

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2003-20  
Appeal of Jyotsna Sawhney  
Re: 26 and 28 Abbott Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, February 13, 2003 at 7:30 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley on the Appeal of JYOTSNA SAWHNEY, pursuant to the provisions of Section XXIV-C and Section XXIV-D of the Zoning Bylaw, from the decision of the Inspector of Buildings on January 14, 2003, to revoke the building permits issued for 26 and 28 ABBOTT ROAD on August 28 and June 27, 2002 respectively, and the order to cease and desist any work under those permits.

On January 21, 2003, the petitioner filed the Appeal to be heard by this Authority at the aforesaid Public Hearing, and due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Arthur Kreiger, counsel for the petitioner, who was present also. Mr. Kreiger, who explained that there are two properties involved: 26 and 28 Abbott Road, where Mrs. Sawhney plans to construct a Child Care Center. The Building Inspector issued permits in the summer, which were appealed in two separate hearings by the neighbors. In two separate decisions, the Board ordered the Building Inspector to revoke the building permits, and in the second decision regarding 26 Abbott Road, imposed a deadline, which it not imposed in the first decision regarding 28 Abbott Road. The deadline for the revocation was 10 days after the expiration of the 20 day appeal period. Within that appeal period, Ms. Sawhney appealed the Board's decision to the Land Court, where the case is still pending.

Ms. Sawhney then came to the Building Inspector with revised plans and applied for a building permit based on these plans. The Building Inspector issued the permit on January 14, 2003, subject to two conditions. Simultaneously, the Building Inspector, purportedly acting pursuant to the decisions of the Board, revoked the previous building permits and ordered a cease and desist on all work.

They believe there are at least two defects about the revocation portion of that decision. The Building Inspector should not have revoked the permits because they are tied up in litigation. No work is being done under the permits, so the Cease and Desist Order was unnecessary.

Secondly, although the Building Inspector purportedly was acting under the Board's decision of September, 2002, the Board did not say to revoke the building permits now, but within 10 days after the expiration of the appeal period.

Mr. Kreiger stated that he believes that to mean that if an appeal was taken to the decision, then the appeal period has not expired. The Building Inspector took it upon himself, four months after the Board's

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decision, on the occasion of Ms. Sawhney coming in with revised plans, to revoke the permits at that time. He believes that this action was not what the Board contemplated.

Having said that, Mr. Kreiger added that he did not believe the Building Inspector's actions matter in this context. Ms. Sawhney is not going forward. Whether the Board upholds or overturns the Building Inspector's actions, the litigation will continue. Ms. Sawhney has filed the appeal to ensure that there is no argument that has gone undeveloped in regard to administrative remedies.

The Board asked if it upheld the Building Inspector's action, would an additional appeal be filed, or would the complaint be amended. Mr. Kreiger said they would file a Supplemental Complaint as they did before. A Supplemental Complaint deals with issues that arose after the time the original Complaint was filed. It will not change the litigation.

Mr. Kreiger said the new plans are for one building on a merged lot. The Building Inspector has issued a building permit conditional on the demolition of the structure on 26 Abbott Road and the merging of the two lots. The neighbors have filed appeals on the decision to issue this permit, which will be heard by the Board in March. The Building Inspector granted the new building permit and revoked the old permits in the same letter of January 14, 2003. The new permit is for a single structure on one lot, which is 28 Abbott Road and would include the land that was 26 Abbott Road.

The Board said the letter from the Building Inspector was generated by the submittal of plans for a new building permit. Mr. Kreiger agreed, but stated that the Building Inspector's letter refers only to the Board's previous decisions as a basis for revocation, and not the issuance of a new permit, although this action was probably the trigger.

The Board stated that the simplest way of maintaining the status quo is to uphold the Building Inspector's action of revocation, which would ensure the case would be complete.

Michael Eby, counsel representing the neighborhood group, said that common sense would dictate there should not be two outstanding permits for the same project. Neither the Building Inspector nor the neighbors would know which permit would be used for the construction. The appeals from the initial permits are now pending in the Land Court. Mr. Eby stated that the lot has been reconfigured by combining the two lots, and one of the structures will be demolished. At some point, Ms. Sawhney should elect which permit on which she is proceeding, particularly if a demolition permit is involved.

