Staff Report

Devens Enterprise Commission

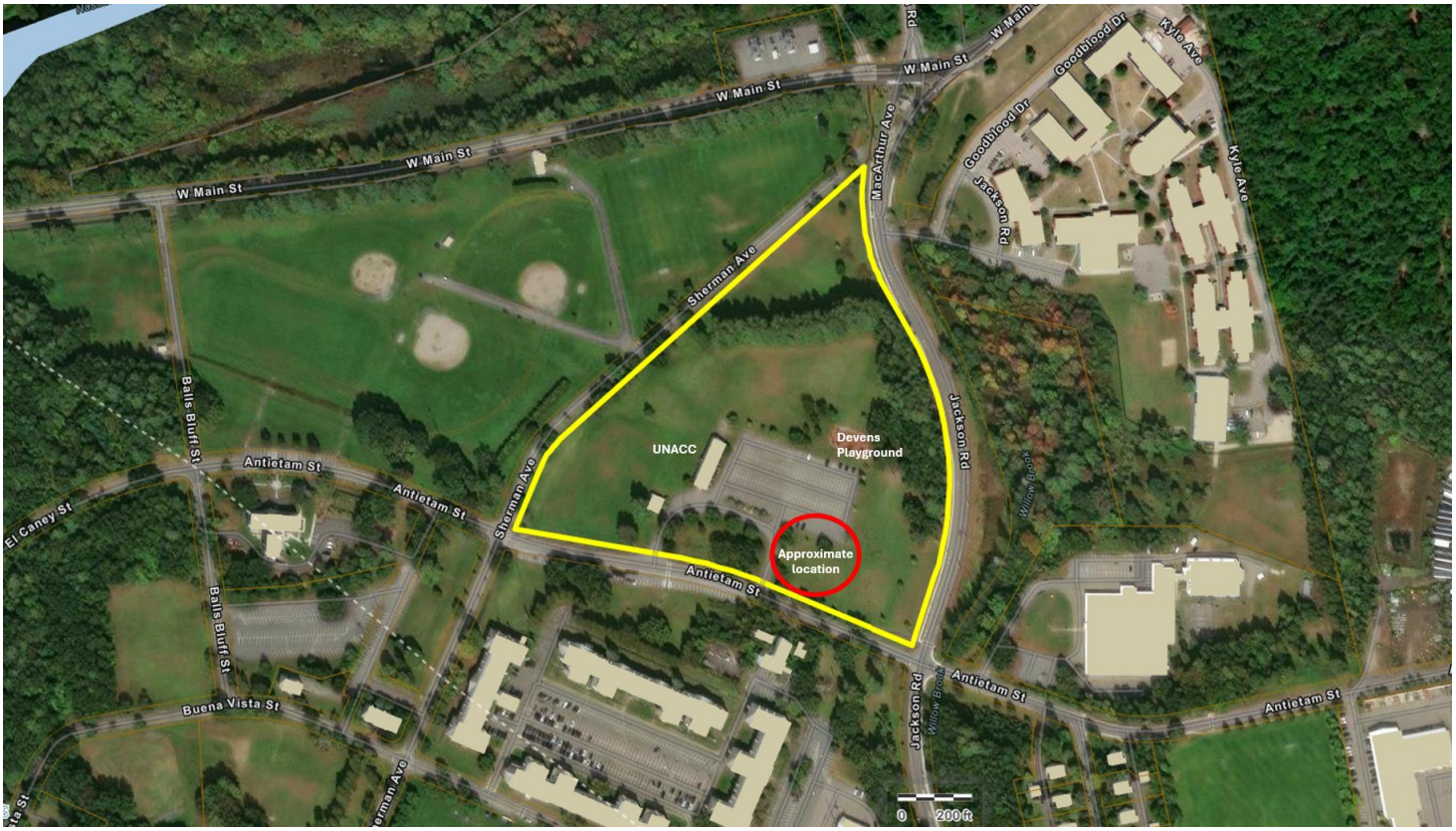
Date: July 29, 2025

To: **Devens Enterprise Commission**

From: Neil Angus FAICP CEP, Director

RE: **Determination of Zoning Compliance – Applewild Early Childhood Education**

Applewild School Incorporated currently occupies space in Devens at 27 Jackson Road where they operate an early childhood education program serving children up to the age of five (through kindergarten). Applewild has been in operation in Devens since 2014 and offers educational amenities for Devens and the surrounding region. Applewild's current lease expires in November and they are seeking an alternate location in Devens where they could build their own school and continue their early childhood education program with the possibility of a school age summer camp or after school program. Applewild is currently in discussions with MassDevelopment regarding a proposed +/- 2 acre portion of property located near the intersection of Jackson and Antietam Street:



This area is part of a larger +/-19 acre parcel (yellow outline) that is zoned Open Space and Recreation and contains a public playground and the United Native American Cultural Center. The Devens Bylaws permit cultural and municipal uses as-of-right in Open Space and Recreation Districts. While educational uses are not listed as an allowed use in Exhibit D of the Devens Bylaws, they are listed as an exempt use under Article VI.D. of the Devens Bylaws, as long as they are a non-profit.

