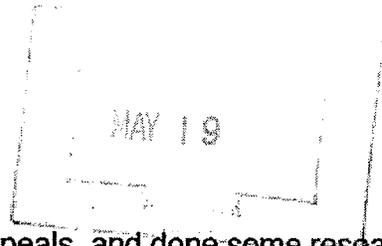


May 12, 2009

Dear Members of the Zoning Board of Appeals,



Having attended the May 4th meeting of the Board of Appeals, and done some research, I have the following thoughts on the matter before the Board. Before I begin I have referenced some of the legal wording to make my reasoning clear. This wording is attached at the end of my letter.

The restrictions the town has set are clear and reasonable. They are available for any prudent developer to review before purchasing land and planning a project. The Town has no obligation, and no right to ignore the current established zoning restrictions when the "bulk" (which is expressly "related to the density of use and relating problems")* would be against the Town's interest of public safety and worsen an already critical traffic problem in an area that includes public safety buildings, two shifts of school busses during peak hours and parking problems. *(Bulk and Density were explained by the town counsel at the Board of Appeal meeting and came from my notes taken at the meeting).

Particularly in light of the specific case before Acton the restrictions are clear and reasonable and appropriately applied to the the specific daycare center application currently before the Board. The developer chose to purchase land in a residential area and planned a building that was grossly over the (floor area ratio) limits set in Acton's by-laws. Even with the last minute reductions, the plan is still over the specified restrictions.

Allowing or denying a building over the specified size ratio approved by the by-laws is the town's prerogative. For such an exemption of the approved by-laws the town counsel states "the burden of proof lies with the applicant." Unless that proof has been clearly established, Town officials and employees have an obligation to uphold the by-laws, particularly when those by-laws are written and approved by Town Meeting to protect the town from unreasonable use. It is not the fact that this project is a day care center that moves residents to object but that it is two residential lots with a planned use of over 250 people in an area already state-rated with multiple "Fs" for traffic. The Town's rejection of this applicant's request was prudent and reasonable not discriminatory. I presume the Zoning Board would rule the same for any situation which would cause strain and disruption of the area. I also presume that a small daycare facility with little impact on traffic would not need such an appeal. I also presume that these restrictions would not be necessary in a less congested or dense area of town. It is this specific situation that is of concern. The purchase of two residential lots to build a commercial interest serving over 200 children, in an area that is noted state wide for traffic congestion is not only unreasonable, it is outrageous. For the developer to claim that the it is possibly being discriminated against is bullying and nonsense.

It was argued by the applicant that other non-residential interests are in the area. The fact that other business have been granted use does not indicate, prove or suggest discrimination. None of those businesses on even the busiest of days, increase traffic flow and public safety as dramatically as this specific project. Kennedy's is closed for months of the year and the Animal hospital does not have 250 pet owners dropping off and picking up everyday, five days a week. The comparison is ludicrous. The Town could also argue that because that area has other non-residential interests in the residential zone already, and legally remains a residential zone, it is unreasonable to expect any additional exemptions when there are other less "taxed" residential areas in town.

There is no proof that Acton is discriminating against day care centers, because it does not. We have many, some advertising vacancies. The problem clearly expressed by abutters and cross town residents alike is that the area is already unable to handle the current density. To add the "bulk" of a daycare center, the use and traffic of which is equivalent to new "school" with over 200 children and 50 employees would not be reasonable or responsible action by our town employees or officials. Therefore the restriction of such a development as allowed by our by-laws and in the Sate Law as a regulation "concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." is reasonable. The burden to prove otherwise would rest on the applicant.

I know I am not a lawyer or a planning board member, but as a citizen I understand the Appeals Board's choice as the following... For example: The by-laws require "Maximum FLOOR AREA RATIO 0.10;" "shall apply to child care facilities located in Residential Districts" as the standards stated. Therefore the Board's original rejection of the proposal was justified because its duty is to determine if the standard is met or not met as stated in the by-law. At the meeting on Monday May 4th, the plan continued to be over the standard as required. The applicant did not comply to the standard set in the current by-laws. Town meeting - Acton's legislative body, requires by its wording of "shall" (not "may") that these standards be met as stated with out discretion.

