. Sheet LS, entitled "Overall Site Plan & Locus."
 - c. Sheet LE, entitled "Existing Site Plan."
 - d. Sheet LP, entitled "Proposed Site Plan and Details" (dated January 13, 1999).
 - e. Sheet LL, entitled "Proposed Site Lighting."
 - f. Sheet A1, entitled "Proposed First Floor Renovations and Additions."
 - g. Sheet A2, entitled "Proposed Second Floor Renovations and Additions."
 - h. Sheet A3, entitled "Proposed Exterior Elevations and Sections."
 - i. "Existing Conditions and Wetland Resource Areas for Parking Expansion at Wayland Town Hall," and "Proposed Drainage
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WAYLAND SCHOOL DEPARTMENT
DECISION 98-46
Page 3

Improvements for Parking Expansions at Wayland Town Building," both prepared by Andrews Survey & Engineering, Inc. and dated December 28, 1998.

2. The Applicant shall pay all fees upon billing, including any balance of the review fee and the \$2,000 inspection fee due the Planning Board.
3. The Applicant shall obtain all necessary approvals from other Boards with jurisdiction over this matter, including the Conservation Commission.

FACTS AND REASONS:

The property, the site of the Wayland Town Building, is located at 41 Cochituate Road, in a Single Residence District. The lot contains a total of 33 acres, and contains buildings with an aggregate footprint of 33,160 square feet. In 1978, the use of the property was changed from school use to Town Offices and School Administration, both of which are permitted uses in a Single Residence District. See Decision 78-9. Since that time, the property has been used for such purposes.

The Applicant has been operating a fee-based preschool known as the "The Children's Way," for children 2.6 to 5 years of age, for several years. This program has been decentralized in the past, having been unable to locate a permanent home. Accordingly, it has maintained classrooms in available space within School Department buildings.

The Applicant now seeks to utilize the vacant portion of the second floor of the Town Building as its permanent, centralized home. The Applicant seeks to construct a total of five (5) classrooms within the existing second floor space, along with space for office, storage and other related use. The proposed gross floor area to be utilized by the Applicant within the existing building is 6,980 square feet.

The Applicant's plan calls for four changes to the property that will be visible from the exterior of the building. First, the Applicant proposes a substantial alteration to the areas of parking and vehicular access. This change triggers Site Plan Review. See By-law §198-601.1. The Applicant

WAYLAND SCHOOL DEPARTMENT
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seeks to resurface and expand the existing parking area, which will change the design of the drainage system for the site. By-law §198-601.2.4. Second, the Applicant seeks to make a change to the exterior of the building to accommodate a new stairwell and elevator. Third, the Applicant seeks to relocate some existing trees from one location to another on the site, to accommodate the new parking plan. Finally, the Applicant seeks to add a new sign, identifying the location of the preschool.

The Applicant seeks the following forms of relief from this Board. First, the Applicant seeks a special permit pursuant to By-law §198-901.1.7.5 to locate a preschool in a residential district. Second, the Applicant seeks a special permit pursuant to By-law §1701.1, to locate a structure in the Floodplain District, and pursuant to By-law §1703.4 to locate a structure in the Watershed Protection District. Third, the Applicant seeks a variance to locate a way-finding sign on the property, a use not permitted in the Residential District. Finally, the Applicant requires Site Plan Approval, over which this Board has jurisdiction by virtue of the pending special permit and variance applications. See By-law §198-603.2. Each of these separate forms of relief is discussed as follows:

1. **Use Permit to Operate a Child Care Facility.** The Zoning By-law provides that "nursery schools, day-care centers and other facilities that receive children of school or preschool age for temporary custody, with or without stated educational purposes, during all or part of the day," is a permitted use in a Single Residence District, provided that the Applicant receives a special permit. By-law §198-901.1.7.5. The Applicant has sought a special permit for such purposes.