Mr. Eby said that the neighbors have filed an appeal to the second permit issued by the Building Inspector on the new plans, which will be heard on March 13<sup>th</sup>. He reiterated his point that common sense dictates that as one doesn't have two permits for the same lot, the first permits had to be revoked before the second permit was issued.

David Rutledge, 7 Bemis Road, said he believed there was still an underground oil tank on 28 Abbott Road, which had not been removed.

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Statement of Facts

**28 Abbott Road**

The subject property at 28 Abbott Road, in a 10,000 square foot Single Residence District on a 23,794 square foot lot and contains a single dwelling unit, with access from Seaward Road and Abbott Road.

On June 27, 2002, the Building Inspector issued a building permit for Zion Realty Trust for upgrading of the existing structure for use as a Child Care Facility, a use allowed by right in a Single Residence District, pursuant to Section II A 3 A of the Zoning Bylaw.

On July 24, 2002, Paul and Barbara Calhoun filed a request with the Inspector of Buildings for an open hearing in regard to the issuance of this permit. On the same date, 15 property owners also filed individual appeals to the issuance of said building permit on the grounds that the project was not in compliance with Section II A 3 A of the Zoning Bylaw.

On August 15, 2002, the Board of Appeals heard the appeal of Paul and Barabara Calhoun, et al, and found noncompliance, or insufficient information to determine compliance in regard to Section II A 3 A Subsections d. through g., upheld the appeal of the petitioners, and ordered the Inspector of Buildings to reverse his decision and revoke the permit for use of the premises as a Child Care Facility. This Decision (ZBA 2002-73) was filed with the Town Clerk on September 10, 2002.

On September 30, 2002, Jyotsna Sawhney, Trustee of the SAI Realty Trust and Trustee of the Madan Realty Trust, filed a Complaint with the Land Court appealing the decisions by the Wellesley Zoning Board of Appeals ordering the Wellesley Inspector of Buildings to revoke two building permits regarding 26 and 28 Abbott Road, Wellesley, for use as a child care facility. At the time of filing of this complaint, the Board of Appeals had not filed its decision with the Town Clerk regarding 26 Abbott Road nor had the Inspector of Buildings revoked the building permit issued for 28 Abbott Road.

**26 Abbott Road**

The subject property is located at 26 Abbott Road in a 10,000 square foot Single Residence District, on a 10,017 square foot lot and contains a single dwelling unit with sole access from Abbott Road and shared access to Abbott Road and Seaward Road through a 24 foot drive running along the northern lot line of 26 Abbott Road and the abutting property at 28 Abbott Road.

On August 6, 2002, the Inspector of Buildings issued a building permit to SAI Realty Trust to convert the existing building at 26 Abbott Road to meet Daycare Facility Requirements. On August 28, 2002, Paul and Barbara Calhoun, et al, filed an appeal to the decision of the Inspector of Buildings to issue this permit on the grounds that the plans submitted were not adequate to determine whether or not the project met the requirements of Section II A 3 A of the Zoning Bylaw.

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On September 19, 2002, the Board of Appeals heard the Appeal of Paul and Barbara Calhoun, and found noncompliance, or insufficient information to determine compliance in regard to Section II A 3 A Subsections d. through g., upheld the appeal of the petitioners, and ordered the Inspector of Buildings to reverse his decision to issue the building permit for 26 Abbott Road and to revoke said permit within 10 days after the expiration of the 20 day appeal period following the date of time stamp of the decision. This Decision (ZBA 2002-94) was filed with the Town Clerk on October 23, 2002.

On November 1, 2002, Jyotsna Sawhney, Trustee of SAI Realty Trust and Madan Realty Trust, filed a Supplemental Complaint with the Land Court to include the Board of Appeals decision regarding 26 Abbott Road.

On January 14, 2003, the Inspector of Buildings, in a letter to Jyotsna Sawhney, Trustee of the Madan Realty Trust, revoked the building permits issued on 26 and 28 Abbott Road, pursuant to the Decision dated September 19, 2002, of the Zoning Board of Appeals, and ordered Ms. Sawhney to cease and desist any further work purportedly under those permit.