The applicant is also disregarding the 20 ft limit for access to the main road. The plan shows 50 feet and then tapers in. This was explained by the applicant by stating because it was at an intersection more space was needed. More space is certainly needed if over two hundred cars will be coming and going every morning and afternoon. That is the point of the by-law. By restricting the size of the access for one access driveways it implies that use will be lower. This is why the by-law was put in place as a law not a suggestion. Again the standard "shall apply". It is not at the discretion of the applicant or the Board of Appeals according to the current by-law.

One other argument presented by the applicant was that the original plan had an even bigger floor to area ratio, and the Town should be appreciative that it has come down (or recalculated). This argument amounts to little more than a bait and switch tactic. In fact, the plan is over the floor to area ratio specified in the by-law and so by definition the plan's own presentation admits failing to conform to the by-law.

It has been suggested that the threat of litigation, the mere word discrimination, mandates that the Town's "hands are tied." When there has been no evidence at all that the Town discriminated, and certainly none presented to the board, this threat would be nothing more than bullying with no compelling evidence. How sad for us in a town that prides itself on a democratic tradition of town meeting, and the heritage of Isaac Davis, we would forget that the backbone of democracy is our court system. Why bother having by-laws or a town counsel at all if we not prepared to enforce them as needed?

If the mere threat of a litigation, regardless of how unfounded, causes the Town to forego otherwise sound zoning decisions, we will see more lawsuits, not fewer. Every person unhappy with a zoning decision will simply threaten a lawsuit hoping to get from the courts, or the mere threat of courts, what has been determined unreasonable by the citizens as the "standards". Worse, the Town will be left with no real way to enforce any zoning policy, regardless of how rational.

Acton has had much development over the last 20 years. Naturally this can not be stopped or turned back. The Town has been remarkably careful in its preservation of open space and responsible management. Yet, I am concerned that this particular development intentionally and obviously ignores the current reasonable restrictions of the by-laws legally in place as voted by the citizens of Acton. I think the duty of town officials and employees lies more with upholding the laws as voted and approved by town meeting, than trying to interpret them to the advantage of the developer and at the cost of public safety and compromising the towns best interest in hopes of avoiding a law suit. Once approved and built the Town will have to deal with the costly problems and inconsistencies for years to come. Most importantly Acton's By-law does not restrict, prohibit, or discriminate against day care facilities it does regulate them in residential areas to conform to specific standards as stated. The standards are pertinent in this case because of the already overly congested area around the site and public safety building and the inability of the area to absorb the additional burden of 250 or more cars on Main Street and Hayward Road twice a day at peak times.

I urge you to reject this appeal.

Nancy Duggan
186 Pope Road
Acton, MA



The following notes in red were taken from:

<http://www.mass.gov/legis/laws/mgl/index.htm> or the town by-laws.

The blue/black notes are my own.

According to Mass law, Acton "may not have a bylaw or zoning restriction that prohibits or discriminates against day care facilities but [daycare facilities] may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

In accordance with this law Acton's By-laws state:

"Child Care Facilities in Residential Districts – In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to child care facilities located in Residential Districts (emphasis supplied):

If a legislating body gives discretion it uses "May Apply" If a legislating body removes discretion from the regulatory body it uses "Shall apply" .

Minimum OPEN SPACE not including outdoor play areas - 35 percent;

Maximum FLOOR AREA RATIO - 0.10;

(This is only one of the restrictions being appealed by the applicant).