This By-law, and the requirement of a special permit, conflicts with the Massachusetts Zoning Act, which provides as follows: "No zoning ordinance or by-law in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulation concerning the bulk and height of structures and determining yard sizes, lot area, open space, parking and building coverage requirements." G.L. c.40A, §3.

WAYLAND SCHOOL DEPARTMENT

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In view of this clear conflict between the town's zoning by-law and controlling state law, we are bound to follow the latter, from which the very authority for local zoning regulation is drawn. Following the requirements of G.L. c.40A, §3, the Board finds that the Applicant's use of its property for operation of a "child care facility," as proposed, may be conducted as a matter of right. The preschool proposed by the Applicant is a "day care center," as defined in G.L. c.28A, §9, and as such is a "child care facility for purposes of G.L. c.40A, §3. The building meets all necessary set-back and height requirements, and the lot is of more than sufficient size for the proposed use.

Nonetheless, the Board finds that the proposed child care facility meets the requirements for a special permit, as called for in By-law §198-203.1. The Board finds that the use of the Property for the proposed child care facility is not against the public interest, does not derogate from the character of the neighborhood, and is not detrimental, offensive or injurious to public health or safety.

2. Floodplain District/Watershed Protection District. The property is located in both the Floodplain District and the Watershed Protection District. The Applicant proposes an expansion of the parking area, increasing the number of spaces from 105 existing to 161 proposed, to accommodate the increased need for vehicular access and parking during hours in which parents will drop off and pick up students enrolled at the preschool. The addition of these parking spaces requires the expansion of the paved parking area, with a slight encroachment into the wetlands surrounding the property. The Applicant will replicate 1760 square feet of wetlands, to replace the 1620 square feet of existing wetlands to be filled in connection with the parking lot expansion.

By-law §198-1701.1 provides in relevant part that "no filling, excavating or transferring of any material that will reduce the natural floodwater storage capacity or interfere with the natural flow or recession of any floodwater shall be done in the Floodplain District, and no structure shall be erected or placed in the Floodplain District unless a special permit for such action or structure has been issued by" this Board. In addition, By-law §198-1703.4 provides that "[a]ny person desiring to fill, excavate or transfer materials or to erect or place a structure within the Watershed Protection District" shall

WAYLAND SCHOOL DEPARTMENT
DECISION 98-46
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seek a special permit, and that no such works shall commence until the ZBA shall have issued a special permit.

The Applicant has submitted a report entitled "Drainage Analysis for Parking Expansion at Wayland Municipal Building," prepared by Andrews Survey & Engineering, Inc. This report concludes that "[t]he peak runoff rate from the 1.4 acre area studied remained virtually unchanged from the additional 12,000 s.f. of pavement for the requisite storms analyzed. The outlet structure proposed for the water quality swale controls runoff for the 2, 10 and 100 year storms, keeping post-development discharge rates to within an acceptable tolerance of existing."

The Board finds that the proposed changes to the impervious parking areas warrant issuance of a special permit, provided that the Conservation Commission approves the Applicant's proposal.

3. **Signage.** The Applicant proposes locating a new sign outside the new entrance to the building to be utilized by the preschool. As depicted on Sheet LL submitted to the Board, the proposed sign measures 2.5 feet by 4.5 feet, and will be two feet off the ground.

Signs are not permitted in Single Residence Districts, and are, for the most part, inconsistent with the character of a residential neighborhood. Accordingly, the Applicant requires a variance for its proposed sign. This Board is authorized to grant a variance where we find "that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law." G.L. c.40A, §10.

