



TOWN OF ACTON
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Planning Department

INTERDEPARTMENTAL COMMUNICATION

To: Chairperson and Members
Board of Appeals **Date:** May 27, 2009

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: Learn & Play Preschool Child Care Facility - Petition for Review under Section 10.1.1 of the Town of Acton Zoning Bylaw to Appeal Decision of Zoning Enforcement Officer

Location: 245 Main Street
Applicant: Learn & Play Preschool, 245 Main Street, Acton, MA 01720
Owner: 245 Main Street, LLC., 245 Main Street, Acton, MA 01720
Architect: The Office of Michael Rosenfeld, Inc., 543 Massachusetts Avenue, Acton, MA 01720
Zoning: R-2 (Residence 2)
Groundwater Protection District Zone 4
Proposed FAR: 0.0945¹ (maximum is 0.10)
Proposed Net Floor Area: 2,128 square feet¹ (maximum is 1,000 square feet)
Open Space: 38%¹ (35% minimum)
Proposed Uses: Child Care Facility
Map/Parcel: G-3/22
Hearing Date: June 1, 2009
Decision Due: August 15, 2009

Attached are the legal ad, application, site plan and architectural drawing sheets, and interdepartmental comments. As of this date, comments have been received from the Town of Acton's Board of Selectmen, Fire Department, Transportation Advisory Committee, Engineering Department, Municipal Properties Department/Tree Warden, Conservation Commission, Building Department and the Health Department.

The applicant is proposing to expand an existing child care facility through the conversion of an existing basement to useable child care space as well as a small addition to the front of the existing structure, with outdoor play areas for enrolled children, a 13 space parking lot, landscaping areas and the creation of a new driveway entrance for the subject property. The subject child care facility is located entirely within an R-2 Residential zoning district.

To date, the Planning Department is in receipt of the following items and documentation:

¹ Staff has calculated different numbers. Please see Planning Department Comments #1, 2 and 3 for further explanation.

- The original 5 page set of architectural drawings (A-1: Site Plan, A-2: Main Level Floor Plan, A-3: Lower Level Floor Plan, A-4: Sections, A-5: Sections) submitted as part of the building permit application which were prepared by The Office of Michael Rosenfeld, Inc., Architects and dated March 24, 2009;
- An email received by Town Staff on May 26, 2009 which included 3 revised drawings (SK-A 1: Site Plan, SK-A 2: Main Level Floor Plan, SK-A 3: Lower Level Floor Plan) which were prepared by The Office Of Michael Rosenfeld, Inc., Architects and dated March 24, 2009;
- A May 28, 2009 hand-delivered set of 5 revised drawings (SK-A 1: Site Plan, SK-A 2: Main Level Floor Plan, SK-A 3: Lower Level Floor Plan; SK-A 4: Exterior Elevations, SK-A 5: Building Section) which were prepared by The Office of Michael Rosenfeld, Inc., Architects and dated May 28, 2009.

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.

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 Site Plan:

The site is approximately 0.52 acres (22,500 ft²) and consists of only one parcel of land which is owned by the child care facility entity. The subject property is immediately bound by Route 27 (Main Street) to the west, and residentially zoned land to the north, east, and south.

There is currently a single story structure and detached shed on the subject property. The building located on the property is an approximately 1,008 ft² existing single story structure built in 1959 (as per the Town of Acton Assessor Office information) and originally utilized as a single family dwelling residence. The structure was converted to the existing child care facility use in 2004.

The proposed relevant zoning information for the subject site is summarized in the following table:

By-Law Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²)	20,000 ft ²	22,500 ft ²	22,500 ft ²
Min. Lot Frontage (ft)	150'-0"	150'-0"	150'-0"
Min. Front Yard (ft) - West	30'-0"	89'-0"	+/- 78'-0"
Min. Side Yard (ft) – North	10'-0"	31'-0"	+/- 29'-0"
Min. Side Yard (ft) - South	10'-0"	+/- 58'-0"	+/- 58'-0"
Min. Rear Yard (ft) - East	10'-0"	34'-0"	34'-0"
Max. Building Height (ft)	36'-0"	Unknown	Unknown*
Max. F.A.R. (Floor Area Ratio)	0.10	N/A	0.0945**
Max. Net Floor Area	1,000 ft ²	N/A	2,128 ft ² ***
Min. Open Space	35%	N/A	38%****
Parking Requirements	Required	Existing	Proposed
Use: Child Care Facility 1 space per 10 children of rated capacity plus 1 space for each staff person on the	12	Unknown	13

largest shift			
Regular Spaces	12	Unknown	13

* No dimension provided on drawings submitted to date. Having the actual dimensions identified on the site plan would be a requirement of any future building permit plans.