Whenever a proposed use is questionable whether or not it complies with Devens zoning, under 974 CMR 1.05(2), Applicant's have the option of seek Determination from the DEC that the proposed uses and activities are permitted within the zoning district in which the development site is located. Such determination is made by the Commission at

a public meeting following submission of a statement of how the proposed use and development comply with zoning district development goals and objectives of the By-Laws and the Patterns (section 4 of the Reuse Plan) for the zoning district in which the site is located. Applewild, through their legal counsel Bowditch & Dewy, LLP., has submitted such a Request for Determination of Zoning Compliance letter (see attached) making the case for an exempt use under the Devens Bylaws. The letter includes a copy of their bylaws which clearly identify their organization as a non-profit education institution. Thie letter also discusses how their proposed use is a public benefit for Devens, local businesses, and the region, and how the use will continue to further the sustainability goals of the Devens Reuse Plan, collaborate with surrounding land uses, and still preserve public open space surrounding.

DEC legal Counsel Opinion:
Staff reviewed Applewild's request with DEC Legal Counsel and their opinion is attached. They concluded, based on the information provided by the Applicant, that the proposed use would qualify for an exemption under Article VI.D of the Devens Bylaws.

There are a number of issues that would need to be addressed as part of any future development proposal in this area: traffic, pedestrian safety, parking, existing open space uses, and others. The property is also located within the Devens Historic District and would be subject to review by the Massachusetts Historical Commission. Staff received public comments regarding some of these issues as well (see attached). These issues have been shared with Applewild and MassDevelopment and they would need to work together to ensure any proposed use of shared/adjacent spaces is complimentary and not in conflict. Any future proposed development proposal in this area would be required to be reviewed by the DEC as part of a Level 2 Unified Permit to ensure compliance with the Devens Reuse Plans, Bylaws, Open Space and Recreation Plan, and Rules and Regulations. This request is only considering the "use" issue at this time.

Recommended Action:
If the Commission is in agreement that the proposed use meets the qualifications for an exempt use, it should consider making the following motion:

Based on the July 24, 2025 letter and supporting information from Mary T. Feeney of Bowditch & Dewy, LLP., Applewild School Incorporated's early childhood education program is considered a non-profit educational corporation and qualifies as an "exempt" use under Article VI.D.5 of the Devens Bylaws. This exemption is based on the specific and unique facts presented by Applewild and the DEC in this matter and shall not be used as a precedent. The DEC reserves all of its rights and authority and does not waive same.

BOWDITCH

Bowditch & Dewey, LLP
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508-791-3511 | bowditch.com

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July 24, 2025

(by email: neilangus@devensec.com)

William P. Marshall, Chair
Devens Enterprise Commission
33 Andrews Parkway
Devens, MA 01434

Re: Request for Determination of Zoning Compliance
Applewild School at 27 Antietam Street

Dear Chair Marshall:

This firm represents Applewild School Incorporated ("Applewild") in connection with the proposed relocation of its existing preschool from a leased location at 27 Jackson Road, to a new location on a portion of the parcel located within an Open Space and Recreation Zoning District at 27 Antietam Street ("27 Antietam").

Applewild operates as an independent day and boarding school for toddlers through grade nine together with a long-standing childcare program for younger children. Applewild School opened in Fitchburg in 1957 and opened its location at Devens in 2014 occupying under a lease that expires in November 2026 (that the landlord does not intend to renew as it has other plans for that property). Applewild School, including the current Devens location, is accredited by the Association of Independent Schools of New England and belongs to the National Association of Independent Schools and the Devens location is additionally accredited through the Massachusetts Department of Early Education and Care.

Applewild is seeking to purchase from Massachusetts Development Finance Agency an approximately 2 acre site (the "Proposed Site") to be subdivided from the 19.25 acre parcel located in the Open Space and Recreation District at 27 Antietam, at its southeast corner and construct a new one story facility of approximately 8,000 square feet. The relocated Applewild at Devens will continue its early childhood education program serving children up to the age of five (through kindergarten) with the possibility of a school age summer camp or after school program (the "Proposed Use") serving the same number of children (approximately 80-115) who now attend Applewild at Devens at 27 Jackson Road.

The purpose of this letter is to provide information to the Commission for consideration of Applewild's request for a Determination that the Proposed Use is an exempt educational use within the Open Space and Recreation District in compliance with the Devens Enterprise Commission Bylaws ("DEC Bylaws") Article VI, Section D.5.

Applewild School is an Exempt Use in the Open Space and Recreation District. The Proposed Use is an exempt use under the DEC Bylaws as an ". . .educational uses on land owned or leased by a . . .non-profit educational corporation." (DEC Bylaws Article VI, Section D.5.)

Applewild School Incorporated is a Massachusetts nonprofit corporation incorporated under M.G.L. c. 180, with a purpose as stated in the Applewild School Incorporated Restated Articles of Organization as filed with the Massachusetts Secretary of State September 14, 2015 (attached at Exhibit A):

> "To operate and maintain an educational institution without profit, to prepare children for high school/secondary school and higher education and in connection therewith to promote educational opportunities for students and their families, and the community, and to do any and all other things incidental, in furtherance of, or related thereto, except as restricted herein and as limited by the provisions of Section 501(c)(3) of the Internal Revenue Code.
>
> To engage in those exclusively charitable and educational activities that may be engaged in by corporations organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts and, in particular, without limiting the generality of the foregoing, those activities within the scope of Section 4(a) of said Chapter 180."

