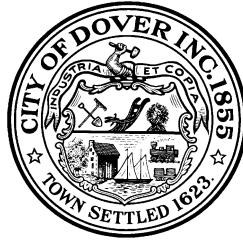


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October 6, 2026

VIA EMAIL (ihuyett@nhcornerstone.org)

Ian Huyett, Esq.
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Dear Ian-

I write in response to your email of September 23, 2026, which you sent after I inquired of you following our in-person meeting on September 14, 2026 here at Dover City Hall.

By way of reminder, at the September 14th meeting City staff outlined the history leading up to the September 14th meeting, including City staff's interactions with Attorney Lanzetta earlier this year¹, along with several possible options for The Prayer Room, including a Conditional Use Permit ("CUP"), a variance, or a petition to change Dover's zoning ordinance. Staff indicated they would assist your client with completing a CUP application and would support the application before the Planning Board. I also indicated the CUP in my view is fairly straightforward and, while I cannot guarantee an outcome, I expected it very likely the Planning Board would grant The Prayer Room a CUP with a single meeting.

Having not heard back, I emailed you on September 22, 2026 seeking to clarify if The Prayer Room would be submitting a CUP application and provided you with date cutoffs for upcoming Planning Board meetings.

You then wrote an email to me on September 23rd indicating, among other things, that: "The Prayer Room has decided it would rather pursue its rights under RSA 674:76 and the New Hampshire Constitution than accede to a requirement which—because it was triggered by The Prayer Room's intention to worship—we do not believe the City had the legal authority to impose."

First, I will clarify for you, once again, that filing for a CUP is a procedural way of enabling a specific land use in this zoning district, and applies neutrally and equally to all religious and non-religious uses not already listed in this district's zoning table.

Second, as for RSA 674:76, there is neither textual support in that statute nor case law support for your assertion that your client's leased portion of the multi-use building is what frames the analysis.

¹ I note that nothing in your email disputes the information we provided on September 14th concerning communications with Attorney Lanzetta, predecessor counsel to The Prayer Room. When we left the September 14th meeting, you indicated you would be speaking with Attorney Lanzetta to confirm that information.

Textually, the statute's use of the word "primarily" intrinsically confirms that, in situations where there are multiple uses occurring, it is the dominant use that is used for purposes of analyzing RSA 674:76 in a given situation. As numerous Courts have held, the "term 'primarily' has an ordinary and obvious meaning in the law. 'Primarily' means 'of first importance' or 'principally.'" *State Bd. of Equalization v. City of Lander*, 882 P.2d 844, 850 (Wyo. 1994) (quoting *Malat v. Riddell*, 383 U.S. 569, 572 (1966)). Use of words like "primarily" are aimed at multi-use properties. See *Doe v. Cooper*, 148 F. Supp. 3d 477, 491 (M.D.N.C. Dec. 7 2015) ("[T]he 'primarily intended' use of a multi-use facility depends on the likely 'use [of] customers generally.'" (quotations omitted)); *State ex rel. Nudo Holdings, LLC v. Bd. of Review*, 2022 WI 17, 18 ("And 'primarily' means chiefly or mainly."); *Litchfield Twp. Bd. of Trs. v. Forever Blueberry Barn, LLC*, 160 Ohio St. 3d 70, 72 (2010) ("The word 'primary' means 'of first rank, importance, or value.'").

The legislative history of RSA 674:76 confirms and illustrates the significance of the qualifier "primarily". As originally introduced and passed by the House, HB 1021 lacked the word "primarily", which was added by the Senate after legislators heard breadth and vagueness concerns.²

New Hampshire secondary authority concurs. The *New Hampshire Practice* treatise endorses the view of the New Hampshire Municipal Association ("NHMA") that, in order to demonstrate a use qualifies for protection under RSA 674:76, the user should affirm that religious user will use the property at least 51% of the time, and "that 51% of the area of the lot and/or structures, will be used for religious purposes." 15 *N.H. Practice, Land Use Planning and Zoning* § 38.19 (2025) (quoting NHMA's affidavit).

Beyond the textual and secondary source support, case law only further confirms City staff's view of RSA 674:76. Massachusetts' so-called "Dover Amendment" (M.G.L. 40A, § 3, which is referenced as a model or analogue in the legislative history of RSA 674:76, has made plain that the text of Massachusetts' statute does not call for examinations of individual portions of a property, but instead "[t]he statute directs the inquiry to the use of 'land' or a 'structure,' not the use of an element or part of a structure." *Martin v. Corp. of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints*, 434 Mass. 141, 149 (2001). Put another way, "Courts do not take 'a piecemeal approach' to this question but rather ask 'whether the structure as a whole is to be used for religious purposes.'" *Becker v. City of Somerville Zoning Bd. of Appeals*, 34 LCR 145, 159 (Mass. Land Court April 8, 2026). Notably, Massachusetts' statute does not even contain the word "primarily", meaning New Hampshire's statute is, if anything, narrower than the Massachusetts' statute.