Maximum NET FLOOR AREA - 1000 square feet. "

Proximal exposure of public schools and students to major roadways: a nationwide US survey

Alexandra S. Appatova, Patrick H. Ryan, Grace K. LeMasters and
Sergey A. Grinshpun*

Department of Environmental Health, University of Cincinnati, Cincinnati, OH, USA

(Received October 2007; final version received January 2008)

This study addresses the effect of urban planning and road development on the health risk of students attending schools near major roadways. The proximity of public schools and students was quantified to Interstate, US and state highways in nine large Metropolitan Statistical Areas (MSA) of the USA. In total among the surveyed schools and students, over 30% fell within 400 m of a major roadway and over 10% were within 100 m. For some MSAs almost half of the student population attended schools near ($\leq 400\text{m}$) major roadways, resulting in a potentially increased risk for asthma and other chronic respiratory problems, especially in schools representing the urban fringe locale. It was concluded that proximity of major roadways should be an important factor in considering sites for new schools and developing policies for reducing the exposure in existing schools. The findings provide an important reference point for coordinating future urban development, transportation and environmental policies.

Keywords: proximal exposure; traffic; major roadways; public schools; air pollutants

1. Introduction

Effective land use and road development patterns are necessary to protect the health of school-age children. Elevated levels of air pollutants from traffic exhaust, including nitrogen dioxide (NO_2), carbon monoxide (CO), volatile organic carbon (VOC) and particulate matter (PM), near major roadways are associated with adverse childhood health effects, such as respiratory allergies, decreased lung function, bronchitis and asthma exacerbation (Rutishauser *et al.* 1990, Edwards *et al.* 1994, Pershagen *et al.* 1995, van Vliet *et al.* 1997, Venn *et al.* 2001, Brauer *et al.* 2002, Nicolai *et al.* 2003, Kim *et al.* 2004, Gauderman *et al.* 2005, Ryan *et al.* 2005, McConnell *et al.* 2006). Children are especially susceptible as their lungs are growing until adulthood, they breathe with 50% more air per pound of body weight than adults and develop respiratory infections more often than adults (USEPA 2002, ALA 2004).

International studies have shown many health risks for children from traffic-related pollutants. Children exposed to high-traffic roadways had substantial deficits in 8-year lung development (Gauderman *et al.* 2007), and a higher prevalence of most respiratory

*Corresponding author. Email: sergey.grinshpun@uc.edu

Policy makers need effective strategies for (a) the building of new schools in relation to major roadways and (b) reducing the exposure to traffic-related air pollution in existing schools.

Local traffic emissions should be a factor in considering sites for new schools so that effective urban planning can parallel effective public health policy. Sports fields, playgrounds and other on-school sites for outdoor activities should be built farthest from major roadways. In California, for example, legislation has already been passed, prohibiting the building of new schools within 500 ft (168 m) of a busy road (California State Legislature 2003). Additionally, a Bill requiring highway entrance/exit ramps to be at least 1000 ft (305 m) from schools is currently moving through New Jersey's State Legislature, having been overwhelmingly passed in its Assembly (New Jersey State Legislature 2007). Although health risk mitigation through appropriate urban planning seems viable, it does not address the population exposed at schools *already* built near major roadways. To reduce health risks in those schools, adequate air filtration and ventilation systems should be installed and properly operated to reduce the penetration of ambient air pollutants (Morawska 2007).

Most critically, public policy should continue reducing and moderating traffic emissions, particularly DEP. Progressively stricter rules for gasoline and diesel fuel quality have helped reduce emissions in recent years (USEPA 2007). Although major roads play an important role in the US economy, the nationwide implications of the growing transportation infrastructure should be examined from the environmental health perspective, addressing the exposure of school students to air pollution from major roadways. This will help create and manage a better built environment in major metropolitan areas in the USA and other countries by promoting balance between economic and health considerations (Morawska *et al.* 1995, Frumkin 2005, Kjellstrom *et al.* 2007).

Acknowledgements

This study was partially supported through a pilot grant from the University of Cincinnati Center for Sustainable Urban Engineering and grant No. ES11170 from the National Institute of Environmental Health Sciences. This support is greatly appreciated.

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60,000
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Thu Sep 20, 2007, 04:04 PM EDT

Concord - Many residents of Concord have called my office over the last few weeks to inquire about two specific pieces of legislation: the Healthy Breathing Act of 2007, House Bill 840 and An Act Relative to Reporting on Health Effects of Particle Matter, House 2227. Both supporters and opponents of building the playing fields at CCHS have voiced concern about the proposed legislation's impact on the construction of the fields.