Therefore, Applewild School is established and exists as a non-profit educational corporation with a primary educational purpose of educating children, which purpose is within and consistent with the exemption of the DEC Bylaws for the establishment of an exempt educational use in the Open Space and Recreation Zoning District.

Description of Proposed Site, Proposed Use and Suitability at Proposed Site

The Proposed Site, that is an approximately 2 acre portion in the southeast corner of the 19.25 acre 27 Antietam parcel, consists of an existing flat mown lawn at the intersection of Antietam Street and Jackson Road. It is immediately adjacent to a somewhat underutilized paved parking lot located on 27 Antietam that is currently used primarily by weekend visitors to the nearby and adjacent playing fields and the United Native American Cultural Center for athletics and cultural purposes. The Proposed Site is across the street from the Parker Charter School and close to the Shriver Jobs Center, allowing educational collaborations and the potential for synergies that will foster and be supportive of those programs.

The Proposed Use will be carried out in a new single-story 8,000 sq ft early childhood education center. Standard operating hours are 7:00 AM to 6:00 PM Monday through Friday. Occasional open houses and community programs may occur on weekends or in the evenings. Families typically drop off their children between 7:30 and 9:00 AM, and pick them up between 4:00 and 5:30 PM.

Applewild's program, with a core belief that the environment teaches as much as curriculum and faculty, significantly incorporates curriculum that encourages its youngest learners to explore their worlds and develop foundational academic, social-emotional, gross and fine motor, artistic, and musical skills. Applewild's program recognizes that children need copious amounts of time in a natural setting and as a result, the outdoor spaces around the school are treated as carefully curated "outdoor classrooms" and this feature will be a significant component of the Proposed Use. Applewild's facility uses natural colors and materials that are frequently modified and updated to ensure a stimulating setting.

Applewild proposes to use the existing parking lot (that is adjacent to but not included in the Proposed Site) at 27 Antietam for its employee parking (18-20 cars) and student pickup and drop off. The parking lot will be used by Applewild primarily during the weekday so this shared use would not impede weekend use by visitors to the athletic fields, other open areas, or the United Native American Cultural Center and would substantially minimize the amount of any paved or impervious areas on the Proposed Site, where it is expected that parking will be limited to required handicapped spaces and some visitor parking. The Proposed Site is currently a flat mowed lawn area so the construction and the use of the Site will not impact sensitive natural resources. The expectation is that the Proposed Use will not require the removal of any trees and, to our knowledge, will not disturb any wetlands areas.

Consistency of the Proposed Use with Reuse Plan:

A. Goals: The Proposed Use will contribute to the sustainability goals of the Reuse Plan as Applewild's program is designed and carried out to ensure that future generations receive the early education they require to be successful in school. Children graduate from Applewild's programs well-prepared for kindergarten and beyond. The Proposed Use, by allowing the continuation at Devens of the existing Applewild at Devens educational program, one of only a few educational or childcare options at Devens, preserves that diversity of uses at Devens.

Applewild at Devens at Jackson Road includes an existing program that teaches children how to garden and that will continue in a new garden at the Proposed Site. In learning how healthy food is grown, Applewild teaches young children healthy eating habits and encourages an interest in agriculture and sustainable practices.

Applewild also employs 18-25 people at its Jackson Road site and has collaborations with both Mount Wachusett Community College and Fitchburg State University to offer practicum

placements, and these will continue, thus contributing to building education capacity. As noted above, the Proposed Site is close to the Shriver Jobs Center and will be near the United Native American Cultural Center offering various collaborations this near co-location allows. Helping children appreciate the rich cultural heritage of the area, as well as an understanding of our shared history is key to developing an educated citizenry. Lastly, Applewild expects to continue to welcome high school students from Parker Charter School who choose to intern at the Applewild at Devens facility as they explore possible future educational careers.

As noted in this subsection and above, all of the features of the Proposed Use describe a sustainable development at the Proposed Site with a balance of economic, social, and environmental benefits that does not derogate from the existing natural resources in the Open Space and Recreation District.

B. Objectives: The availability of high-quality early childhood and preschool education is of paramount importance to Devens businesses and families. It is hard to attract and retain employees if they cannot find childcare and preschool programs, and reliable services help reduce employee turnover and absenteeism. The Proposed Use is an enabler of the Devens workforce and, by serving between 80 and 115 children, will create opportunities for 100 or more individuals who work at Devens and in the region to bring their children to a high quality and convenient childcare/early education program. The convenience of having early childhood education on-site within Devens is a major quality of life factor for anyone looking to work or live in or near Devens. Applewild has been repeatedly told that one of the first questions that possibly relocating businesses ask is if there is childcare available in the area.

