

# Town of Dennis Request for Legal Services

DATE: August 3, 2023

NAME: Paul Fowler

TITLE: Building Commissioner

DEPARTMENT: Building

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## DESCRIPTION OF REQUEST:

A legal review of the merits for the application of the Dover Amendment pursuant to M.G.L. Chapter 40A Section 3, to redevelop of an existing Nursing Home in the Industrial Zoning District to residential a Multi Family-Shelter Program at 1 Love Lane, Dennis, Map 168 Parcel 9. Please see the additional attached documents submitted from the developer in support of this proposal. Please note I have requested the applicant to apply for informal Staff Review and no formal building or zoning application has been received to date.

TIME FRAME: As time permits

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SUBMIT COMPLETED REQUEST FORM TO

esullivan@town.dennis.ma.us (508) 760-6148

APPROVED BY TOWN ADMINISTRATOR:

YES

NO

DATE: 8/15/23

FORWARDED TO TOWN COUNSEL BY:

DATE:

Greg Rouseville

8/15/23

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ATTORNEY ASSIGNED TO REQUEST:

Atty. Hesel



*The Leader in Public Sector Law*

T: 617.556.0007 F: 617.654.1735

101 Arch Street, 12<sup>th</sup> Floor, Boston, MA 02110

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To: Elizabeth Sullivan, Town of Dennis Town Administrator  
Paul Fowler, Town of Dennis Building Commissioner  
Paul Foley, Town of Dennis Town Planner  
*(by Electronic Mail)*

From: Amy E. Kwesell

Re: Housing Assistance Corporation

Date: August 29, 2023

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You have requested an opinion regarding an eighty-room family shelter operating at an existing nursing home at One Love Lane in Dennis, Massachusetts (the “Property”) by the Housing Assistance Corporation (“HAC”). In particular, HAC is seeking a determination that its use of the Property is exempt pursuant to G.L. c. 40A, § 3 as an educational use. Upon review and based on the information outlined below, it is my opinion that the proposed use likely qualifies as an exempt educational use under the so-called Dover Amendment provision in section 3 of the state Zoning Act (G.L. c. 40A).

The Dover Amendment provision of G.L. c. 40A, §3 is as follows:

No zoning ordinance or by-law shall . . . regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or 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 and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

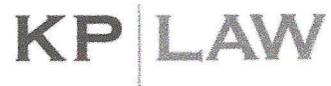
In addition to exempting “traditional” educational uses under the Dover Amendment, the courts have routinely approved non-traditional uses. “A proposed use of land or structures may have an educational purpose notwithstanding that it serves nontraditional communities of learners in a manner tailored to their individual needs and capabilities.” Regis College v. Town of Weston, 462 Mass. 280, 285 (2012), citing Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869, 870 (1980). In determining whether this test is met, courts have customarily required only a demonstration that the articles of organization permit it to engage in educational activities. See Gardner-Athol Area Mental Health Association, Inc. v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12 (1987). The proposed educational activities

must merely “be within the corporate purposes of the nonprofit corporation” to qualify for the exemption. Id. at 16. See also, Commissioner of Code Inspection of Worcester v. Worcester Dynamy, Inc., 11 Mass. App. Ct. 97 (1980). Here, the Articles of Organization for HAC includes, as a purpose of the corporation: “to receive and administer funds exclusively for educational and charitable purposes without pecuniary profit, either direct or indirect, to its members.”

In the Regis College case, the Supreme Judicial Court stated two established principles in determining applicability of Dover Amendment protection: first, the use must have as its “bona fide goal something that can reasonably be described as ‘educationally significant.’ ” 462 Mass. at 285, quoting Whitinsville Retirement Soc’y, Inc. v. Northbridge, 394 Mass. 757, 761 (1985); and second, the educationally significant goal must be the “primary or dominant” purpose for which the land or structures will be used.” 462 Mass. at 285, quoting Whitinsville Retirement Soc’y, Inc., supra at 760. Here, the memorandum from Attorney Peter Freeman dated July 12, 2023 indicates that “[t]he primary purpose of the facility is to provide shelter and education to teach families to live independently by assisting them in developing the skills and resources needed to acquire and sustain their housing.”