** See Planning Department Comment #1 for detailed explanation.

*** See Planning Department Comment #2 for detailed explanation.

**** See Planning Department Comment #3 for detailed explanation.

Planning Department Comments

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

- 1) Maximum Floor Area Ratio (FAR) – The maximum permitted FAR is 0.10. As defined in Section 1.3.9 of the Bylaw, the FAR is “*the ratio of the sum of the net floor area of all buildings on a lot to the developable site area of the lot*”. The proposed site plan currently indicates a 0.0945 FAR. However, the applicant has submitted floor plans which show two (2) areas on the main level which have not yet been counted in the overall net floor area which must be included. The resulting increase to the overall net floor area for the subject child care facility will result in a higher Floor Area Ratio number, which staff believes will exceed the maximum 0.10 permitted FAR. New shaded floor plans and revised calculations are required to be submitted by the applicant.

- 2) Maximum Net Floor Area – The maximum permitted net floor area is 1,000 square feet. The drawings submitted to date are currently indicating a total net floor area of approximately 2,128 square feet. However, the applicant has submitted floor plans which show two (2) areas within the main level of the structure which have not yet been counted in the overall net floor area which must be included. The total net floor area for the subject project must also include the existing shed located on the property. New shaded floor plans and revised calculations are required to be submitted by the applicant. The resulting increase to the overall net floor area for the subject child care facility will also result in a higher Floor Area Ratio number.

- 3) Minimum Open Space (not including outdoor play areas) – The minimum open space required is 35%. The proposed site plan indicates that 38% open space is being provided. However, the submitted drawings are unclear as to how exactly this number was calculated. Section 6.7.6 of the Town of Acton Zoning Bylaw requires “*a minimum 10’-0” wide perimeter landscape buffer, which must be provided in addition to any minimum open space requirement for the property*”. Therefore, the 10’-0” wide landscape buffer can not be included in the overall open space calculation for this project. The applicant should submit new open space drawings which clearly separate and indicate how the proposed 38% open space is calculated.

In addition to the specific Bylaw requirements set forth above, the following is another Table of Standard Dimensional Regulation of the Town of Acton’s Zoning Bylaw which may or may not be in conformance.

- 4) Maximum Permitted Building Height – Currently there are no building permit plans submitted which identify the proposed building height of the structure. The submitted plans and associated documentation provided to date however, indicate a one (1) story structure only with full basement. Although the height of the structure can not be confirmed at this time, the proposed height would appear to comply with the Zoning Bylaw requirements.

Having the actual vertical dimensions identified on the elevation drawings would be a requirement of any future building permit plans.

Furthermore to the above identified Bylaw requirements, the following are dimensional requirements set forth in Section 6 of the Town of Acton's Zoning Bylaw pertaining to Parking Standards which are not in conformance.

- 5) Section 6.3.1.5 of the Bylaw which regulates the minimum number of parking spaces for a given use states that "*One space per ten (10) children of rated capacity of the child care facility plus one space for each staff person on the largest shift*" is required. The submitted plans do not currently indicate what the total projected rated capacity for the entire child care facility is proposed to be. The plans do however, provide a number of 54 children, but it is unclear whether this number is the actual rated capacity of the facility or if it is the proposed number of enrolled children (which could be less than the rated capacity). Once this number is calculated and provided, then an exact minimum parking requirement could be computed.
- 6) Section 6.7.2 of the Bylaw states "*no parking space or other paved surface, other than access driveways, common driveways or walkways, shall be located within 30 feet of the front lot line and within 10 feet of the side and rear lot lines*". The current site plan indicates a large portion of pavement and 2 parking spaces currently located within this minimum required setback.
- 7) 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*", and "*an access driveway for one-way traffic only may be a minimum of 14 feet*". The submitted site plan indicates that there is currently one existing access driveway and proposes a second access driveway through the Main Street frontage. If the introduction of the second access driveway is to create a true circulation pattern of one-way traffic through the site, then the Special Permit Granting Authority could waive this requirement based upon safety considerations.
- 8) Section 6.7.4 of the Bylaw states that "*interior driveways shall be at least 20 feet wide for two-way traffic and 14 feet for one-way traffic*". Should the applicant wish to create a true circulation pattern of one-way traffic through the site and satisfy the minimum required front yard setback (6.7.2), then this requirement could be satisfied.

Should the Zoning Board of Appeals conclude to overturn the decision of the Zoning Enforcement Officer, the following is a list of suggested conditions which the Board of Appeals may wish to impose upon any development.