The Board finds that the Applicant's proposed sign meets the requirements necessary for the grant of a variance. The Applicant will suffer a hardship if it is unable to provide parents and others visiting the preschool with guidance necessary to locate the newly relocated preschool. The placement

WAYLAND SCHOOL DEPARTMENT
 DECISION 98-46
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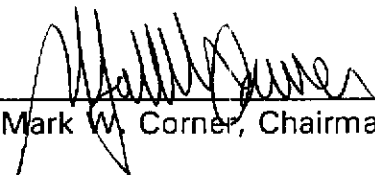
of the building on the lot justifies the placement of a sign in the proposed location. The entrance to the building, and to the preschool, is on the opposite side of the building from vehicular access to the building, and the entrance itself is some distance from the parking area. Under these specific circumstances, it would be unreasonable not to allow for a sign, particularly in view of the existing way-finding signs on the property and the unique use of residentially zoned property for both municipal and preschool use. Allowance of the proposed sign will not cause any detriment, substantial or otherwise, to the public good and will not substantially derogate from the intent or purpose of the By-law.

4. **Site Plan Approval.** Finally, this Board must administer Site Plan Approval, pursuant to Article 6 of the Zoning By-law, by virtue of its jurisdiction over the variance and special permit applications. The Board has reviewed the Status Report and Recommendations prepared by the Planning Board, and accepts its recommendations. The Board finds that the plans submitted by the Applicant meet the standards set forth in By-law §606.2, to the extent applicable, and approves the Applicant's site plan, subject to the conditions set forth above.

DATE OF FILING OF DECISION:

March 9, 1999

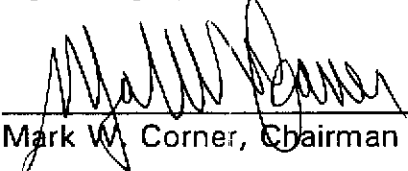
BY ORDER OF THE BOARD


 Mark W. Corner, Chairman

CERTIFICATION:

The Board of Appeals, by delivery of a copy of this Decision to the Applicant, Wayland School Department, does hereby certify that copies of this Decision and all plans referred to in this Decision have been filed with the Planning Board of the Town of Wayland and with the Town Clerk of the Town of Wayland.

BOARD OF APPEALS


 Mark W. Corner, Chairman



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

DECISION NO. 98-46

THE BOARD OF APPEALS HAS MADE THE FOLLOWING DECISION:

WAYLAND SCHOOL DEPARTMENT

APPLICATION FOR:

Permits and approvals necessary to conduct a child care facility in the existing unoccupied second floor of the Town Building, including a Special Permit pursuant to Town of Wayland Zoning By-law §§198-901.1.7.5 to operate a day care facility, Site Plan Approval pursuant to By-law § 198-606 *et seq.*, Floodplain Protection District permits under By-law § 198-1701 *et seq.*, Watershed Protection District permits under By-law § 198-1703.4, and for signage, on property located at 41 COCHITUATE ROAD, which is in a SINGLE RESIDENCE DISTRICT.

DATE OF HEARING: February 23, 1999.

BOARD CONDUCTING HEARING AND RENDERING DECISION:

Mark W. Corner, Mary Ann McDougall, Carolyn Klein, Lawrence Glick and Linda Segal.

- DECISION:
1. No special permit is required under By-law § 198-901.1.7.5, and the Applicant can conduct the proposed "child care facility" as a matter of right. The Board further finds that the Applicant meets the requirements for a special permit.
 2. The site plan submitted to the Board is approved.
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 4. A special permit under By-law §§ 198-1701.1 and 198-1703.4 is granted, provided that the proposed parking lot expansion and drainage plan receives approval from the Conservation Commission.

VOTE OF THE BOARD: Unanimous.

DATE OF FILING OF DECISION:

March 9, 1999

The decision and the reasons therefore are on file with the Town Clerk. Any person aggrieved by a decision of the Board of Appeals may appeal to the Superior Court of Middlesex County by bringing an action within twenty days after the decision has been filed in the office of the Town Clerk. Appeal, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17. Notice of appeal action with a copy of the complaint shall be given to the Town Clerk so as to be received within the same twenty day appeal period.

BOARD OF APPEALS

Mark Corner
Mary Ann McDougall
Mary L. Lentz
Carolyn J. Klein

Lawrence Glick
Brian T. O'Herlihy, Associate
Linda Segal, Associate