Applewild appreciates Deven's commitment to recreation and open spaces. The proposed building and plan to utilize the adjacent paved parking lot will preserve as much open space at the Proposed Site as possible. The Proposed Site has already been cleared so it is anticipated that no trees will be removed as part of the Proposed Use. In fact, the School's planned landscaping will beautify a rather barren lawned corner lot with berms, and a range of beautiful plantings. It is Applewild's preference to minimize the use of paved areas and lawns. This is in alignment with Applewild's focus on teaching sustainability and conservation, it prefers its landscaping to be low-maintenance plantings that require no mowing and minimal water use. Applewild's students are outside whenever possible (with programs occurring outside nearly all days, and with teachers who are adept at providing instruction outdoors) and therefore Applewild places great emphasis on the design of the outdoor spaces. Accordingly, Applewild's proposal for a modest 8000 s.f. building, with outdoor learning areas, low environmental and natural resources impact use to minimize impervious areas, to eliminate mown lawns, and to when possible use low water plantings will protect and enhance Devens' ecological and environmental resources and will provide an attractive improvement to the existing mowed area.

C. Consistency with the Goals of the Open Space District. The Proposed Site will be improved with plantings to replace the current mowed lawn, with children playing and learning outside

enhancing the feelings of community and belonging. The Proposed Use, with its focus on nature and outdoor education, will enhance the beauty of the property, and bring life to a little-used flat corner lot.

The Proposed Site will occupy less than 10.5% of the existing 27 Antietam parcel that is within the Open Space and Recreation District and the Proposed Use will occupy a 8,000 s.f. building on a 2 acre lot and that is less than 10% of the Proposed Site and less than 1% of the 27 Antietam site; therefore the Proposed Use, that is an exempt educational use, will result in a minimal reduction in the open space area at this location. Establishing a preschool at the corner of the 19.25 acre 27 Antietam parcel has minimal effect on the presence of open space and availability of existing recreational spaces in the immediate location as this corner Proposed Site is not a readily desirable location for picnicking or a ball game as there are many other recreation spaces and playing fields nearby that would be better for enjoying the outdoors.

The Proposed Use also meets the Reuse Plan criteria that calls for Open Spaces and Recreation District to serve as a transition zone for other uses as well as to buffer and enhance other uses. When parents / workers drop off or pick up their children, they may on occasion make stops at other areas of Devens, and it is expected those stops will include patronizing Devens businesses such as the gas station, Dunkin, Cantina, and other restaurants. Applewild's collaborations with the United Native American Cultural Center, Parker Charter School, and Shriver Jobs Corps will enrich everyone with inter-organizational synergies.

For all of the foregoing reasons, we believe that Applewild School's Proposed Use to relocate its existing educational and early childhood program from Jackson Road to 27 Antietam Street meets the requirements for a Determination of Zoning Compliance. We look forward to your consideration and response.

Very truly yours,

Mary T. Feeney

MTF:smm

Exhibit A: Applewild School Incorporated Restated Articles of Organization

cc: Amy Jolly, Head of School (ajolly@applewild.org)
Neil Angus, Devens Enterprise Commission (neilangus@devensec.com)

EXHIBIT A

IDENTIFICATION NO. _____
Filing Fee: $35.00

Examiner

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1717, Boston, Massachusetts 02108-1512

RESTATED ARTICLES OF ORGANIZATION

(General Laws, Chapter 180, Section 7)

Name Approved

We, William Aubuchon, *President /~~*Vice President,~~

and Kimberly Ansin, Secretary ~~*Clerk / *Assistant Clerk,~~

of APPLEWILD SCHOOL INCORPORATED,
(Exact name of corporation)

located at 120 Prospect Street, Fitchburg, MA 01420,
(Street address of corporation in Massachusetts)

do hereby certify that the following Restatement of the Articles of Organization was duly adopted at a meeting

held on May 21, 20 15, by a vote of: _____ members,

17 Trustees ~~directors~~, or _____ shareholders**,

☐ Being at least two-thirds of the members or directors legally qualified to vote in meetings of the corporation where there is no amendment to the Articles of Organization; OR

☐ Being at least two-thirds of its members legally qualified to vote in meetings of the corporation where there is an amendment to the Articles of Organization; OR

☑ Being at least two-thirds of its ~~directors~~ Trustees where there are no members pursuant to General Laws, Chapter 180, Section 3 and there is an amendment to the Articles of Organization; OR

☐ In the case of a corporation having capital stock, by the holders of at least two-thirds of the capital stock having the right to vote therein where there is an amendment to the Articles of Organization.

C ☐
P ☐
M ☐
R.A. ☐

**Delete the inapplicable words.*
***Check only one box that applies.*
Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet as long as each article requiring each addition is clearly indicated.

P.C.

ARTICLE I

The name of the corporation is:

APPLEWILD SCHOOL INCORPORATED

ARTICLE II

The purpose of the corporation is to engage in the following activities:

(a) To operate and maintain an educational institution without profit, to prepare children for high school/secondary school and higher education and in connection therewith to promote educational opportunities for students and their families, and the community, and to do any and all other things incidental, in furtherance of, or related thereto, except as restricted herein and as limited by the provisions of Section 501(c)(3) of the Internal Revenue Code.

To engage in those exclusively charitable and educational activities that may be engaged in by corporations organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts and, in particular, without limiting the generality of the foregoing, those activities within the scope of Section 4(a) of said Chapter 180.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualification and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

The corporation has no members.

ARTICLE IV

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:

See attached Continuation Sheet IV.

