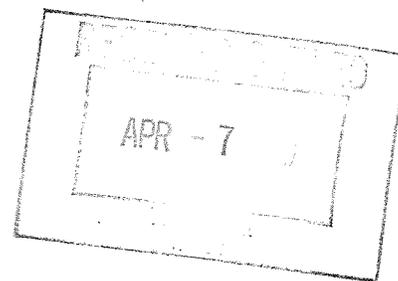




FLETCHER, TILTON & WHIPPLE, P.C.
C O U N S E L O R S A T L A W

April 6, 2009

Eva K. Taylor, Town Clerk
Town Hall
472 Main Street
Acton, MA 01720



Re: Administrative Appeal
Acton Board of Appeals
Petitioner: Walker Realty, LLC
Locus: 348-352 Main street
Assessor's Map: F-3, Lots 54, 61 and 61.1

Dear Ms. Taylor:

Enclosed herewith please find the following documents in connection with an Appeal to the Acton Board of Appeals filed on behalf of Walker Realty, LLC, from a decision of the Zoning Enforcement Officer dated March 26, 2009:

Seven (7) copies of a Form 1 Petition and Exhibits thereto as follows:

1. Letter dated March 24, 2009 requesting a Zoning Determination for a proposed Child Care Center with attached Site Plan by Hancock Associates dated March 15, 2009;
2. Decision of the Zoning Enforcement Officer entitled "Zoning Determination Letter" dated March 26, 2009;
3. Revised Site Plan by Hancock Associates dated March 15, 2009 with revisions dated March 31, 2009;
4. Open Space Exhibit Plan by Hancock Associates, dated March 31, 2009.
5. Certified List of Abutters.

In addition, enclosed is this Firm's check in the amount of \$100.00 (1-25 abutters) representing the filing fee in accordance with Form 1, and the release form for the Beacon Community Newspaper for legal advertising.

{Client Files\18610\0001\00411859.DOC}

Please direct all correspondence to our Worcester office.



This Appeal is filed pursuant to G.L.c. 40A§8 and pursuant to Section 10.1.1 of the Acton Zoning By-law. Please transmit the enclosed to the Board of Appeals for processing in accordance with the Acton Zoning By-law.

Please feel free to contact the undersigned if there is any further information or documents necessary regarding this appeal.

Thank you for your assistance and cooperation.

A large, fluid handwritten signature in black ink, appearing to read 'James M. Burgoyne', is written over the printed name.

James M. Burgoyne

Direct phone line: (508) 459-8019

Direct fax line: (508) 459-8319

JBurgoyne@ftwlaw.com

cc: Scott Mutch, Zoning Enforcement Officer
Acton Board of Appeals
Walker Realty, LLC
Hancock Associates
Arthur Kreiger, Esq., Town Clerk



TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Building Department

INTERDEPARTMENTAL COMMUNICATION

To: Fire Department, Water District, Conservation Commission, Board of Health, Planning Department, Engineering Department, Transportation Advisory Committee, Municipal Properties, Design Review Board, Economic Development Committee, Sidewalk Committee, Building Department and Board of Selectmen

Date: April 8, 2009

From: Cheryl Frazier, Board of Appeals Secretary

Subject: Board of Appeals Hearing #09-01 348-352 Main Street

I am in receipt of a Board of Appeals application for a **PETITION FOR REVIEW** to appeal the decision of the Zoning Enforcement Officer set forth in a letter dated March 26, 2009 determining that a building permit may not be issued for a proposed child care center located at 348-352 Main Street.

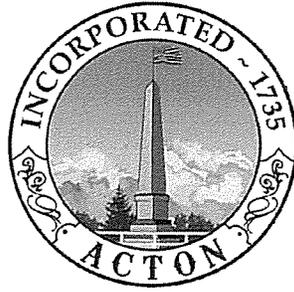
Please provide your comments to Scott Mutch in the Planning Department no later than Monday, April 20, 2009. Due to the controversial nature of the proposed application, it is imperative that comments be received by the above noted due date.