In the same letter of January 14, 2003, the Inspector of Buildings wrote the he had issued a permit on Ms. Sawhney's new application for a building permit conditioned on

- "1. The two lots at 26 and 28 Abbott Road be merged (as your presentation presumes you will do), and
2. That one of the two standing buildings be demolished (also as your presentation presumes you will do)."

On January 22, 2003, Jyotsna Sawhney filed an appeal with the Town Clerk on the decision of the Inspector of Buildings dated January 14, 2003, to revoke the building permits issued for 26 and 28 Abbott Road.

In response to the request to the Inspector of Buildings by the Board of Appeals, dated January 22, 2003, for copies of all documents and papers constituting the record of the case in which the appeal has been taken, the Inspector of Buildings submitted a copy of his letter of January 14, 2003 revoking the building permits issued for 26 and 28 Abbott Road, and issuing a new building permit for 28 Abbott Road.

On January 28, 2002, the Planning Board reviewed the appeal, and had no comment.

#### Decision

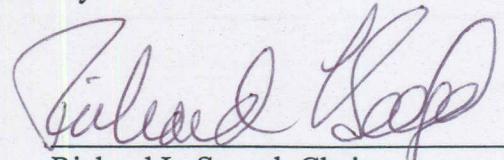
This Authority has made a careful study of the materials submitted and the information presented at the hearing. The Appeal filed by Jyotsna Sawhney from the decision of the Inspector of Buildings to revoke the building permits issued for 26 and 28 Abbott Road includes a request that the Board of Appeals reverse the Inspector's revocation (and cease and desist) order regarding the aforesaid building permits.

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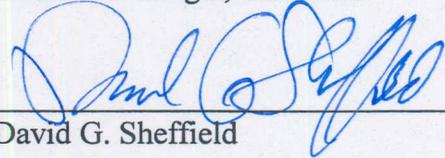
This Authority, as unanimously voted at the Public Hearing, denies the appeal of Jyotsna Sawhney and upholds the decision and action of the Inspector of Buildings to revoke the building permits for 26 and 28 Abbott Road issued on August 6, 2002 and June 27, 2002, respectively.

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN  
THE OFFICE OF THE TOWN CLERK.

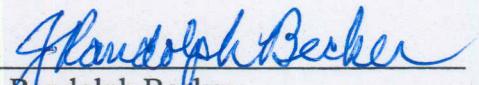
Cc: Planning Board  
Inspector of Buildings  
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Richard L. Seegel, Chairman



David G. Sheffield



J. Randolph Becker

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## ZONING BOARD OF APPEALS

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Abbott Wellesley Hills Children's Learning Center  
 28 Abbott Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 10, 2009, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the request of ABBOTT WELLESLEY HILLS CHILDREN'S LEARNING CENTER at 28 ABBOTT ROAD for Zoning Relief under Section II.3A of the Zoning Bylaw and M.G.L. Chapter 40A§ 3 (Dover Amendment). At a business meeting, the Board found that it would be unreasonable to apply parking regulations in connection with a Building Permit to increase occupant load to 124.

On September 4, 2009 Arthur P. Kreiger, Esq., representing Jyotsna Sawhney, filed a request for a waiver of the parking requirement under Section II.3A(f) of the Zoning Bylaw, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Nina Pickering Cook, Esq., who said that she was representing Jyotsna Sawhney, Director, Abbott Wellesley Hills Children's Learning Center (the "Petitioner"). She said that the Board had previously voted unanimously at a Business Meeting that applying the parking regulations in the Zoning Bylaw would be unreasonable.

Ms. Cook said that the applicant had been operating another daycare center nearby. She said that daycare center closed down. She said that some of the children wanted to be absorbed in the 28 Abbott Road facility. She said that the only restriction was the application of the parking ratio.

Ms. Cook said that the parking ratio at 28 Abbott Road has been complied with since the daycare center was founded. She said that they have noticed over the past four years that there has been ample parking. She said that Ms. Sawhney is requesting a waiver of the parking regulations. She said that the Building Inspector has already issued a Building Permit.