***If there are no provisions, state "None".*

Note: The preceding four (4) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

ARTICLE V

The effective date of the Restated Articles of Organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

ARTICLE VI

The information contained in Article VI is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation *in Massachusetts* is:

120 Prospect Street, Fitchburg, MA 01420

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:	William Aubuchon	4 Otsego Road Worcester, MA 01609	Same
Treasurer:	Beth Lindstrom	161 Wharton Row Groton, MA 01450	Same
Clerk:	Kimberly Ansin	64 Gibson Road Ashburnham, MA 01430	Same
Directors: (or officers having the powers of directors)	See attached Continuation Sheet VI.b.		

c. The fiscal year of the corporation shall end on the last day of the month of: June

d. The name and business address of the resident agent, if any, of the corporation is: N/A

****We further certify that the foregoing Restated Articles of Organization affect no amendments to the Articles of Organization of the corporation as heretofore amended, except amendments to the following articles. Briefly describe amendments below:**

The Articles of Organization are amended and restated in their entirety.

SIGNED UNDER THE PENALTIES OF PERJURY, this 4th day of September, 20 15,

_____, *President /~~*Vice President~~

Kimberly Ansin, Secretary /~~*Clerk~~ /~~*Assistant Clerk~~

*Delete the inapplicable words. **If there are no such amendments, state "None".

APPLEWILD SCHOOL INCORPORATED

CONTINUATION SHEET IV TO RESTATED ARTICLES OF ORGANIZATION

ARTICLE IV. Other lawful provisions for the conduct and regulation of the corporation's business:

(a) Subject to all limitations set forth in, or referred to by, other provisions of these Articles, this corporation shall have, and may exercise in furtherance of its corporate purposes, (1) all of the powers specified in Section 9 of Chapter 156B of the Massachusetts General Laws as amended from time to time except the powers referred to in paragraph (m) thereof which do not apply to charitable corporations, and (2) all other powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; provided always that (i) no such powers shall be exercised in a manner inconsistent with Chapter 180 of the General Laws of the Commonwealth of Massachusetts; (ii) the corporation shall be operated exclusively for charitable and educational purposes, as said terms have been and shall be defined in Sections 170(c) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"); (iii) the corporation shall act or refrain from acting so as not to subject itself to the taxes imposed by the following Sections of the Internal Revenue Code: 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to taxes on investments which jeopardize charitable purpose), and 4945 (relating to taxable expenditures); (iv) no part of the assets of the corporation and no part of any net earnings of the corporation shall be divided among or inure to the benefit of any officer or Trustee of the corporation or any private individual, or be appropriated for any purposes other than the purposes of the corporation as herein set forth; and (v) no substantial part of the activities of the corporation shall be or include the carrying on of propaganda or otherwise attempting to influence legislation or participating in or intervening in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(b) The corporation shall have the following powers in furtherance of its corporate purposes:

(1) The corporation shall have perpetual succession in its corporate name.

(2) The corporation may sue and be sued.

(3) The corporation may have a seal, which it may alter at pleasure.

(4) The corporation may elect or appoint members of its Board of Trustees, officers, employees, or other agents, fix their compensation and define their duties and obligations.

(5) The corporation may make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, religious, educational, scientific, civic or similar purposes; provided that, as long as the corporation is entitled to exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, it shall make no contribution for other than religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to children or animals.

(6) The corporation may purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property or any interest therein, wherever situated.

(7) The corporation may sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage, pledge, encumber or create a security interest in, all or any of its property or any interest therein, wherever situated.

(8) The corporation may purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental or other activities.

(9) The corporation may make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or encumbrance of, or security interest in, all or any of its property or any interest therein, wherever situated.

(10) The corporation may lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) The corporation may do business, carry on its operations, and have offices and exercise the powers granted by Chapter 180 of the Massachusetts General Laws as now in force or as hereafter amended, in any jurisdiction within or without the United States, although the corporation shall not be operated for the primary purpose of carrying on for profit a trade or business unrelated to its tax exempt purposes.

(12) The corporation may pay pensions, establish and carry out pension, profit-sharing, and other retirement, incentive and benefit plans, trusts and provisions for any and all of its employees, including employees who serve as its officers or Trustees, and for any or all of the directors, officers, and employees of any corporation or other entity 50% or more of the shares of which outstanding and entitled to vote on the election of directors or comparable equity interests are owned, directly or indirectly, by the corporation.

(13) The corporation may solicit and receive contributions from any and all sources and may receive and hold in trust or otherwise funds received by gift or bequest.

(14) The corporation may be an incorporator of other corporations of any type or kind. The corporation may be a partner in any business enterprise, which it would have power to conduct by itself.

(15) No person shall be disqualified from holding any office in, or contracting or transacting business with the corporation by reason of any personal interest or interest as a stockholder, director, officer, member, or beneficiary of any other corporation, association, trust, partnership, firm or entity.