Applying these standards, the following non-traditional educational uses have been held to qualify for Dover Amendment protection:

- Residential group home for the elderly, mentally ill, Campbell v. City Council of Lynn, 415 Mass. 772, (1993);
- Residential programs for mentally handicapped, providing education in daily living activities, Fitchburg Housing Authority v. Board of Zoning Appeals of Fitchburg, 380 Mass. 869 (1980); Gardner-Athol Area Mental Health Ass’n, Inc. v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12 (1987);
- Residential group home for children with educational and psychological disorders, Harbor Schools, Inc. v. Board of Appeals of Haverhill, 5 Mass. App. Ct. 600 (1977);
- Residential group home for single mothers, Brockton Coalition for Homeless v. Tonis, 2004 WL 810296 (Mass. Super. Mar. 5, 2004);
- Educational services “to homeless families, single mothers, persons with AIDS and other physical disabilities such as deafness and blindness, and persons recovering from addictive habits,” Congregation of the Sisters of St. Joseph of Boston v. Town of Framingham, 1994 WL 16193868 (Mass. Land Ct. Mar. 31, 1994); and
- Residential life skills program for 15 to 21-year old males exhibiting “emotional dysregulation;” McLean Hospital Corporation v. Town of Lincoln, 483 Mass. 215 (2019).



Additionally, HAC has submitted a list of curriculum programs to be offered/required at the Property consisting of adult education classes focusing on household and job development skills.

Based on all of the above, it is my opinion that the Building Commissioner may determine that the proposed use could be classified as exempt pursuant to G.L. c. 40A, § 3.

Please contact me if you have any further questions.

879189/DENN/0001

## FW: 1 Love Lane Zoning Application

Paul Fowler <pfowler@town.dennis.ma.us>

Tue 8/29/2023 1:27 PM

To:Elizabeth Sullivan <esullivan@town.dennis.ma.us>

 1 attachments (258 KB)

1 Love Lane, referral.pdf;

Fyi

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**From:** Paul Fowler

**Sent:** Tuesday, August 29, 2023 1:25 PM

**To:** 'Peter Freeman' <pfreeman@freemanlawgroup.com>

**Cc:** Nancy MacPhee <nmacphee@freemanlawgroup.com>; Paul Foley <pfoley@town.dennis.ma.us>; Mary Lou Hammond <mhammond@town.dennis.ma.us>

**Subject:** 1 Love Lane Zoning Application

Peter,

Please see the Zoning document of findings for the Conversion of an existing Health Care facility at 1 Love Lane, South Dennis, to a Family Shelter program and Educational use. The Educational use is exempt per c. 40A, § 3 and a use authorized after Planning Board Special Review pursuant to section 2.2.2 of the Town of Dennis Zoning Bylaws. Please consider the attached document as a referral to the Board for a Special Review.

I hope this will help your client Housing Assistance Corp for planning purposes. If you have any questions please let me know.

Paul Fowler  
Building Commissioner  
Town of Dennis  
685 Route 134  
South Dennis, MA 02660  
508-760-6163



**SUBMITTAL SUMMARY REPORT (ZP-022514-2023)  
FOR TOWN OF DENNIS**

**PERMIT ADDRESS:** 1 LOVE LANE  
SD,

**PARCEL:** 168-9-0

**APPLICATION DATE:** 08/22/2023

**SQUARE FEET:** 0

**DESCRIPTION:** Dover Amendment Use

**EXPIRATION DATE:**

**VALUATION:** \$0.00

CONTACTS	NAME	COMPANY	ADDRESS
Applicant	Nancy MacPhee	Freeman Law Group LLC	86 Willow Street Yarmouthport, MA 02675
	Peter L. Freeman	Freeman Law Group LLC	
Owner	ONE LOVE LANE SOUTH DENNIS, LLC 45 BROADWAY NEW YORK, NY 10006		

SUBMITTAL	STARTED	DUE	COMPLETE	STATUS
Building Review v.1	08/24/2023	09/08/2023	08/29/2023	Approved

**SUBMITTAL DETAILS**

<b>Building Review v.1</b>				
ITEM REVIEW NAME (DEPARTMENT)	ASSIGNED TO	DUE	COMPLETE	STATUS
Building (Building)	Paul Fowler	09/08/2023	08/29/2023	Complete
Health (Health)	Kristen Keller	09/08/2023	08/29/2023	Complete
Natural Resources (Conservation - DNR)	Erin Burnham	09/08/2023	08/25/2023	Complete
<i>Comments</i>	Not in conservation jurisdiction			
Zoning (Building)	Paul Fowler	08/24/2023	08/29/2023	Complete
<i>Comments</i>	Conversion of an existing Health Care facility to a Family Shelter program and Educational use. The use is exempt and authorized after Planning Board Special Review pursuant to section 2.2.2 of the Town of Dennis Zoning Bylaws.			