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

***Board of Appeals
Hearing # 09-01***

A public hearing of the Acton Board of Appeals will be held in the Acton Memorial Library on Monday, May 4, 2009 at 7:30 PM on the request of Walker Realty, LLC for a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw to appeal the decision of the Zoning Enforcement Officer set forth in a letter dated March 26, 2009 determining that a building permit may not be issued for a proposed child care center to be constructed on the premises located at 348-352 Main Street. Map F-3, Parcels 54, 61 and 61-1.



Board of Appeals

NOTICE OF PUBLIC HEARING

The Board of Appeals will hold a Public Hearing on Monday, May 4, 2009 at 7:30 PM in the ACTON MEMORIAL LIBRARY

on the following petition:

Hearing # 09-01

**Walker Realty, LLC for a Petition for Review
under Section 10.1.1 of the Acton Zoning Bylaw
to appeal the decision of the Zoning Enforcement
Officer set forth in a letter dated March 26, 2009
determining that a building permit may not be issued
for a proposed child care center to be constructed on
the premises located at 348-352 Main St.
Map F-3, Parcels 54, 61 and 61-1.**

Petitioner must be present, or send authorized representative

BOARD OF APPEALS

Date Received
TOWN CLERK

By: _____



TOWN OF ACTON
MASSACHUSETTS

Date Received
BOARD OF APPEALS

RECEIVED

APR - 7 2009

By: _____

ACTON BOARD OF APPEALS

BOARD OF APPEALS
(FORM 1)
PETITION FOR REVIEW

April 6, ~~xxx~~ 2009
(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section ~~xxxxx~~ 10.1.1 of the Zoning By-Law. ~~to review (a) the refusal of the Building Commissioner to grant a permit under Section xxxxxxxxxx of the Zoning By-law to allow (b) the refusal of the Building Commissioner to enforce the provisions of Section xxxxxxxxxx of the Zoning By-Law as follows: (Strike out inapplicable language)~~

SEE ATTACHMENT

Date of Building Commissioner's Action _____

(1) Petition must be filed within 30 days of refusal date with copy of decision or order attached.

OFFICE USE ONLY

~~Four~~ ^{Seven} copies of petition? _____

Location map? _____

Detailed plans? _____

Additional Briefs? _____

List of abutters and other interested parties? _____

Fee - \$100.00/1-25 abutters
\$125.00/26+ abutters? _____

Next Hearing Date? _____ No _____

Respectfully submitted
WALKER REALTY, LLC
Signed Robert A. Walker
(Petitioner)

Name Robert A. Walker, Member

Address 2 Lan Drive, Westford, MA 01886

Phone # (978) 692-9450

Signed _____
(Owner of Record)

Name _____

Address _____

Phone # _____

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Building Commissioner.

Walker Realty, LLC
Proposed Next Generation Children's Center
348-352 Main Street, Acton, Mass.

Attachment to Petition

Walker Realty, LLC, as petitioner and owner of premises located at 348-352 Main Street, Acton, Mass., Assessor's Map F-3, Parcels 54, 61 and 61-1, hereby appeals from a decision of the Acton Zoning Officer dated March 26, 2009, determining that a building permit may not be issued for a proposed child care center to be constructed on the premises at 348-352 Main Street.

Petitioner requests that the Board determine that the proposed use of property as a child care center as defined in G.L. c. 40A§3, may be constructed as proposed by Petitioner as set forth in a Site Plan by Hancock Associates dated March 15, 2009, as revised and that compliance with certain parking lot and dimensional requirements applicable to child care centers may be waived.



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Cheryl Frazier
Board of Appeals Secretary

TO: Beacon Community Newspapers
Legal Notice Department

I hereby authorize Beacon Community Newspapers to bill me directly for the Legal Notice to be placed in connection with my permit/application on _____ in the Beacon.