Ms. Cook said that Ms. Sawhney has amended her State Operating License to include the additional students. The additional students have been admitted at this time.

Ms. Cook said that the issue is a reaffirmation of the Board's previous position regarding the requirement to build nine additional parking spaces. She said that there is no evidence that the parking spaces will be needed.

The Board confirmed that the applicant is seeking to accommodate 26 additional children, bringing the total enrollment from 98 to 124.

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Abbott Wellesley Hills Children's Learning Center  
28 Abbott Road

The Board said that the Building Inspector received calculations from Brian Judge, AIA for the building occupancy limit, in accordance with 780 CMR. Mr. Judge said that total occupancy could be up to 160 in that building.

The Board read a portion of the Planning Board's written recommendations.

Ms. Cook said that she disagreed with the Planning Board's legal interpretation as applied to this site. She said that placing parking limitations would limit the use of the facility. She said that would be unreasonable because there is ample parking. She said that the requirement to build nine additional parking spaces would be unreasonable, when on a daily basis there are 10 to 12 spaces open.

The Board asked if any traffic studies had been done. Ms. Cook said that there were no traffic studies done.

Ms. Sawhney said that the children that were added are all siblings. She said that 30 percent of her clients are siblings. She said that practice is encouraged but not required. She said that currently there is no change in the number of cars. She said that she would not be able to guarantee that the ratio of siblings will not change.

Ms. Sawhney said that they submitted a site plan. She said that the parking lot has an entrance that comes off of Abbott Road. She said that there is a one-way driveway that goes out to Seaward Road. She said that the children are dropped off. She said that the vehicles have not been queuing on the street.

The Board asked if the current parking is all on-site. Ms. Sawhney said that it is. She said that there are always open parking spaces. She said that the Center has always operated with a staggered schedule. She said that the daycare center is open from 7 a.m. to 6 p.m. She said that the children arrive between 7 and 9:30 a.m. She said that 30 percent of the children leave between 12:30 and 3 p.m. She said that the remaining 70 percent leave between 3 and 6 p.m.

Ms. Sawhney said that this is a daycare center, not a school. She said that the operations do not start at one time or end at one time. She said that because the children's schedules are different, there is not always full staff at the Center. She said that the number of staff varies based on the number of children.

Ms. Sawhney said that long term daytime parking is limited to staff. She said that there are 16 to 17 cars parked for staff members. She said that the number will now change to 18.

The Board asked if any of the spaces are rented out to commuters. Ms. Sawhney said that they are not. She said that her primary goal is to keep the children safe.

The Board asked about parking during events. Ms. Sawhney said that they previously held their events at the Maugus Club. She said that she has booked all of her upcoming events at the Community Center.

Ms. Sawhney said that she had been licensed for 135 children at 40 Abbott Road. She said that she gradually reduced that number to 80 children. She said that she absorbed 26 of those children in the 28 Abbott Road facility. She said that those are the children who leave at 12:30 p.m.

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Abbott Wellesley Hills Children's Learning Center  
28 Abbott Road

The Board said that it would like to see a parking count done by a professional company over a period of a week to give it some hard numbers that they can point to. Ms. Cook said that having a count done at this time would be unreasonable since the Town has already issued a Building Permit. She said that the Certificate of Occupancy has been amended, the State Board has licensed the Center for additional children and they are currently attending. She said that a study that is done at this time will include the 26 additional students who are already there. She said that expenditure at this time would be unreasonable.

The Board said that it does have the authority to require reasonable regulations subject to parking. The Board said that what is before them is to determine if enforcing the parking regulations under the bylaw would be reasonable. The Board said that it may be overly burdensome to require Ms. Sawhney to hire a traffic consultant for a formal demand study. The Board said that it could ask the Building Inspector to make a finding that correlates the counts to the attendance. The Board said that it would need a record that shows that there is sufficient parking capacity.

