



**Revised**

**MINUTES OF THE CONTINUED HEARING FOR**

**HEARING # 12-01**

**348-352 MAIN STREET, WALKER REALTY LLC.**

**(NEXT GENERATION CHILD CARE)**

**3/9/2015 9 AM**

The Zoning Board of Appeals public hearing was re-opened on Monday, March 9, 2015 at 9:00 am in The Francis Faulkner Room (Room 204) of the Acton Town Hall on Remand Hearing #12-01.

Present at the hearing were Board members Jonathon Wagner, Chairman; Richard Fallon, Clerk; Adam Hoffman, Member; Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; Nina Pickering-Cook, Town Counsel; Robert Nagi, P.E. Principal/Senior Project Manager, Vanasse Hangen Brustlin, Inc. (Town of Acton Traffic Consultant); Robert Walker, Petitioner, Kevin Eriksen of Walker Realty, LLC.; and Mark Johnson and Kathleen Heyer, Counsel for the Petitioner.

**Absent: Francis Mastroianni and Suzanne Buckmelter.**

Jon Wagner read the new contents of the file into the record which included the following: a letter from MDM transportation Inc., offering opinions relative to traffic mitigation measures and a copy of their March 10, 2014 Updated Traffic Impact Assessment; a letter from Robert Walker of Walker Realty LLC dated March 4, 2015; a one page Architectural Elevation renderings of the proposed structure; an information package of Next Generation Child Care Facilities in Massachusetts (11 pages); Court Trial excerpt of Donna Kelleher's (owner of Next Generation Child Care Facilities) testimony (21 pages); and a copy of the Land Court's November 25, 2014 Decision issued by Judge Sands. Mr. Wagner reiterated that at the last hearing the Board had requested that the Applicant bring his traffic engineer to this hearing so that he may provide an explanation of the traffic mitigation measures and answer any questions which the Board of Appeals may have. Attorney Mark Johnson also submitted to the Board more information and pictures of the other Next Generation Child Care Centers in Massachusetts as well as an architectural rendering of the proposed Next Generation building's front elevation for the Town of Acton.

Jon said that today they were going to focus on and talk more about the open space and traffic issues. Jon asked Scott to again comment on the open space and reiterate the difference between this Remand Plan and the original plan. He asked Scott to again explain what Open Space was. Scott again referred to Zoning Bylaw Section 1.3.11 (definition of Open Space) and then again explained how under Zoning Bylaw Section 5.3.9 that Open Space excludes playgrounds as well as buildings. Scott stated that the Remand Plan is different in the fact that the Open Space has been reduced to 21% from the 31% on the original plan, all when a minimum of 35% Open Space is required by the Zoning Bylaw. The Remand Plan is further out of compliance than the Original Plan was with regards to Open Space.

Mr. Walker stated that the playground space was shifted around and reconfigured, but that he still maintains and believes that the playground, for practical purposes, should be counted as Open Space.

Mr. Walker suggested that if he had proposed to build a church of the same size and shape that they would not be here before the Board, and that this particular requirement wouldn't be under scrutiny.