- 1) The applicant should submit a complete landscape plan for the entire property to be reviewed and approved by the applicable disciplines prior to building permit issuance. The landscape plan should be very detailed and specific as to the proposed species. The landscape plan shall be completed by and show the seal of a Registered Landscape Architect. Additionally, the Acton Water District is now promoting drought sensitive species and varieties.
- 2) The applicant should submit a complete lighting plan for the subject property. The lighting plan should verify that all light being produced by the proposed development would not extend beyond the subject property extents in a detrimental or harmful way to any of the abutting properties. The minimum requirements in order to adequately satisfy this requirement are set forth in Section 10.6 of the Town of Acton's Zoning Bylaw.

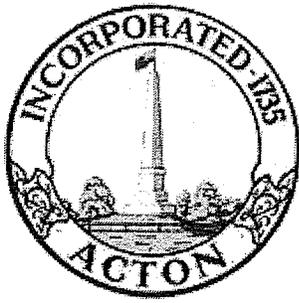
- 3) Prior to any building permit being issued for the subject project, the applicant shall demonstrate compliance with any and all other comments provided by other municipal disciplines (such as, but not limited to the Engineering Department, Fire Department, Municipal Properties Department/Tree Warden, Health Department and Building Department, etc.).
- 4) Prior to any Certificate of Occupancy being approved or issued for the use of the subject space, the applicant shall show compliance with all conditions and comments imposed by the Zoning Board of Appeals.

INTEROFFICE MEMORANDUM

TO: SCOTT MUTCH, PLANNING DEPARTMENT
FROM: ROBERT C. CRAIG, FIRE CHIEF
SUBJECT: BOARD OF APPEALS HEARING #09-02 - 245 MAIN STREET
DATE: 5/21/2009
CC: CHERYL FRAZIER, BOARD OF APPEALS

Please be advised that I have reviewed the above-named application and have only the following comment: I would concur with comment #4 in a memo from the Engineering Department on this matter, dated 5/19/09. The applicant should modify the enter/exit lanes to allow for easier access for fire and emergency apparatus.

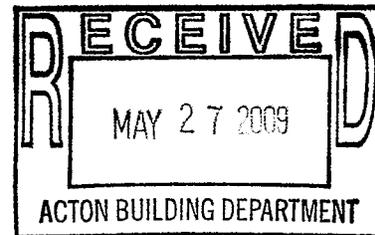
Robert C. Craig, Fire Chief



TOWN OF ACTON
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Building Department

Date: May 19th 2009
To: Scott Mutch, Zoning Enforcement Officer
From: Frank Ramsbottom, Building Commissioner
Subject: 245 Main Street Child Care Expansion



Regarding the site plan submitted I do not see any access on the plan for disable persons to get the proposed lower level. An accessible entrance is required for this area. In addition if the stairs are to be used for public access than accessible access would also be required inside between floors.

Respectfully submitted

Frank Ramsbottom
Building Commissioner



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Board of Selectmen

To: Zoning Board of Appeals
From: Board of Selectmen
Subject: Learn and Play Pre – School, 245 Main Street

Date: May 19, 2009

The Board of Selectmen has reviewed the Petition for Review of the decision of the Zoning Enforcement Officer concerning the proposed expansion of a child care facility located at 245 Main Street.

The Board is concerned about the potential traffic impact of the proposed expansion and feels that the existing FAR for day care use protects and preserves both open space as well as buffers to abutting neighbors.

TOWN OF ACTON
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Engineering Department

INTERDEPARTMENTAL COMMUNICATION

To: Scott Mutch, Planning Department

Date: May 19, 2009

From: Engineering Department

Subject: Board of Appeals Hearing #09-02 – 245 Main Street
Learn & Play Pre School

We have the following comments regarding the site plan for the Learn & Play Pre-School at 245 Main Street dated March 24, 2009:

1. The Site Plan does not label the iron pipe located at the rear property corner adjacent to house #247. This survey marker should be marked in the field to prevent it from being disturbed during construction. Attached is a copy of the record plans for house #247 & #245.
2. The applicant will be required to apply for Permits to Construct within a Public Way for the work shown in the layout of Main Street such as the relocated driveway apron(s), any new underground utilities, etc...
3. There is no information documenting the proposed increase in traffic that will be generated at the site. Based on the size of the new classrooms, it does not appear to be a significant increase.
4. We would defer comment to the Fire Chief to ensure emergency personnel can safely access and maneuver within the site. We recommend that the Site Plan show the pavement radiuses at Main Street to ensure that the emergency vehicles can safely enter/exit the site. Based on my turning templates for an emergency SU-30 vehicle, the applicant might want to modify the enter/exit lanes to allow easier access for a fire truck.
5. The existing sidewalk on Main Street is located on the opposite side of the road.
6. The Site Plan does not indicate the existing conditions for the property such as the existing driveway, fire hydrant, street trees, etc... If the existing driveway access

is being removed, the applicant will be required, as part of the Permit to Construct within the Public Way, to remove the pavement and restore the area at least to a similar condition as the surrounding shoulder to avoid any washouts onto Main Street.