The Board asked if there would be any effect on the operation of the Center if the Board were to continue the Petition to get more anecdotal information from the Building Inspector. Ms. Cook said that the Building Permit has been issued and the students have moved over. She said that a continuance would be acceptable as long as it does not put additional burden on Ms. Sawhney to hire a professional for a traffic study.

The Board voted unanimously to continue the request for waiver to January 7, 2010. The Board said that the Center may continue to operate with the increased enrollment until the next hearing. The Board said that it will ask the Building Inspector to make several visits over a course of a period of time, several times a day, and submit a written report to the Board regarding parking at the Center.

January 7, 2010

Presenting the case at the hearing was Arthur Kreiger Esq., who said that he was representing Jyostna Sawhney of the Abbott Wellesley Hills Children's Center.

Mr. Kreiger said that they submitted a letter on September 4, 2009 that requested a waiver of the parking ratio in order to add 26 children, who were coming from the Maugus Center at 40 Abbott Road.

Mr. Kreiger said that after discussing the issue with Zoning Board Chairman, Town Counsel and the Building Inspector, it came before the Zoning Board of Appeals at a Business Meeting. The Board essentially granted the relief and the Building Inspector issued the Building Permit and the amended Certificate of Occupancy. Ms. Sawhney received her State Operating License for the additional children.

Mr. Kreiger said that the issue came before the Board for a Public Hearing for reasons of transparency. He said that there is no appeal pending before the Board. He said that his associate, Nina Cook, Esq., attended the Public Hearing on December 10, 2009 and the issue was continued to January 7, 2010.

Mr. Kreiger said that the Board wanted to hear from the Building Inspector about traffic counts. The Building Inspector confirmed in a memorandum that there is ample parking. Mr. Kreiger said that it would be unreasonable to apply the parking ratio for the additional number of children. He asked that the Board ratify its earlier decision.

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Abbott Wellesley Hills Children's Learning Center  
28 Abbott Road

The Board said that the number of children has been increased from 98 to 124 children. The Board said that there are 49 parking spaces on the site. The Board said that it wanted to confirm that the parking was sufficient with some sort of documentation. The Board said that the Building Inspector's traffic count confirms that there is sufficient parking.

The Board said that a condition of the waiver would be that the spaces not be rented or used for commuter parking. Mr. Kreiger said that it has never been an issue in the four years that Ms. Sawhney has been operating there.

The Board that it would condition the waiver to state that no events that require more than available parking on the site will be allowed.

There was no one present at the Public Hearing who wished to speak to the request for waiver.

#### Statement of Facts

The subject property is located at 28 Abbott Road.

The Petitioner is requesting Zoning Relief under Section II.3A of the Zoning Bylaw and M.G.L. Chapter 40A§ 3 (Dover Amendment).

A letter dated September 4, 2009 from Arthur P. Kreiger, on behalf of Jyotsna Sawhney, regarding Abbott Wellesley Hills Children's Learning Center, 28 Abbott Road Parking Requirement – Request for Zoning Relief, was submitted.

At a Business Meeting on October 1, 2009, the Zoning Board of Appeals found that it would be unreasonable to apply parking regulations in connection with a Building Permit to increase occupant load to 124.

On December 8, 2009, the Planning Board reviewed the request and recommended that relief from the parking requirements of Section II.3A. be denied.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

It is the finding of this Authority that it is reasonable, under the Dover Amendment, to waive the Town Bylaw parking requirement, subject to the conditions that:

1. On-site parking spaces shall not be leased or used for commuter parking
2. No events that require more than available parking on the site shall be allowed.

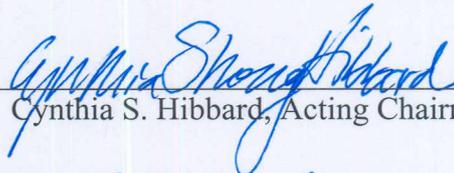
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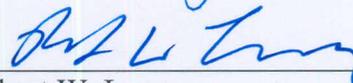
Abbott Wellesley Hills Children's Learning Center  
28 Abbott Road

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Cynthia S. Hibbard, Acting Chairman

  
Robert W. Levy

  
David G. Sheffield

cc: Planning Board  
Inspector of Buildings  
lrm