



**MINUTES OF THE HEARING ON THE PETITION
OF LEARN & PLAY PRESCHOOL, 245 MAIN STREET**

HEARING # 09-02

SESSION 2

A previously opened public hearing of the Acton Board of Appeals was continued to Tuesday, June 9, 2009 at 7:30 pm in Room 126 of Town Hall. The hearing is at the request of Learn & Play Preschool on a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw to appeal the denial of a building permit by the Zoning Enforcement Officer set forth in a letter dated April 24, 2009. The building permit denial letter provided the basis and reasoning as to why a building permit could not be issued for the proposed expansion of an existing child care facility, due to a number of bylaw non-compliance issues. The subject property and existing child care facility is located at 245 Main Street and identified on Tax Map G-3 as Parcel 22.

Present at the hearing was Board of Appeals members: Cara Voutselas (Chairperson), Ken Kozik (Member), and Marilyn Peterson (Member); Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Secretary to the Board of Appeals; Petitioners Brian & Stacey Regan; project architect Lisa Pecora Ryan from The Office of Michael Rosenfeld, Inc., Architects and one member of the public.

Cara began the hearing by reading the new exhibits into the record. She then proceeded to ask the Petitioner to present the new or modified information.

Lisa Pecora-Ryan, project architect, stated that since the previous hearing she and the petitioner had met with Scott Mutch, Zoning Enforcement Officer and other municipal staff to discuss the outstanding issues and work towards resolving them. Subsequently, modifications have been made to the previous plans and calculations. The actual floor plans have been revised to accurately depict the areas which are and must be included in the Net Floor Area calculations. The previously omitted porch and kitchen have now been included bringing the first level net floor area to 1,300 square feet. In the lower level, the previously omitted vestibule/common hallway is now included as was requested by staff. The closet on the lower level was subdivided into two smaller closets (kid toy and game storage side and a custodial side) and counted accordingly in the net floor area. The lower level Net Floor Area is now 1,040 square feet. Therefore, the proposed overall Net Floor Area calculations and the overall proposed Floor Area Ratio have also been adjusted accordingly. The new overall proposed net floor area is 2,340 square feet and the

FAR is 0.104. Cara asked Scott Mutch, Zoning Enforcement Officer, if he agreed with the revised Net Floor Area and overall FAR calculations, and Mr. Mutch responded that he was in agreement with the revised numbers. It was noted and generally agreed that with rounding to two decimal places the revised FAR now complies with the Bylaw.

The previous concerns of staff regarding the parking lot expansion have been resolved, the proposed lot has been reconfigured and the amount of actual overall pavement has been reduced. One parking space was lost due to the reconfiguration, but they are still in compliance with the minimum amount of parking spaces required. The access drives have also been modified to address the Engineering and Fire Department concerns regarding fire apparatus getting into and out of the site efficiently.

Section 5.3.9 of the bylaw requires a minimum of 35% open space. Based on discussions with planning department staff, the applicant has revised their calculations to indicate a new proposed open space calculation of 36.3%. The applicant had originally identified 38% open space. The Board asked the Zoning Enforcement Officer if he was comfortable with the revised open space calculation and Mr. Mutch responded that he was.

The applicant stated that the maximum number of children within the facility would be 45 and based upon the zoning bylaw requirements pertaining to the minimum number of parking spaces required, the proposed configuration complies with Section 6.3.1.5. Scott explained that even though the revised plans had one less parking space than previously proposed, the application was still in compliance with the minimum bylaw requirement of 12 spaces.

The Board continued by discussing the issues surrounding Section 6.7.2. The applicant referred to the plans which have been revised to address this concern and now comply with the minimum bylaw requirement. As shown on the plans, there is no longer any pavement or parking spaces located within the first 30'-0" feet of the property.

The site plan still calls for the creation of a second access driveway which could be granted by the Board of Appeals under Section 6.7.3 of the zoning bylaw. The Engineering & Fire Departments had unresolved outstanding concerns with respect to the proposed configuration of the driveway. The applicant has reconfigured the access drives to address their concerns.

The applicant has also revised the site plan and parking lot layout so that it now complies with Section 6.7.4. The reconfiguration of the parking lot on the revised site plan now provides a minimum 24'-0" foot wide interior maneuvering aisle.

Ken Kozik, on behalf of the Board of Appeals, made a motion to close the public hearing portion of file # 09-02. The motion was seconded by Marilyn Peterson. All Board members voted unanimously in favor and the hearing was closed.

After discussion and deliberation, the Board of Appeals unanimously voted to overturn the Zoning Enforcement Officer with regards to the maximum Net Floor Area permitted and the maximum Floor Area Ratio permitted. With regards to Zoning Bylaw Section 6.7.3, the Board of Appeals voted unanimously to waive the requirement of a property having only one access driveway. The second access driveway is permitted to be constructed. The other non-compliant issues (Sections 6.3.1.5, 6.7.2, 6.7.4) have been brought into compliance and do not need further Board of Appeals action.

Cara Voutselas stated that she would draft the decision for the Board of Appeals to review and approve.

Respectfully submitted,



**Cheryl Frazier
Secretary to the Board of Appeals**



**Cara Voutselas
Board of Appeals Chairman**