(16) Except as may be otherwise required or permitted by law, the corporation may at any time authorize a petition for its dissolution to be filed with the Supreme Judicial Court of the Commonwealth of Massachusetts pursuant to Section 11A of Chapter 180 of the Massachusetts General Laws by the affirmative vote of a majority of the Board of Trustees of the corporation then in office; provided, however, that in the event of any liquidation, dissolution, termination, or winding up of the

corporation (whether voluntary, involuntary or by operation of law), the property or assets of the corporation remaining after providing for the payment of its debts and obligations shall be conveyed, transferred, distributed, and set over outright to one or more educational, charitable, religious or literary institutions or organizations, created and organized for nonprofit purposes similar to those of the corporation, contributions to which nonprofit institutions or organizations are deductible under Section 170(c) of the Internal Revenue Code and which qualify as exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, as a majority of the total number of the Board of Trustees of the corporation may by vote designate and in such proportions and in such manner as may be determined in such vote.

For such period of time as the corporation shall maintain its exemption from the income tax laws of the United States, the provisions of this Article IV(b)(16) shall not be amended or repealed by the corporation or by vote of its Board of Trustees.

(17) All references herein: (i) to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as now in force or hereafter amended; (ii) to the General Laws of The Commonwealth of Massachusetts, or any chapter thereof, shall be deemed to refer to said General Laws or chapter as now in force or hereafter amended; and (iii) to particular sections of the Internal Revenue Code or the General Laws of The Commonwealth of Massachusetts shall be deemed to refer to similar or successor provisions hereafter adopted.

(c) Except as otherwise specifically provided by the By-Laws of the corporation, meetings of the Board of Trustees of the corporation may be held anywhere in the United States.

(d) The Trustees of the corporation may make, amend or repeal the By-Laws of the corporation in whole or in part.

(e) The corporation shall, to the extent legally permissible and only to the extent that the status of the corporation as an organization exempt under Section 501(c)(3) of the Internal Revenue Code is not affected thereby, indemnify each person now or hereafter elected or appointed a Trustee of the corporation (including each person who serves at its request as a director of any other organization in which the corporation has any interest as a stockholder, creditor, or otherwise) against all expense reasonably incurred or paid by him or her in connection with the defense or disposition of any actual or threatened claim, action, suit, or proceeding (civil, criminal, or other, including appeals) in which he or she may be involved as a party or otherwise by reason of having served in any such capacity, or by reason of any action or omission or alleged action or omission (including those antedating the adoption of these Restated Articles of Organization) by him or her while serving in any such capacity; except for expense incurred or paid by him or her with respect to (i) any matter as to which he or she shall have been adjudicated in any proceeding not to have acted in the reasonable belief that his or her action was in the best interests of the corporation, or (ii) to any matter as to which he or she shall agree or be ordered by any court of competent jurisdiction to make payment to the corporation, or (iii) which the corporation shall be prohibited by law or by order of any court of competent jurisdiction from indemnifying him or her. Such indemnification shall include payment by the corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he shall eventually be adjudicated to be not entitled to indemnification under these Restated Articles of Organization.

No matter disposed of by settlement, compromise, or the entry of a consent decree, nor a judgment of conviction or the entry of any plea in a criminal proceeding, shall of itself be deemed an adjudication of not having acted in the reasonable belief that the action taken or omitted was in the best interest of the

corporation. The term expense shall include, without limitation, settlements, attorneys' fees, costs, judgments, fines, penalties, and other liabilities. The right of indemnification herein provided for shall be severable, shall be in addition to any other right which any such person may have or obtain, shall continue as to any such person who has ceased to be such Trustee and shall inure to the benefit of the heirs and personal representatives of any such person.

The corporation, upon authorization by a disinterested majority of the Trustees then in office, may indemnify each person now or hereafter elected or appointed an officer, employee or agent of the corporation (including each person who serves at its request as an officer, employee or agent of any other organization in which the corporation has any interest as a stockholder, creditor, or otherwise, or who serves at its request in any capacity with respect to any employee benefit plan to the same extent and in accordance with the guidelines set forth in these Restated Articles of Organization.

As used in this Article IV(e), the terms "Trustee" and "officer" and "employee" include their respective heirs, executors, administrators and legal representatives, and an "interested" Trustee is one against whom in such capacity the proceeding in question or another proceeding on the same or similar grounds is then pending.

The right of indemnification provided in this Article IV(e) shall not be exclusive of or affect any other right to which any Trustee, officer or employee may be entitled under any agreement, statute or otherwise. The corporation's obligation to provide indemnification under this Article shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by this corporation or any other person. Nothing contained in this Article IV(e) shall affect any right to which corporate personnel may be entitled by contract or otherwise.

(f) Personal Liability: No officer or Trustee of the corporation shall be personally liable to the corporation for monetary damages for or arising out of a breach of fiduciary duty as an officer or Trustee notwithstanding any provision of law imposing such liability; provided, however that the foregoing shall not eliminate or limit the liability of an officer or Trustee to the extent that such liability is imposed by applicable law (i) for a breach of the Trustee's duty of loyalty to the corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the officer or Trustee derived an improper personal benefit. The foregoing provision shall not eliminate or limit the liability of an officer or Trustee for any act or omission occurring prior to the date upon which the foregoing provision became effective. To the extent permitted by law, no amendment or deletion of the foregoing provisions of this Article IV(f) which restricts or limits the limitation on liability provided thereunder to officers and Trustees shall apply or be effective with respect to actions and omissions of any officer or Trustees occurring prior to the date said amendment or deletion became effective.

