

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

HEARING #09-01

SESSION I

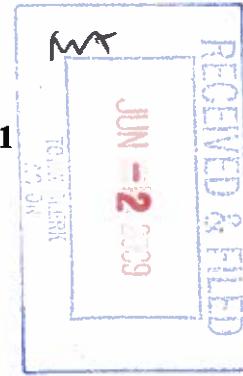
A public hearing of the Acton Board of Appeals was held on Monday, May 4, 2009 at 7:30 pm in the Francis Faulkner Room of Town Hall. The hearing is at the request of Walker Realty, LLC for a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw appealing a written zoning determination of 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; Petitioner, Robert A. Walker of Walker Realty, LLC. (a Massachusetts based company); Attorney for the Petitioner - James M. Burgoyne of Fletcher, Tilton & Whipple, P.C.; and Katie (Bomengen) Enright of Hancock & Associates, project engineer. Also in attendance were approximately 57 Town of Acton residents and staff of existing Acton daycare providers.

Cara Voutselas read through the contents of the file and asked Mr. Kreiger to begin by explaining the legal framework, background and case law as it pertains to this particular petition. Mr. Kreiger then continued by explaining that the primary issue in this petition is not the USE itself due to child care facilities being permitted as of right under the zoning bylaw. The issue is regarding whether or not a town can uphold existing bylaw requirements if they are reasonable on the face or as they apply to the specific case. Mr. Kreiger continued by explaining that the Board of Appeal's task is to determine whether the proposed structures net floor area, floor area ratio, (FAR) and parking lot non-conformities are reasonable exemptions of the existing zoning bylaw requirements.

Cara then proceeded to ask Scott Mutch, Zoning Enforcement Officer to state the applicable sections of the zoning bylaw that apply to this petition. Mr. Mutch proceeded to explain that Section 5.3.9 of the Acton zoning bylaw provides dimensional requirements specifically for childcare facilities located in residential districts which the currently proposed facility does not meet. Additionally, the proposed site plan as currently designed, does not comply with a number of the Parking Standards as set forth in Section 6 of the Acton Zoning Bylaw.

Cara again summarized the items which currently are not in compliance and are as follows: the maximum FAR (floor area ratio), the maximum net floor area, the utilization of parking lot cells and minimum distance separation, minimum require interior parking



lot landscaping, maximum access driveway width, and interior drive aisle width. The proposed height of the structure is not identified at this time and may or may not be in compliance with the zoning bylaw. The minimum required open space for the subject project appears to be in compliance with the bylaw at this time.

Mr. Burgoyne then proceeded to begin his presentation and stated that they are presenting a plan that has evolved over time. Walker Realty acquired the subject properties in February and March of 2008. They are proposing to construct a two story 24,085 square foot building with an accessory playground, parking areas, landscaping and utilities. A single access drive for the site is proposed towards the site's northernmost Main Street frontage coinciding with the intersection of Isaac Davis Way. Mr. Burgoyne stated again for the record that the proposed use is permitted as of right in the R-2 Zoning District. The site plan proposes the minimum 77 parking spaces as required under the bylaw. The proposed building exceeds Maximum Floor Area Ratio and Maximum Net Floor area of Section 5.3.9 of the Zoning Bylaw. Additionally, the Parking design requires waivers relating to cell separation and interior landscaping. The combined area of the three parcels on the property is 106,188 square feet of land (2.43 acres). The site has over 500 feet of frontage on Main Street which includes a portion of Isaac Davis Way. The site will be serviced by public water supply and on-site septic facilities. A traffic study was done and submitted to the town. They have proposed to implement significant traffic and safety mitigation improvements to Main Street (Route 27) at the applicant's expense. The site plan as proposed, satisfies all required yard, building and parking area setbacks contained in the bylaw. The site is bounded by the Route 2 right of way on its westerly side and much of the lot's frontage is located directly opposite the Route 2 highway interchange with Route 27 (Main Street). Although the site is located in the R-2 Residential Zoning District, it is located in close proximity to many existing commercial and municipal uses. They meet the frontage requirement of 150 square feet.