First, let me state that neither bill will effect the construction. I voted in Town Meeting to build the fields at the CCHS location, and to my knowledge construction is moving forward as planned.

The proposed legislation, however, does address a very serious public safety concern that needs to be addressed.

House Bill 840 would limit construction of certain facilities such as schools, day care centers, residential developments, hospitals, long term care facilities, and public open spaces within 500 feet of a high-activity roadway or a train yard or train station unless a health risk assessment determines that short-term and long-term exposure at the site poses no significant health risk or can be mitigated.

House Bill 2227 requires the Department of Public Health to conduct a comprehensive study of the health effects of particulate air pollution from transportation sources, including respiratory, cardiovascular disease, and cancer. The study will focus on mapping the distribution and concentration of particle matter around high traffic roadways and rail lines, and evaluate the health risks for exposed populations.

The bills have prompted concerns about the air quality of Route 2 because of its proximity to the playing fields. Tailpipe exhaust from motor vehicles contains both gases and suspended particles. The particles, ranging in size from coarse to ultra-fine, are known as "particulate matter."

During a legislative hearing in April, Dr. Joel Schwartz of Harvard's School of Public Health and recipient of the McCarthy Genius Award for his work linking lead in gasoline to neurological and developmental impairments in children; Dr. Helen Suh, also of Harvard's School of Public Health; and Dr. Douglas Brugge of Tufts New England Medical Center briefed members of the Legislature on the dangers of particulate matter and its effects on public health. They provided slides showing that the particle matter actually enters the cells of those who have been exposed. The effects include a marked increase in cases of and deaths from respiratory disease, pulmonary disease, and cancer.

Suh has been extensively studying air quality at highway locations within the Route 495 area for the last two years. One of her studies shows the differences between a city that has no major highway nearby (Malden) to a suburban area (Bedford forest) that does — Route 128. The air quality of the forests in our neighboring town of Bedford is remarkably more polluted.

These findings are especially upsetting for policy makers and residents alike because of the endless numbers of private residents, hospitals, schools, companies, playing fields, etc. presently located on major highways throughout the commonwealth.

While concerns with the dangers of particulate matter are relatively new, danger from exposure to exhaust fumes is not. I had assumed studies of the air quality in that area were completed because of the extensive deliberations of the environmental impact of the playing fields. I was wrong.

Since I was informed at a meeting with Concord selectmen on Sept. 7 that there had been no studies, my office has been in contact with a number of state agencies inquiring about how to get the studies done. Air quality studies and monitoring along Route 2 are especially important now for several reasons. Concord Academy is considering the Arena Farm area for its new playing fields, and, hopefully, a major construction project redesigning of Crosby Corner should begin soon. The highway project will cause traffic back ups along that corridor for a considerable amount of time.

It appears that the solution for this problem has to come from the town itself.

Concord has wisely increased the height of the berms that act as a barricade between the playing fields and highway to mitigate the both air and noise pollution.

I believe it is incumbent upon all local and state officials to work together to ensure that air quality studies and on-going monitoring are done so residents can make informed risk assessments about the potential dangers of pollutants to their health and the health of their loved ones.

For anyone who lives or works on a major highway some simple precautions can be helpful. Keep the windows facing the highway shut at all times. Limit time outdoors to non-peak traffic times. Air conditioning also helps purify the air of harmful particulates.

A DVD of the presentation made by Dr. Joel Schwartz, Dr. Helen Suh and Douglas Brugge is available at the Concord Public Library.

Please feel free to contact me at 617-722-2013 or Rep.CoryAtkins@hou.state.ma.us.

State Rep. Cory Atkins, D-Concord, represents the 14th Middlesex, which includes Concord, Carlisle and parts of Acton and Chelmsford.