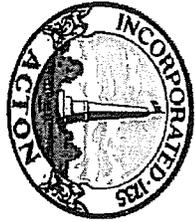
WALKER REALTY, LLC

X ^{BY} Signed: Robert A. Walker
Robert A. Walker, Member

X Address: 2 Lan Drive
Westford, MA 01886

X Phone: (978) 692-9450

Note: This release is to be signed and submitted by the applicant to the Town at the time of initial submittal of every Permit/Application that requires Public Notice by Newspaper. Please leave the day on which date it will appear blank.



Town of Acton
 472 Main Street
 Acton, MA 01720
 Telephone (978) 264-9622
 Fax (978) 264-9630

Brian McMullen
 Assistant Assessor

Locus: 348 - 352 MAIN ST
 Parcel: F3-61, F3-61-1, & F3-54

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
70 HAYWARD RD REAR	F3-15	ACTON-BOXBORO REG SCHOOL DIST		472 MAIN STREET	ACTON	MA	01720
52 HAYWARD RD	F3-17-1	PREDERGAST REBECCA	CUOCO EDWARD	52 HAYWARD RD	ACTON	MA	01720
50 HAYWARD RD	F3-18-1	LU HONG	SUN XIAOYONG	50 HAYWARD RD	ACTON	MA	01720
10 ISAAC DAVIS WY	F3-19-1	RYDER JR JOHN ERIC	RYDER HEIDI H	10 ISAAC DAVIS WAY	ACTON	MA	01720
362 MAIN ST	F3-32	KENNEDY MICHAEL J TR	362 MAIN ST REALTY TRUST	362 MAIN ST	ACTON	MA	01720
6 ISAAC DAVIS WY	F3-45	POST MATTHEW R	POST LAURA G	6 ISAAC DAVIS WAY	ACTON	MA	01720
352 MAIN ST	F3-54	GRAHAM WENDELL MORGAN + MCLAUGHLIN	C/O WALKER REALTY LLC	2 LAN DR	WESTFORD	MA	01886-3550
353 MAIN ST	F3-70	KENNEDY PHYLLIS A TR	MAIN ST AGRICULTURAL TR	362 MAIN ST	ACTON	MA	01720
10 STACYS WY BESIDE	F3-70-17	ACTON TOWN OF		472 MAIN STREET	ACTON	MA	01720
312 MAIN ST	F3-74-1	ACTON-BOXBORO REG SCHOOL DIST		472 MAIN STREET	ACTON	MA	01720

Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:

Boxborough, MA 01729 Maynard, MA 01754 Concord, MA 01742 Littleton, MA 01460
 Carlisle, MA 01741 Slow, MA 01775 Westford, MA 01888 Sudbury, MA 01776

Kimberly Hoyt
 Assessing Clerk
 Action Assessors Office

11-Mar-09



FLETCHER, TILTON & WHIPPLE, P.C.
C O U N S E L O R S A T L A W

March 24, 2009

VIA HAND DELIVERY

Scott Mutch, Zoning Enforcement Officer
Town of Acton
472 Main Street
Acton, MA 01720

Re: Proposed Next Generation Children's Center, 348 -352 Main Street

Dear Mr. Mutch:

This firm represents Walker Realty, LLC, owner of premises located at 348-352 Main Street in Acton. The premises are shown as Lots 54 and 61 on Map F-3 of the Acton Assessors Maps.

As you know, Walker Realty has proposed the development of the 348-352 Main Street premises for use as a Child Care Center. The most recent Site Plan, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA, dated March 15, 2009, is attached hereto. This plan has evolved from previous site plans which have been discussed with the Acton Planning Department as well as other municipal agency representatives and officials, at various development review meetings.

By correspondence dated November 6, 2008, Walker Realty outlined the nature and protected zoning status of the proposed Next Generation Children's Center as a child care facility subject to G.L. c. 40 §3.