Jon moved on to the traffic impact mitigation concerns and stated that the original plan and the Remand Plan are essentially the same plan, except that the dedicated left hand turn lane has been added to the Remand Plan. Jon invited the Town of Acton's Traffic Engineer, Mr. Robert Nagi, to approach the podium and noted that Mr. Nagi served as an expert witness during the trial. Jon began by asking if Mr. Nagi could explain what a traffic report is and what a traffic study does from a layman's perspective. Mr. Nagi stated that a traffic impact study is an evaluation and that it tries to identify current road conditions and then project what conditions might be like in the future, taking into account a potential project's impact. A Traffic Impact Analysis can analyze how access to a facility would be provided and how safe it would be for the public utilizing it, in addition to making recommendations as to what the Town could do to improve the general overall safety. The access to this particular site and its close proximity to the existing Route 2 interchange and westbound on/off ramps would be looked at and taken into consideration. Would there be any negative impacts created or affected by the proposed project? Traffic engineers try to analyze the potential traffic impacts by utilizing their industry accepted and approved standards and documents and analytical views. At the end of the day, they look for what's out there today and project what will be there in the future and try to mitigate and reduce the impact of a proposed project. Mr. Nagi stated that he had worked with MDM (the Applicant's traffic engineer) closely to make sure that the new driveways would be safe and not have a significant negative impact on traffic flow in this area. Jon asked Mr. Nagi what the proposed traffic in and out of the center would be in an hour's timeframe. Mr. Nagi explained that traffic engineer's look at and analyze the amount of trips that a proposed use generates. Mr. Nagi continued on to explain that a vehicle entering the site would be counted as one trip and that same vehicle exiting the site would be counted as another trip. If 60 vehicles entered the site for a proposed use, then there would be a trip generation of 120 trips per hour. The trip generation numbers that traffic engineers refer to are those generated during the peak hours of business. Jon asked Mr. Nagi to address the level of service that is referred to and to please explain what it is. Mr. Nagi explained that "Level of Service" is like a report card for an intersection, and in this specific case, the information indicates that the Main Street (Route 27) & Route 2 interchange intersection would be congested. Mr. Nagi stated that drivers coming off the Route 2 ramp would be delayed, especially during the weekday commuting periods, but certainly not to the same degree on the weekends. There were also concerns regarding how the driveways would operate and the fact that the Applicant proposes three separate driveways into the property. Adam had a question for Mr. Nagi about the site plan that was in front of the Board and the fact that there were some discrepancies. Mr. Nagi said that the original plan had only a single entrance into the property and proposed separate right and left turn lanes for traffic exiting the property, however, given the volume of traffic projected, there were concerns regarding the internal flow of traffic. The proposal of two separate driveways spreads the impact out so there won't be a wall of traffic pulling out of the driveways. Mr. Nagi also noted that the Kennedy Landscape Center driveway is not part of the daycare center and is completely separate. The Remand Plan, having the dedicated left turn lane in front of the driveway, Mr. Nagi believes will help with the overall flow of traffic northbound on Main Street (Route 27), but traffic attempting to exit the property and turn left to go

northbound on Main Street (Route 27) will experience delays and could potentially lead to aggressive and dangerous choices by drivers. The access driveway into the Kennedy Landscape Center is located within the State layout and may need to be modified based upon State regulations. The location of the dedicated left-turn lane is located within the Town of Acton's jurisdiction and coordination with the Town's Engineering Department would be required.

Nina had questions regarding traffic entering and exiting the site. She asked Mr. Nagi to speak to the issue of traffic exiting the site and whether or not in his opinion the overall traffic flow will continue to operate in a constrained level of service. Mr. Nagi replied that during the peak hours there will be delays for drivers trying to turn left out of the proposed facility and that such turning movements could potentially be troublesome and problematic. Mr. Nagi also stated that they asked applicant to ensure that there were adequate site lines for the travel speeds that currently exist on Main Street and that none of the proposed landscaping along the Main Street frontage around the access driveways would obstruct or inhibit drivers site lines.

Rick Fallon had some factual questions for Mr. Nagi with regards to the Judge's Decision, and the accuracy of some of the Judge's findings as they relate to traffic assumptions.

Attorney Johnson, had a question for the Board with regards to Open Space. He stated that the Board had originally made a finding in regards to the 35% minimum Open Space required. Attorney Johnson stated that there are exceptions in the Bylaw as to how Open Space is calculated. Mr. Johnson argued that with any other type of development, play areas are permitted to be counted as Open Space, and that it is unreasonable to not permit these play areas which are directly associated with a Child Care Facility to count as Open Space.

Jon asked the Applicant if they had consulted with the State DOT (Department of Transportation) regarding the proposed dedicated left turning lane. Mr. Johnson said that MassDOT approval was not necessary to install the left turn lane. Mr. Walker added that whatever permits they need to get when this project is approved, they will get and that the landscape plan exceeds the Bylaw in every respect.

Rick asked another question in order to verify just what the Board was going to be deliberating on, and confirm that the additional landscaping, a reduction in the amount of Open Space being provided, and the dedicated left turning lane, are the three main changes open for Board discussion and deliberations. Adam asked the Applicant questions with regards to the economic feasibility of this project and Mr. Walker responded that he did not have that information with him today. Attorney Johnson further stated that whether a business is making money or not making money is not at question for the Board to deliberate or render a decision upon. Adam said that half of the facilities within the package submitted by the Applicant are under 19,000 square feet in size. Attorney Johnson said that this proposal is what works with this particular community. Adam asked for the Applicant to explain why the Natick Facility can work with only 12,000 square feet but the same sized model cannot work in Acton.

Jon asked for public comment. There was none. Jon asked for a motion to close the public hearing. Adam made such motion, Rick seconded such motion and the public hearing was closed. The Board began their deliberations.