Applewild School Incorporated

CONTINUATION SHEET VI.b TO RESTATED ARTICLES OF ORGANIZATION

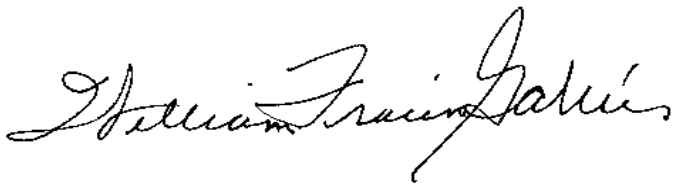
Name	*Title*	*Address*
Iouri Alsov	Trustee	12 Allen Hill Road Princeton, MA 01541
Kimberly Ansin '77	Secretary	64 Gibson Road Ashburnham, MA 01430
William Aubuchon '92	President	4 Otsego Road Worcester, MA 01609
Lisa Bakstran	Trustee	44 Theodore Drive Leominster, MA 01453
Christine Cline	Trustee	42 Fletcher Hill Lane Groton, MA 01450
Wells Dow	Trustee	69 Mirick Road Princeton, MA 01541
William Ellerkamp	Trustee	212 Whiley Road Groton, MA 01450
Mary Feeney	Trustee	39 Brookline Street Pepperell, MA 01463
Ron Feldman	Trustee	1111 Oak Hill Road Fitchburg, MA 01420
Louis Franco	Trustee	250 Arbor Street Lunenburg, MA 01462
Nathaniel Gove	Trustee	15 Gregory Hill Road Princeton, MA 01541
Joseph Lerner	Trustee	286 Barretts Mill Road Concord, MA 01742
Beth Lindstrom	Treasurer	161 Wharton Row Groton, MA 01450
Michael Lyons	Trustee	1 Fern Lane Sterling, MA 01564
Debbie MacDonald '80	Vice President	2 Farmers Row Groton, MA 01450
Scott Swain	Trustee	177 Wintergreen Lane Groton, MA 01450
Christopher Torino	Trustee	39 School Street Ashburnham, MA 01430

Name	***Title***	***Address***
Ronald Ansin	Honorary Trustee	132 Littleton Road Harvard, MA 01451
Todd Crocker '62	Honorary Trustee	45 Hubbard Street Concord, MA 01742
Scott Foster '65	Honorary Trustee	P.O. Box 93 Lunenburg, MA 01462
Allen Rome	Honorary Trustee	769 Main Street Fitchburg, MA 01420
Albert Stone	Honorary Trustee	12 Farmers Row Groton, MA 01450
David Stone '73	Honorary Trustee	18 Farmers Row Groton, MA 01450

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

September 14, 2015 11:42 AM



WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

LAW OFFICE OF
LAMPKE & LAMPKE
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JAMES B. LAMPKE
———
OF COUNSEL
HASKELL A. LAMPKE
(1910-2010)

HULL OFFICE
781-925-1587
PLEASE REPLY TO
HINGHAM OFFICE

July 24, 2025

Devens Enterprise Commission
33 Andrews Parkway
Devens, MA 01434

Attention: William P. Marshall, Chair and Members
Neil Angus, Director and Land Use Administrator

Re: Applewild School, Inc. and Use of Property Zoned Open Space

Dear Commission Members and Mr. Angus:

I am writing to you regarding the proposed use by Applewild School, Inc. (Applewild) of property within Devens located in an Open Space District for an educational use.

As discussed more fully below, it is my opinion that it would be entitled to use this space for education purposes notwithstanding the fact that it is in an Open Space District. It would, however, be subject to reasonable rules and regulations.

Applewild proposes to use land located within Devens and within an Open Space District for "educational purposes.", namely a school. As you know, land zoned as Open Space generally is to be used for open space purpose. However, there are exceptions both in Deven's bylaws and state law that could permit the use of this land for educational purposes.

Applewild's Articles of Organization as a non-profit entity under Massachusetts law specifically refer to its activities to "operate and maintain an education institution without profit, to prepare children for high school/secondary school and higher education". Reference is also made as relates to its activities "those activities within the scope of Section 4(a) of said Chapter 180."

G.L. c. 180, section 4 sets forth the purposes of charitable corporations. It includes "(a) for any civic, educational, charitable, benevolent or religious purpose".

Applewild's Bylaws specify that the Purpose and Mission of it is "to prepare children for high school/secondary school and higher education". Bylaw, Article II, Purpose and Mission Statement, Section 2(a).

Thus, it appears that Applewild would qualify as a non-profit educational entity "to prepare children for high school/secondary school and higher education". Bylaw, Article II, Purpose and Mission Statement, Section 2(a).

With respect to its activities in Devens, it is presently engaged in educational activities.

I am advised that the location of its activities or proposed activities is on property zoned as Open Space. Under Permitted Uses, Article VI of the Devens Zoning By-Laws, if a "proposed use does not fit under any use type, it shall not be permitted."

A question then arises as to whether the proposed use falls within a permitted use or not.

Under Article VI.A. subpart m, Open Space and Recreation, uses within that zone are generally to "preserve and enhance the natural beauty and sensitive natural resources of Devens and serve as a buffer and transition zone for other uses."