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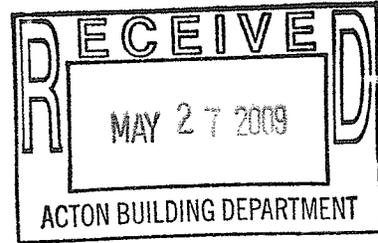
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Concord Area Content

To the Acton Zoning Board of Appeal,

Subject: Next Generation Day Care Center



Dear Board,

There are many reasons why the Next Gen Center is wrong for the town of Acton:

* As an Acton resident I already drive through side streets during rush hours in order to avoid Rte 27. Just imagine dozens of additional cars taking a left turn onto Rte 27 North out of Rte 2 East every morning to go to Next Gen. Most of their children will be "Rte 2 kids". Why else would Next Gen find this location so attractive?

Not only cars but delivery trucks will be a problem: diaper/linen service, food deliveries, trash.....Please let's find out the frequency of such truck traffic.

* As an Early Childhood educator, working in Acton, I am appalled at the size of the Next Gen. project. I would not be writing to you if they offered 50 spaces.

Please imagine the simplest of fire drill in a 2 story building with cribs on wheels and young children hurrying down stair cases.

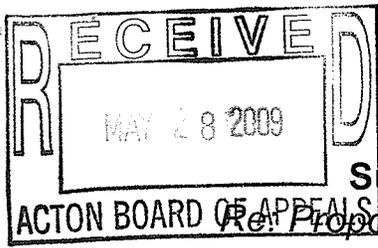
* As a mother I am already concerned about the industrialization and uniformity of education. Beside the location, hours and price I cannot imagine young toddlers thriving in such a facility. Their size alone defies common sense and is not in the best interest of the Young Child.

I urge the Board of Appeal to please reject this project as it is and think of the legacy the Town of Acton wants to stand for.

A "puppy mill" daycare is not what resident and tax payers want to support.

Thank you for your time,

Monique Odin
14 Balsam Drive
Acton



Submission to Board of Appeals, Town of Acton

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

Continued Hearing, June 1, 2009

Members of the Board of Appeals:

This submission explains why the Zoning Enforcement Officer's decision with regard to the Next Generation Children's Center, proposed to be constructed at 348-352 Main St in Acton, should be upheld and the proposed construction of a 20,000 sq. ft. site should be denied. The issue before the Board of Appeals is relatively simple. The town of Acton Zoning By-Laws (Section 5.3.9) specifically dictates the maximum size and scope of any child care facility to be located in a residential district. The operative language imposes three standards, two of which the Next Generation proposal does *not* meet. These are the maximum net floor area and the maximum floor area ratio. The key issue is that the proposed center is so far outside the maximum limits so as to make the proposed center clearly unreasonable, a threat to public safety, and certainly not what the town intended when it implemented its By-Laws with respect to child care facilities. Furthermore, based on statements made by Attorney Krieger, it is the developer who has the burden of proof with regard to any exemption under Chapter 40A, Section 3, and the developer has not met that burden and indeed cannot given the size, scope and "bulk" of this proposal.

First, let me describe several important facts that the Board should consider in its deliberations. The Board of Selectmen *unanimously* oppose this project. Their letter to the ZBA of April 30, 2009 makes it clear that they believe the Zoning Enforcement Officer's decision should be upheld as they find that the proposal is "not in the best interest of the town" and that it "will have a detrimental effect on the character of the town." As you are aware, the Board of Selectmen is the executive branch of town government and among other things sets policy. While they cannot tell you how to rule on this matter, by virtue of their letter and expression of opinion on this matter, it is clear that they will support any legal or other action that is necessary to prevent Next Generation from coming to Acton. The Board of Selectmen were briefed by legal counsel at their meeting prior to taking this position, so the Board is aware of the legal issues involved, yet believe this project should be stopped. The Board of Appeals must consider the expressed views of the major policy-setting Board in town.

