



**MINUTES OF THE HEARING ON THE PETITION
OF WALKER REALTY LLC, 348-352 MAIN STREET**

HEARING # 09-01

SESSION 2

A previously opened public hearing of the Acton Board of Appeals was continued to Monday, June 1, 2009 at 7:30 pm in the Francis Faulkner Room of Town Hall. The hearing is at the request of Walker Realty, LLC for a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw appealing a written zoning determination of the Zoning Enforcement Officer which was set forth in a letter dated March 26, 2009. The Zoning Determination Letter provided the basis and reasoning as to why a building permit could not be issued for the proposed child care facility due to a number of Bylaw non-compliance issues. The subject property is located at 348-352 Main Street and identified on tax Map F-3 as Parcels 54, 61 and 61-1.

Present at the hearing was Board of Appeals members: Cara Voutselas (Chairperson), Ken Kozik (Member), and Marilyn Peterson (Member); Roland Bartl, Planning Director; Scott Mutch, Zoning Enforcement Officer; Arthur Kreiger, Acton Town Counsel; Cheryl Frazier, Secretary to the Board of Appeals; Attorney for the Petitioner - James M. Burgoyne of Fletcher, Tilton & Whipple, P.C.; Katie (Bomengen) Enright of Hancock & Associates, project engineer; and Robert J. Michaud, P.E. of MDM Transportation Consultants, Inc. – Petitioner's traffic consultant for the subject project. Also in attendance were approximately 60 Town of Acton residents and staff of existing Acton daycare providers.

Cara Voutselas began the hearing by reading the new exhibits into the record. She then asked Scott Mutch, Zoning Enforcement Officer to discuss his revised memo dated May 25, 2009.

Scott began by reiterating that the applicant had submitted revised drawings and calculations during the previous hearing, which staff had not seen before and needed time to review. The new data consisted of modified net floor area and overall FAR calculations. The applicant had also submitted for the first time, detailed floor plans of the proposed structure which identified how the interior space would be configured. The previously proposed net floor area and overall FAR calculations were based upon gross floor area numbers, whereas, now that floor plans had been developed, a much more accurate net floor area could be calculated. The definition of net floor area allows for certain areas of a floor plate to be deducted from the net floor area calculation as set forth in Section 1.3.8 of the Zoning Bylaw. Mr. Mutch continued by stating that although his memo to the BOA indicated that Staff was in agreement with the applicants revised net floor area and overall FAR calculations, since the drafting of the memo, staff

had further reviewed the revised numbers and was no longer in agreement with the applicant's revised numbers. Mr. Mutch stated that the common hallways which are permitted deductions under the definition of net floor area, could not be deducted in this instance. A common hallway implies that a single hallway is providing access to more than one separate business within a common building. In this particular instance, the entire building consists of only one use, and therefore, there are no interior common hallways which can be deducted from the overall net floor area. Therefore, the actual net floor area will be somewhere between the applicant's newly proposed 15,836 square feet (0.154 FAR) and 20,000 square feet (0.20 FAR). The applicant has also submitted elevation drawings of the proposed structure.

Art Kreiger reiterated that the proposed FAR calculation was reduced because the applicant had previously counted hallways and building service areas which are exempt under the bylaw. Mr. Kreiger also spoke to the fact that there is only one proposed use in the building and therefore, there is no common hallway.

Cara then asked the applicant's representative if he would like to respond.

James Burgoyne said that in the time since Planning Department Staff had issued their revised memo dated May 25, 2009, concerned citizens requested that staff look again at the common hallway interpretation. Subsequently, staff no longer agrees with his client's proposed calculations.

James Burgoyne continued by stating that the majority of the public comments have focused on the issue of traffic. Mr. Burgoyne said that based upon the conclusions presented in the traffic study, and with the mitigation techniques that are currently proposed, the applicant is confident that the new facility will no further degrade the intersection than currently exists. The traffic mitigation proposes new sidewalks and the addition of another traffic lane for turning and queuing purposes. Mr. Michaud, the Traffic Engineer was in attendance to discuss and address the issues surrounding the traffic study. Mr. Michaud spoke about how he had analyzed all the data that was collected and available to him and tied it into the new proposed facility. He discussed how the proposed floor plan provides significant play areas within the facility which would not increase the trip generation to the facility. Having laundry facilities and food prep areas within the building also do not add additional trips to the facility. Mr. Michaud also discussed the assumption being made that the size of the facility itself dictates the amount of traffic being generated.

Cara Voutselas then proceeded to invite citizens in attendance and abutters of the project to the microphone to speak and provide comments and input on the proposed child care facility. A number of Acton residents again spoke in opposition of the project. The majority of the comments/concerns again centered around potential traffic issues created by the new facility and the overall size of the proposed project. Speakers continued to encourage the Board of Appeals to uphold the original denial of the Zoning Enforcement Officer.

Ken Kozik, on behalf of the Board of Appeals, made a motion to close the public hearing portion of file # 09-01. The motion was seconded by Marilyn Peterson. All Board members voted unanimously in favor and the hearing was closed.

After deliberation, the Board of Appeals unanimously voted to overturn the Zoning Enforcement Officer with respect to the maximum net floor area permitted, and Sections 6.7.1, 6.7.3, 6.7.4 and 6.7.7 of the Zoning Bylaw which specifically pertain to parking lot design standards. The Board of Appeals upheld the Zoning Enforcement Officer's determination of the proposed project exceeding the maximum permitted FAR.

Art Kreiger stated that he would draft the decision for the Board of Appeals review and approval.

Respectfully submitted,



Cheryl Frazier
Secretary to the Board of Appeals



Cara Voutselas
Board of Appeals Chairman