Jon began the Board's deliberations by going back to the Judge's Decision. He believes that the size of the building directly relates to and dictates how the local traffic patterns and flow are affected. Jon felt that the Remand Plan addressed the Town's traffic concerns to some extent, but also noted that the Applicant has no intention to reduce the overall size of the building. Jon strongly feels that it is unconceivable to him that this proposed facility would not have a negative impact on traffic. Mr. Wagner also acknowledged that additional landscape screening had been provided, yet he doesn't think or feel that the landscape screening proposed is adequate or acceptable.

Adam shared similar thoughts and feelings to that of Mr. Wagner and stated that he thought that the intent of the Judge's Decision was to bring a Remand Plan back to the Town for the Applicant and the Board to discuss and negotiate an acceptable outcome to both parties. Adam very clearly stated that he was disappointed in the fact that the Applicant wouldn't consider a smaller facility.

Rick had a couple of additional thoughts and comments. Rick stated that he thought that the Board should take advisory votes on the three main changes identified on the Remand Plan - a reduction in the Open Space, the proposed dedicated left-turn lane traffic mitigation and the overall size of the proposed structure. Rick thought that the dedicated left-turn turning lane was a good proposal and was further encouraged that the Town's traffic engineer was supportive of the traffic mitigation option.

Jon stated that he was intending to do what Rick had suggested with regards to the different multiple votes, and thought that the Board should structure their Decision in such a way that they address each of the issues separately. Jon believes that this approach would touch on everything that Rick had said. Jon thought that the Judge wasn't totally discounting the fact that the proposed facility was located in a residential area, but also didn't feel that the Judge's assessment that the area was mixed use is correct.

Jon asked the Board members for their thoughts and comments regarding the size of the proposed facility, and if they weren't in agreement with the proposed size, then what size of facility would they be willing to accept. Adam said that a 10,000 square foot facility, which is five times what the Town allows, would be acceptable to him. Rick stated that regardless of whether or not he agreed with the Judge's interpretation that the 2,500 square foot facility was unreasonable, Rick felt that the 2,500 square foot Bylaw requirement was in fact reasonable. However, Mr. Fallon also went on to say that he would be supportive of a 5,000 square foot facility, if it were to be proposed along with the inclusion of the currently proposed landscape and traffic mitigation measures. Rick rationalized that a 5,000 square foot facility would be acceptable to him because that is the maximum size for a child care facility located in any residential zoning district and that that number exists in the Zoning Bylaw because it is voted on and accepted by Acton residents through Annual Town Meeting. Jon asked the Board to consider exactly what square foot size of facility that they would be comfortable in approving or agreeing to. Adam felt that they should find a number in between the 2,500 square feet permitted under the Zoning Bylaw and the 19,460 square feet proposed by the Applicant. Adam thought that the Judge's suggestion of a 12,500 square foot facility was reasonable and acceptable and Jon stated that he was in agreement with Adam. Rick did not feel that a 12,500 square foot facility was reasonable or acceptable and stated that he was sticking with his 5,000 square feet which he discussed previously.

The Board took the following votes:

Vote #1 – Would the Board vote to accept the Remand Plan as currently proposed – 19,460 square foot (Net Floor Area) building, left turn lane traffic mitigation and additional landscape planting mitigation?

Rick – No                    Adam – No                    John – No

Vote #2 – Does the Board believe that it is reasonable to waive the Open Space requirement of 35% with the new 3,500 square foot Toddler's Playground Area as proposed on the Remand Plan?

Rick – Yes                    Adam – Yes                    John – Yes

Vote #3 – Does the Board believe that it is reasonable to waive the Open Space requirement of 35% with the new 200 square foot shed as proposed on the Remand Plan?

Rick – No                    Adam – No                    John – No

Vote #4 – Does the Board believe that it would be reasonable to waive the Net Floor Area requirement of 2,500 square feet if the Applicant were to propose a 12,500 square foot (Net Floor Area) building, left turn lane traffic mitigation and additional landscape planting mitigation?

Rick – No                    Adam – Yes                    John – Yes

Vote #5 – Does the Board believe that it would be reasonable to waive the Net Floor Area requirement of 2,500 square feet if the Applicant were to propose a 5,000 square foot (Net Floor Area) building, left turn lane traffic mitigation and additional landscape planting mitigation?

Rick – Yes                    Adam – Yes                    John - Yes

Vote #6 – Would the Board vote to approve a project of 5,000 square feet (Net Floor Area) or more without a turning lane and traffic mitigation measures?

Rick – No                    Adam – No                    John – No

Rick Fallon made a motion to adjourn the public meeting. The motion was seconded by Adam Hoffman, all members voted in favor of adjourning the meeting.

**For a review of the meeting documents for this meeting, please visit the digital link below:**  
<http://doc.acton-ma.gov/dsweb/View/Collection-7128>