Second, in its submission to the ZBA, the proponent makes several false or incorrect statements which are important indications of what we might expect from this developer and Next Generation were they to come to town. Next Generation argues that the proposed site is in "close proximity to commercial uses" and implies that although the site is in a residential district that can effectively be ignored. Let there be no mistake – two existing homes will be demolished if this site is developed as a day care facility. The site is in R-2 residential zoning and perusal of our new GIS system shows clearly that everything on the north side of Route 2 is residential. Indeed even counting the abutters on the south side of Route 2, 15 of the 24 listed abutters as provided in the developer's application are classified as either residential or open space.

To even suggest, as the applicant does, that this site is not in a residential neighborhood is both disingenuous and an attempt to circumvent our Zoning By-Laws.

Next Generation's application spends some time discussing why it seeks to enter the Acton day care market. The primary reason it offers for coming to Acton is that it believes that the infant and toddler populations in Acton are underserved. Contrary to this assertion, the facts clearly demonstrate that this is not why Next Generation wants to come to Acton. Of the 262 children they propose to serve, 82 would be for infants and toddlers (28 infants and 54 toddlers). Interestingly this figure represents only 31% of the total number of children Next Generation would serve at full capacity. There are currently 15 licensed early childhood education centers in town and 6 enroll infants and 10 enroll toddlers. At one relatively large center in town, the Infant Toddler Children's Center (ITC), almost 40% of the total licensed slots are available for infants and toddlers. There is simply no evidence (nor does Next Generation present any data suggesting otherwise) that these age groups are underserved in Acton.¹

Next Generation also implies that the demand for child care in Acton exceeds supply. Nothing could be further from the truth. All of the 15 licensed day care centers in Acton are suffering from excess capacity and a decline in demand.² The average level of enrollment for these 15 centers for next year is less than 75% of capacity. Most of these centers are non-profit organizations and require at least 90% enrollment to break even. While the Board should not necessarily be concerned with the competitive implications of the Next Generation proposal, it is clear that the real reason that Next Generation seeks to enter the Acton day care market is to eliminate several competing providers. It has done this in other communities and then subsequently raised its tuition rates significantly. This will also eliminate the choice that Acton's families currently enjoy in terms of different early childhood educational philosophies which we clearly value very highly in Acton. Alternatively, if Next Generation does not succeed in this competitive market, then what will become of a large vacant building that can only be permitted for a day care facility? This should be of utmost concern to the ZBA. Clearly, Next Generation is not being honest in its submission which raises questions of what else it is not being honest about.

This developer and the corporation that is behind this proposal are not the type of business that we want in Acton. In the past the town has fought other developers who sought to build something that was not wanted, and we have generally succeeded; take for example, Home Depot, the shopping mall at the auto auction site, and a larger than desired Brookside Mall, among others.

¹ Mr. Kelleher, one of the owners of Next Generation, was quoted in the Beacon recently as saying that the day care centers in Acton are not high quality and that was another reason for coming to Acton. This is also false as evidenced by the fact that the elementary schools repeatedly praise the educational preparation of Acton children who have attended area centers, and Acton citizens repeatedly have expressed the desire for choice among educational alternatives including early childhood education. The "one size fits all" approach of Next Generation is not what Acton's citizens desire.

² The decline in demand is a function of two things: (1) the current economic downturn, and (2) a decline in the birth rate. The birth rate in Acton and surrounding communities has declined by 30% in the last 8 years and is expected to continue to decline in the near future.

Legal Grounds Exist to Uphold the Zoning Enforcement Officer's Decision

As noted above, the town of Acton Zoning By-Laws (Section 5.3.9) specifically dictates the maximum size and scope of any child care facility to be located in a residential district. The Next Generation proposal does not meet two of these standards, including the maximum net floor area and the maximum floor area ratio. Indeed the proposal is so far above the maximum limits so as to make it clearly unreasonable, and a threat to public safety. Furthermore as the Selectmen pointed out this is not what the town intended when it implemented its By-Laws with respect to child care facilities as it fails to meet the goals of our Master Plan and would seriously affect the character of the town. Finally review of the developer's appeal demonstrates that Next Generation has not met its burden of proof.³ It has not shown why it should be exempted from local zoning and why it is in the best interests of *all* concerned to have this large day care center located in an already poorly functioning traffic artery in town.