Further research on the matter has revealed numerous other out-of-state decisions supportive of City staff's view of RSA 674:76, in that these cases examine the entire building/property hosting multiple land uses to determine the primary use. See *Daughters of St. Paul, Inc. v. Zoning Bd. of Appeals*, 549 A.2d 1076 (Conn. App. 1988) ("When a building is used for more than one purpose, the main, principal and dominant use of the building determines its character. . . . [T]he relative size of the spaces devoted to differing uses is relevant to the determination of the dominant use of a facility." (quotation omitted)); *Louis A. Abriola & Son Funeral Home, Inc. v. Zoning Bd. of Appeals*, 1993 Conn. Super. LEXIS 1191 (Conn. Super. May 11, 1993) (holding chapel portion of funeral home was not primary use, and that primary use was as funeral home); *Diocese of Altoona-Johnstown v. Zoning Hearing Bd.*, 899 A.2d 399 (Pa. Commw. May 19, 2006) (analyzing entirety of multi-use property to determine whether religious use was the primary use); *Dean v. Lawrence Cnty. Bd. of Assessment Appeals*, 91 Pa. D & C 5th 53 (Ct. Common Pleas Feb. 3, 2021) (holding multi-use property, hosting weekly religious service but also containing a portion leased to a nonprofit and a portion leased to a daycare, was not used primarily for religious purposes).³

² See HB 1021, Hearing before Senate Election Law and Municipal Affairs Committee (Mar. 21, 2022), available at <https://www.youtube.com/watch?v=TPk45scqsUM&list=PLXcUNufNUlum4Gh8iWW4XBrQxDSHrNfq3&index=6>.

³ See also *Petersen v. Willington Planning & Zoning Comm.*, 1999 Conn. Super. LEXIS 667 (Conn. Super.) ("Because there is a combination of uses for the proposed property, the characterization of its primary use is a

Just to highlight two of these cases, in the *Daughters of St. Paul, Inc.* case, the Court examined the dominant use of a multi-use property composed of a convent, chapel, and book/audiovisual center. The Court held that the convent and chapel, standing alone, would constitute a religious use. The Court also held the book and audiovisual center, standing alone, would not so qualify. However, in that case, the Court rejected that argument that the dominant use would be as a commercial bookstore, and instead held that the bookstore use complemented the religious use, such that the dominant purpose remained religious. Conversely, in the *Louis A. Abriola & Son Funeral Home, Inc.* case, the Court analyzed the dominant use of a multi-use property composed of a commercial funeral home and a non-denominational convent. The Court upheld a finding that the dominant use of the property was not religious in nature, despite a portion (approximately 20%) of the property being set aside for religious use (i.e., the convent).

To date, I would also note that neither you, Attorney Lanzetta, nor The Prayer Room have not identified any supporting case law or other authority in relation to your asserted view of RSA 674:76 applying piecemeal to a structure. I welcome any such authority you may have and would update my response in light of any authority you are able to provide.

Responding to your September 23rd email's proposal of City staff issuing what you characterize as a "conditional non-enforcement letter" with "certain conditions described in the letter", as I have already indicated to you at our meeting, City staff lack the authority to do what you propose. Moreover, what you propose—in essence a staff permission letter with conditions—is functionally the same as a CUP. I struggle to understand why your client would accept and accede to a conditional approval letter from staff, but will not make the simple filing for a CUP from the Planning Board, which City staff would support and which I indicated to you, as recounted above, that I think it quite likely the Planning Board would grant with a single meeting.

In light of the foregoing, I would ask you and your client to reconsider refusing to apply for a CUP. In doing so, you should also be aware, and be sure The Prayer Room is aware, that where formal zoning enforcement action is required, RSA 676:17 includes the prospect of per-diem civil penalties along with a mandatory award to the "municipality [of] its costs and reasonable attorney's fees expended in pursuing the legal action if it is found to be a prevailing party." RSA 676:17, II.

Very truly yours,

/s/ Joshua M. Wyatt

Joshua M. Wyatt
City Attorney

cc: J. Michael Joyal, Jr., City Manager
Donna Benton, Director of Planning and Community Development
Paul Crouser, Zoning Administrator/Assistant Planner

question of fact"; affirming finding of commercial or business use, despite existence of laboratory and research also conduct on premises); *Fox v. Zoning Bd. of Appeals*, 147 A.2d 472 (Conn. 1958) (determining dominant use of building was as an office despite containing residential portion).