While it can be questioned as to whether an educational activity falls within those uses, the bylaw in Article VI.D, Exempt Uses, further provides a specific exemption for "religious or educational uses on land owned or leased by a religious sect or denomination, or by a non-profit educational corporation." No Development Permit is necessary to undertake an exempt use by an educational corporation. Applewild would appear to be such an educational corporation.

Its use would be subject reasonable regulations "concerning the bulk and height of structures, yard sizes, lot area, setbacks, and parking requirements". Article VI.D, Exempt Uses.

Without delving unnecessarily deep into it, the Dover Exemption or Amendment, 1950 Mass. Acts c. 325, codified also in G.L. c. 40A, section 3. would also permit an educational use even if it were not specifically permitted under the local zoning.

There is one further item I wish to note.

The above cited sections of Applewild's enacting documents appear to specifically authorize it to "operate and maintain an educational institution (the "School") without profit, to prepare children for high school/secondary and higher education".

Furthermore, its website describes it as "a Private School for students in Preschool through Grade 9 in Fitchburg, MA with a satellite campus in Devens, MA for toddlers through PreK."

That language would be broad enough to include pre-high school, and secondary school, which is another term for high school. If Applewild in the future seeks to expand its class levels this issue should be reviewed. It would not be a difficult step for Applewild to amend its enabling documentation to include higher grades.

After reviewing the law and documents provided, it is my opinion that Applewild would qualify for an educational use and thus is not prohibited under the zoning from operating in an Open Space District.

An educational exemption, even under the Dover Amendment, is not automatic. The particular facts of the applicant must be examined to see whether it qualifies for the Dover Amendment exemption and/or an exemption under local, state or federal law. A guide to apply to the particular facts would include that education is a bona fide goal of the use and the educational use has to be a primary or dominant use. [Citations omitted.]

I would recommend that any communications make it clear that the approval of the educational exemption is based on the specific and unique facts or this situation and shall not be used as a precedent and that Devens reserves all of its rights and authority and does not waive same.

I trust that this provides you with sufficient guidance. If you have any questions or concerns, please do not hesitate to contact me.

Thank you for the opportunity to be of service to Devens.

Very truly yours,

James B. Lampke

JAMES B. ALMPKE

Public Correspondence Received 7/28/25 regarding Applewild Determination of Use 7/29/25 Agenda Item:

From: REGINA TODD <rctodd7@comcast.net>
Sent: Monday, July 28, 2025 1:23 PM
To: Angus, Neil <neilangus@devensec.com>
Subject: Applewild Proposal

HI Neil - I just reviewed the documentation for tomorrow's DEC meeting. I likely won't attend but would like to provide some input in advance. I support Applewild's request with a few caveats for consideration and incorporation in the design if this proceeds forward.

I understand the 2 acre carve out is expected to be located in the SE corner of the parcel and that they are intending to use the existing parking lot for staff parking.

Item 1- Parker Charter routinely uses that SE parcel for Physical Education purposes during good weather. I don't know whether they have any formal arrangement with MassDevel and/or the Rec group, but I would like to ensure that their needs are incorporated if they are displaced.

Item 2- The only official playground at Devens is also on that parcel and families use the parking area. I'd like to ensure that the Devens Playground use isn't negatively impacted by Applewild's development and adjacency.

Item 3- Depending on pickup and release times from both Parker Charter and Applewild, there's normally significant traffic and cars parked on both sides of Antietam (not in any designated parking spaces) that may be exacerbated and should be considered.

Thanks

Regina

From: Brian Harrigan <BHarrigan@theparkerschool.org>
Sent: Monday, July 28, 2025 4:51 PM
To: Delorier, Meg <MDelorier@Massdevelopment.com>
Cc: Michelle McKenna <mmckenna@theparkerschool.org>; Angus, Neil <neilangus@devensec.com>
Subject: Applewild Preschool

Dear Meg,

I hope that you are doing well. I am reaching out regarding the property on the corner of Jackson and Antietam Streets on Devens that Applewild plans to build their new preschool. We have been speaking with Amy Jolly, Head of School, about the partnership opportunities that this would present for our schools. We envision opportunities for our students to intern at the facility and our staff with young children to enroll. We are generally supportive of the project.

That said, we are concerned about the loss of field space that this represents. We currently use the space for Wellness classes and field day during the year. We could move up the street to Antietam Field, space that we have access to according to the documents signed when we purchased our school on 49 Antietam Street. We want to confirm that the arrangement will continue. We also use P5 as overflow parking during and after the school day. We understand that Applewild will use some of those parking spaces for their community, but additional spaces remain at the further end of the lot. We want to confirm that we may continue to utilize P5. Finally, do you know the potential impact to traffic? Are you envisioning a traffic light added to the intersection? Amy does not anticipate waves of pick up or dropoff, so the traffic impact may be minimal.

Thank you for your responses. We appreciate your guidance.

Brian

Brian Harrigan, Ed.D.
Executive Director (he, him, his)
Francis W. Parker Charter Essential School
Theodore R. Sizer Teachers Center
49 Antietam Street, Devens, MA 01434
978-772-3293 x150
www.theparkerschool.org