As illustrated by the attached Site Plan, the proposal is to construct a 22,000+ square foot building with accessory playground, parking areas, landscaping and utilities. The proposed use is permitted as of right in the A-2 Zoning District. While the Site Plan demonstrates that most zoning dimensional requirements applicable to the use can be complied with, the Site Plan depicts four dimensional and parking area design requirements which are not in conformity with the Acton By-law. The proposed building exceeds Maximum Floor Area Ratio and Maximum Net Floor Area of Section 5.3.9. Additionally, the Parking design requires waivers relating to cell separation and interior landscaping. The specific by-law requirements and the specifics of the plan are set forth in detail on the site plan.

In prior correspondence, we have requested a determination that strict compliance with the By-law can be waived in accordance with the provisions of Section 3 of the Zoning Act and relevant cases decided thereunder. We have been advised that the Town of Acton has determined, with the advice of Town Counsel, that the appropriate procedure to follow in this case is to seek relief from the Acton Board of Appeals in the context of an appeal from a decision of the Zoning Enforcement Officer.



Scott Mutch, Zoning Enforcement Officer
March 24, 2009
Page 2

In order that we may process an appropriate appeal to the Acton Board of Appeals as suggested, Walker Realty, LLC hereby requests that you issue a written determination affirming that you will not issue a building permit for construction of the proposed Next Generation Child Care Facility, due to the plan's failure to conform to the By-law. Naturally, it is recognized that your department fully reserves authority to review compliance with all applicable building code issues in future application for building permit on the premises.

Thank you for your anticipated cooperation.

Very truly yours,


James M. Burgoyne
JMB:pat
Enclosures

cc: Walker Realty, LLC
Roland Bartl, Town Planner
Hancock Associates
Arthur Kreiger, Esq.

Direct Line: (508) 459-8019
Direct Fax: (508) 459-8319
E-mail: jburgoyne@fjwlaw.com



TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

Planning Department

ZONING DETERMINATION LETTER

To: Mr. James M. Burgoyne **Date:** March 26, 2009
From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner
Subject: Proposed Next Generation Children's Center, 348-352 Main Street

Dear Mr. Burgoyne,

This letter shall serve as your official Zoning Determination Letter as you requested in your correspondence dated March 24, 2009.

The subject property is located at 348-352 Main Street, Acton, MA and is identified as Lots 54, 61 and 61-1 on Map F-3 of the Acton Assessors Map. It is located in an R-2 Residential zoning district. I am in receipt of the most recent Site Plan drawing dated March 15, 2009, prepared by Hancock Associates and consisting of 1 page only. The development proposal consists of a 2-story, 24,085 ft² structure with outdoor play areas for enrolled children, a 77 space parking lot and landscaping areas.

Multiple meetings with municipal agencies and input from pertinent disciplines have contributed to the latest site plan submitted as part of this Zoning Determination. It has been discussed and reviewed that the proposed use is subject to special zoning status and protections afforded specifically to child care facilities under Massachusetts General Laws Chapter 40A, Section 3. Documentation in this regard has been received by this office.

However, previous paragraph aside, the Town of Acton's Zoning Bylaw, Section 5.3.9 sets forth zoning standards governing child care facilities located in residential districts that the proposed facility would not meet. Additionally, the proposed site plan as currently designed, does not comply with the Parking Standards set forth in Section 6 of the Town of Acton's Zoning Bylaw. The Town of Acton's Zoning Enforcement Officer is an administrative position. In that position, I may not have the authority to resolve any conflicts which may exist between local zoning and the State Zoning Act, and in doing so to waive the requirements of the Acton Zoning Bylaw. In any event, if I have such authority, I decline to exercise it here.

The zoning violations of the proposed site plan are identified and discussed as follows with the applicable Bylaw sections referenced:

Section 5.3.9 of the Zoning Bylaw specifically sets forth standards for child care facilities that are located in Residential Districts.