7. The site plan does not show a proposed drainage system to handle the increase in the runoff from the proposed parking area. We have some concerns that the runoff will be discharged directly onto Main Street and could potentially cause an icing problem during the winter months.
8. The applicant did not label the sight distance for the new driveway location to ensure the visibility is adequate for the 85% speed of the traffic on Main Street.
9. There has been prior discussion about landscaping on the property. I would defer comments related to landscaping to the Tree Warden. We would recommend that any proposed landscaping that is planted near the front property line should be placed such that it will not impact the sight distance for drivers.
10. The site plan submitted for the Board of Appeals does not show the proposed grading for the site. We do not expect any significant changes to the grade along Main Street. The applicant will need to consult with the Tree Warden before starting any work around any public shade trees within the layout of Main Street.

Cc: Cheryl Frazier, Board of Appeals Secretary



Acton Board of Health

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Public Health
Prevent. Promote. Protect.

Doug Halley, Health Director

May 19, 2009

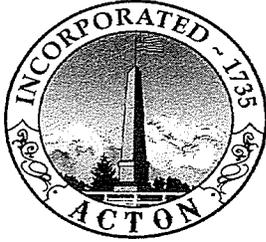
TO: Board of Appeals

FROM: Doug Halley, Health Director

SUBJECT: Board of Appeals Hearing #09-02 – 245 Main Street

Should the Board of Appeals overturn the decision of the Zoning Enforcement Officer regarding a building permit for the proposed expansion of a child care center at 245 Main Street the Health Department has the following comment:

1. 245 Main Street is within the public sewer service area. The Sewer Commissioners may establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land previously assessed a sewer betterment based on its existing use and/or its existing zoning potential where such land is later developed and/or subdivided for more intensive use (such as through a comprehensive permit under G.L. c. 40B, a zoning change, a subdivision, an approval not required plan, or other means). This fee shall be calculated based on the number of Sewer Assessment Units attributable to the intensified use of the land minus the number of Sewer Assessment Units originally assessed to the land, and may be adjusted by such other factors as the Sewer Commissioners, by regulation promulgated pursuant to this bylaw, determine to be appropriate. This fee shall be paid before any sewer connection permit or building permit is issued for the intensified use or, if a sewer connection permit or building permit is not required for the intensified use, before that use is commenced. The Sewer Commissioners may, by regulation promulgated pursuant to this bylaw, divide this fee among the land involved.



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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: *May 7, 2009*

From: *Cheryl Frazier, Board of Appeals*

Subject: *Board of Appeals Hearing #09-02 245 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 April 24, 2009 determining that a building permit may not be issued for the proposed expansion of a child care center on the premises located at 245 Main Street.

Please provide your comments to Scott Mutch in the Planning Department and cc; Cheryl Frazier, Board of Appeals Secretary no later than Tuesday, May 19th.

Upon completion of your review, if you no longer need the application and plans please return them to the Building Department.

Scott,

No issues either from Conservation or wetlands protection.

Tom.

Cheryl Frazier

From: frannyola@aol.com
Sent: Monday, May 18, 2009 8:45 PM
To: Cheryl Frazier
Subject: 245 Main St. TAC opinion

To ZBA:

TAC has reviewed the plans for 245 Main St. We do not think the changes will significantly impact traffic. We are concerned about the second curb cut and encourage the owners to consider using one single, wider entrance/exit. Extra driveways pose extra danger for passing cars and pedestrians.

Thank you.

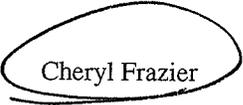
Franny Osman, Chair
Transportation Advisory Committee

ACTON MUNICIPAL PROPERTIES DEPARTMENT

INTERDEPARTMENTAL COMMUNICATION

To: Scott Mutch, Planning Department *Date:* 4/7/09
From: Dean A. Charter, Municipal Properties Director 
Subject: BOA Hearing #09-02, 245 Main Street

I have reviewed the materials presented to the Board of Appeals in regard to the property at 245 Main Street. I concur with the Zoning Enforcement Officer that a full landscape plan is required for this site. I would be happy to review such a plan when it is presented.

cc.:  Cheryl Frazier