Others have submitted significant detail on the traffic and public safety implications of this proposal which I shall not repeat, but do take notice. It is imperative that ZBA understand the potential public safety implications of this proposal. Traffic along Main St. is already highly congested, particularly at rush hours, the same time when families would be delivering and picking up their children at the proposed site. The potential for backups onto Route 2 as well as gridlock on Route 27 are extremely likely, notwithstanding any traffic "improvements" offered by the developer. The potential to block the entrance and exit from the public safety facility is also highly likely which could have catastrophic effects. This alone should be sufficient to prove that this proposal is not in the public interest. In addition the Director of Facilities and Transportation of the Acton/Acton-Boxborough school system has noted that the Next Generation proposal would negatively impact the schools' transportation operation and cause further delays in delivering children to the public schools and also raises other public safety issues including pedestrian safety.⁴ These schools including the regional campus and the Twin Schools are located near the proposed site where over 4,000 students and 400 teachers and staff must come and go at approximately the same time as the peak drop off and pick up times would be for Next Generation.

There is unanimous agreement among those who live and currently work in Acton that this proposal will exacerbate an already bad traffic situation because the proposed center is too large. The size and scale of this center is enormous compared with other day care centers in town. Indeed it is 2½ times larger than the next largest day care center in town! It is 60% the size of an elementary school, and the traffic issues around our elementary schools are very significant even with most children being delivered by bus not car. One can only imagine the traffic issues at this location

³ The developer seems to ignore the primary reason why Section 3 of Chapter 40A was added by the Legislature. The Legislative history related to this amendment indicates that it was to make it easier to provide small, home based child care facilities, not the large for profit chains that Next Generation represents.

⁴ See memo from J.D. Head to Bill Ryan, May 20, 2009.

between 8 and 9 am when 260 families deliver their children to this location (not to mention 40 or more teachers and administrators), many Actonians are entering Route 2 to go to work, and school buses traverse this location to get children to school.

It is clear that the Zoning Enforcement Officer's decision can and should be upheld on the basis that the maximum FAR and net floor area are not met since the ZBA has the authority to enforce "reasonable regulations concerning the bulk and height of structures." Attorney Krieger cited to the *Brookline* case which held that FAR regulations may be used as a guide as to what may be reasonable regulations under Chapter 40A, Section 3. Our Zoning By-Laws do represent "reasonable regulations" and the developer has not shown otherwise.

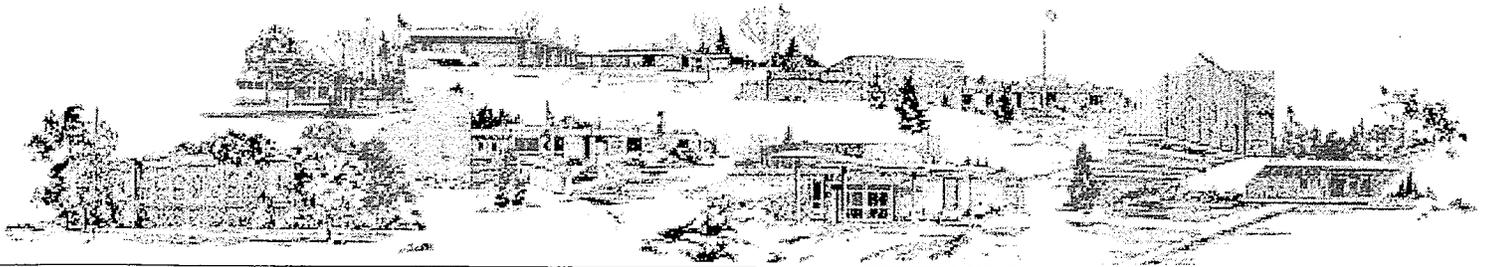
Furthermore, this proposal is *not* in the public interest of the town as many residents and the Board of Selectmen have indicated to this Board. The overwhelming *consensus* expressed by Acton's residents who often represent a great diversity of views should not be lost on this Board. At the very least, upholding the Zoning Enforcement Officer's decision will give town officials leverage to convince Next Generation that Acton does not want them here in Acton. The threat of litigation should also not be a concern as the Selectmen have indicated their willingness to oppose this project.