Minimum open space (not including outdoor play areas) – The minimum open space required is 35%. The proposed site plan indicates that 39% open space is being provided. However, it is unclear exactly how this number was calculated. The submission of shaded drawings which clearly show which areas are being included and which are not would be extremely helpful in understanding how this number is being calculated.

Maximum Floor Area Ratio (FAR) – The maximum permitted FAR is 0.10. The proposed site plan indicates a 0.23 FAR. The proposed FAR is only listed as a number on the plans at this time. It greatly exceeds the maximum permitted FAR. Complete floor plans should be detailed to reveal an accurate FAR.

Maximum Net Floor Area – The maximum permitted net floor area is 1,000 square feet. The proposed site plan indicates approximately 24,085 square feet. The proposed total square footage is only listed as a number on the plans. It greatly exceeds the maximum permitted net floor area. Complete floor plans should be detailed to reveal an accurate overall net floor area.

In addition to the above identified non-compliant Bylaw requirements, the following are additional dimensional requirements of the Town of Acton's Zoning Bylaw which are not in conformance.

Section 6.7.1 of the Bylaw states that *"parking requirements shall be met by utilization of parking lot cells having a maximum of forty (40) parking spaces per parking lot cell. There shall be a minimum separation distance of thirty (30) feet between parking lot cells"*. The submitted site plan does not currently meet or satisfy this requirement.

Section 6.7.7 of the Bylaw states that *"a minimum of ten percent (10%) of the interior area, exclusive of perimeter landscaping, of a parking lot cell containing more than twenty-five (25) parking spaces must be planted as landscape island areas"*. The submitted site plan indicates that only 4.5% (1,146 square feet) is being provided. However, it is unclear exactly how this number was calculated. The submission of shaded drawings which clearly show which areas are being included and which are not would be extremely helpful in understanding how this number is being calculated.

The aforesaid violations came as a result of plan changes following discussions with Town staff to achieve compliance with the open space requirements of the bylaw.

Section 6.7.3 of the Bylaw states that *"each lot may have one access driveway through its frontage which shall be 24 feet wide"*. The submitted site plan indicates that the entrance access drive at the point where it intersects the property line at Main Street is approximately 50 feet in width. However, a Special Permit Granting Authority could waive this requirement based upon safety considerations.

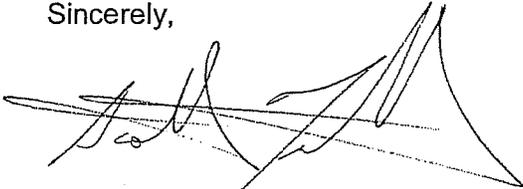
Section 6.7.4 of the Bylaw states that *"interior driveways shall be 20 feet wide for two-way traffic"*. The submitted site plan indicates that the interior driveway weaving around the front of the building is 24 feet wide. Reducing the width will provide additional space for landscaping along Main Street.

As per the table listed in Section 6.6 of the Bylaw, maneuvering isles require a 24 foot width. The maneuvering isle located along the southwestern corner of the parking lot in front of the compact automobile parking spaces does not currently conform with this requirement.

Based upon the above noted items I determine herewith that the proposed site plan for Next Generation Child Care Facility at 348-352 Main Street is in violation of the Acton Zoning Bylaw. Accordingly, I will not sign-off on or approve a building permit. You may seek relief from this determination by filing an application to the Town of Acton's Zoning Board of Appeals requesting an appeal of this administrative decision of the Zoning Enforcement Officer.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 264-9636, Monday through Friday (except for holidays) between the hours of 8:00am and 5:00pm.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott A. Mutch', written over a horizontal line.

Scott A. Mutch
Zoning Enforcement Officer

Cc: Roland Bartl, Planning Director
Steven Ledoux, Town Manager
Town of Acton Building Department
Arthur Kreiger, Esq. (Town Counsel)
Walker Realty, LLC.
Hancock Associates