In addition to the identified traffic concerns, the immediately abutting neighbour to the north of the proposed facility also has concerns about the imposing facility in its relationship to their property. The petitioner has met with Mr. & Mrs. Post and has agreed to place additional plantings along with a fence to their satisfaction along their common/shared property line.

Mr. Burgoyne then turned the presentation over to project engineer Katie (Bomengen) Enright of Hancock & Associates to continue the presentation. She began stating that the playground area will remain green space. The floor area ratio has been reduced to 0.154 which still does not comply with the Zoning Bylaw. They have done a septic system plan which will be able to handle the site. They plan on widening the road and they will be proposing a stockade fence along Isaac Davis Way as a buffer for the residents. In order to ease abutting resident concerns, the applicant has agreed to install a gate or similar device along Isaac Davis Way where it crosses the property line to prevent child care facility traffic from utilizing Isaac Davis Way.

Cara Voutselas brought up the fact that the FAR number submitted tonight by the applicant is different from the FAR that was submitted as part of the original application.

She asked Scott Mutch, Zoning Enforcement Officer to address this issue. Mr. Mutch stated that the currently proposed FAR is less than originally documented in his memo, but continued by stating that what they have submitted tonight was to be expected and could be a much more accurate number than originally proposed. It is understandable that once actual floor plans were prepared and the permitted areas deducted from the floor plates, that both the proposed net floor area and floor area ratio would be reduced. None of the numbers being presented at the hearing for the first time could be immediately confirmed, without staff going away and analyzing the new proposed data. Previously presented numbers were gross floor area calculations, and not entirely 100% accurate and unfortunately a little misleading. Ken Kozik asked Scott or Roland to explain to the Board the history of Section 5.3.9. Mr. Bartl explained that Section 5.3.9 was added to the bylaw in the early 1990's as a response to the State of Massachusetts granting child care facilities exemptions and special provisions from local zoning requirements.

Cara asked the residents, present at the hearing, to begin speaking to their concerns regarding this project.

The first resident that spoke had many concerns with potential traffic issues and referenced past traffic studies that had been undertaken by the Town. The resident also stated that he had not yet seen or reviewed the applicant's Traffic Consultant's traffic impact analysis, but would be interested in doing so.

Attorney Walter Foster, representing and speaking on behalf of some of the residents of Isaac Davis Way, said he would like the record to show that the Petitioner has met with the residents of Isaac Davis Way Road regarding the screening of the property and traffic issues pertaining to Isaac Davis Way. Mr. Foster identified another concern of abutters as being what would happen with the proposed facility should it be constructed, and then have the current applicant leave the property. Should this scenario play out, what would be the possible potential uses of the structure?

The majority of residents speaking had significant concerns regarding traffic and emergency vehicles being able to enter and exit from the Public Safety Facility building.

The proposed height of the building was questioned by another resident. Mr. Mutch responded by explaining how the height of structures is calculated and stated that it is conceivable that the proposed 2 story structure would be in compliance with bylaw requirements. However, this would need to be confirmed and verified at the time of a building permit.

Peter Ashton requested that the Board of Appeals continue the hearing due to an overall lack of information. Mr. Ashton continued by saying that if this project does go forward the Board of Appeals should place conditions on what would happen with this building and its use, should the current applicant ever leave. Mr. Ashton concluded by stating that the proposed daycare is two and one half times larger than any other existing daycare in Acton.

The Board of Appeals made a motion to continue the hearing to a date and time certain of Monday, June 1, 2009 at 7:30 PM in The Francis Faulkner Meeting Room (Room #204) of Town Hall.

Respectfully submitted,

Cheryl Frazier
Board of Appeals Secretary


Cara Voutselas
Board of Appeals Chairman