Although there has been some suggestion that the Board may have little leeway in this matter, I would suggest to you that if our forefathers had taken the same advice and been similarly reluctant to stand up for what they believe was right, we would not be here today as a free and independent nation. Acton has a long history of taking independent action on the basis of what we believe is right and I would urge the Board to follow the wisdom of our colonial predecessors and do what we all know is the right thing to do.

Submitted by

Peter K. Ashton
One Olde Barn Way
Acton, MA 01720

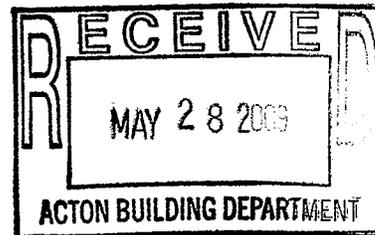
cc: Board of Selectmen
Town Manager
Town Counsel, Art Kreiger



**ACTON PUBLIC SCHOOLS
ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT**

J.D. Head
*Director of Facilities
and Transportation*

May 20, 2009



TO: Bill Ryan
FROM: JD Head
RE: Proposed Next Generation Children's Center (NGCC) / June 1 Zoning
Board of Appeals Meeting

As Director of Facilities and Transportation, I have concerns regarding the proposed NGCC daycare facility slated to be constructed adjacent to Kennedy's on Rt. 27. I attended the first Zoning Board of Appeals meeting in April that focused on this project and I learned of the size and scope of the proposed facility. As proposed, the facility would house approximately 262 children if maxed and would be approximately 24,000 square feet in size.

Our school buses have a great deal of trouble navigating Rt. 27 with the current traffic density. We especially have difficulty making it on time to and from Conant and the Parker Damon Building, as the children attending those schools utilize the same buses. We also have trouble turning from Hayward Road onto Rt. 27 during the JH and HS routes. Given these difficulties, an additional facility at the proposed location could create delays and changes in our busing schedules. We are also concerned about the safety of all pedestrians and drivers with increased traffic congestion in this area. We understand that the proposed facility would be required to widen the road and construct left turn lanes on Rt. 27 in front of the facility. I am sure this plan would help keep traffic from backing up directly in front, but it would not address the traffic backups on the Rt. 2 ramps, which our buses use as well, and the overall traffic density on Rt. 27.

In summary, I believe the proposed facility would negatively impact our current transportation operation. I will attend the June 1st Zoning Board meeting, and will update you after that meeting.

CC: Acton Zoning Board of Appeals
Acton Public School Committee
Acton Boxborough Regional School Committee

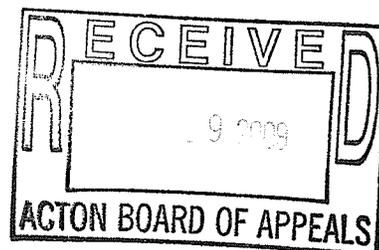
Cheryl Frazier

From: Peter R. Grover [pgrover@theclassicgroup.com]

Sent: Friday, May 29, 2009 12:39 PM

To: Board of Appeals

Subject: next generation child care



May 29, 2009

Dear ZBA members,

As a town resident and former member of the Historical Commission, I urge you to deny the permit for this site plan. This is an ill-conceived plan on the wrong piece of property. My main objection is the 'drain trap' traffic flow that winds along the front of the building in order to gain the proper offset from the cloverleaf. At rush hours, this will become another ill-conceived traffic pattern that will be with us for years to come, such as the nightmare at Roche Brothers. It is unsightly, potentially dangerous, and downright absurd. Please vote to deny this permit.

Thank you.

Peter Grover
278 School Street

5/29/2009