



Zoning Enforcement Officer

TOWN OF ACTON
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MEMORANDUM

To: Ryan Bettez, Chairman
Planning Board

Date: December 16, 2010

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

Subject: Floor Area Ratio Limit in South & West Acton Village Districts

Dear Mr. Bettez,

I am writing this memo to inform you of my interpretation of the Zoning Bylaw as it pertains to the Floor Area Ratio limits within the South and West Acton Village Zoning Districts. My role as the Zoning Enforcement Officer requires me to interpret the Zoning Bylaw provisions and requirements as they are written and adopted by a 2/3 majority vote at Annual Town Meeting. I have consulted with Town Counsel and put considerable thought into my position, decision and how I believe I should be interpreting what the text of the Zoning Bylaw states and the potential ramifications that could or would result from my position. Unfortunately, the manner in which I believe the Zoning Bylaw should be interpreted regarding the Floor Area Ratio limits in these two (2) zoning districts is different than how the Bylaw has been previously interpreted by my predecessor.

I understand and acknowledge the fact that there is currently a project under construction (River Street) which has been reviewed and approved by multiple Town Boards and Committees based upon the previous Zoning Enforcement Officer's Floor Area Ratio interpretation. For this project only, I will accept the previous interpretation and not impede the progress of this particular project only as it pertains to the overall Floor Area Ratio. However, this is the maximum extent to which I am willing to accept the previous Floor Area Ratio interpretation. I can not support or allow any other future developments to be designed or contemplated utilizing the previous maximum Floor Area Ratio interpretation.

South Acton Village Zoning District

The Zoning Bylaw Table of Standard Dimensional Regulations (Section 5, pages 59-61) identifies the maximum Floor Area Ratio in the South Acton Village District as being 0.20 with a footnote (13) that reads as follows:

- (13) The maximum Floor Area Ratio (FAR) may be increased to .40, provided that for every square foot of non-residential NET FLOOR AREA built above FAR of .20 an equal amount or more of habitable residential NET FLOOR AREA is provided simultaneously, and set aside for exclusive residential USE.

The South Acton Village Zoning District permits a variety of uses - residential, commercial and industrial uses – either individually or any combination thereof within the same lot. The beginning Floor Area Ratio limit is 0.20 which is applicable to all of the previously referenced uses.

The interpretation issue at hand is with regards to a proposed project which contemplates a completely residential use only, with no retail or commercial component. The application and interpretation of this Bylaw requirement previously has been such that a 100 percent (100%) residential project could exceed the 0.20 Floor Area Ratio up to the 0.40 Floor Area Ratio limit.

This is where my interpretation is different. Reading the above referenced Zoning Bylaw regulations, there is no provision identified for a strictly residential development being able to exceed the 0.20 Floor Area Ratio maximum. The only manner in which a proposed project would be permitted to exceed the 0.20 Floor Area Ratio limit would be to propose a development consisting of a mixture or combination of uses and compliant with the mathematical formula identified.

West Acton Village Zoning District

The Zoning Bylaw Table of Standard Dimensional Regulations (Section 5, pages 59-61) identifies the maximum Floor Area Ratio in the West Acton Village District as being 0.40 with a footnote (11) that reads as follows:

- (11) The FLOOR AREA RATIO may be increased to .70 provided that for every 1000 square feet of non-residential NET FLOOR AREA built above a FLOOR AREA RATIO of .40 an at-least-equal amount or residential NET FLOOR AREA is provided simultaneously.

The West Acton Village Zoning District also permits a variety of uses - residential, commercial and industrial uses – either individually or any combination thereof within the same lot. The beginning Floor Area Ratio limit is 0.40 which is applicable to all of the previously referenced uses.

The interpretation issue at hand is with regards to a proposed project which contemplates a completely residential use only, with no retail or commercial component. The application and interpretation of this Bylaw requirement previously has been such that a 100 percent (100%) residential project could exceed the 0.40 Floor Area Ratio up to the 0.70 Floor Area Ratio limit.

Again, this is where my interpretation is different. Reading the above referenced Zoning Bylaw regulations, there is no provision identified for a strictly residential development being able to exceed the 0.40 Floor Area Ratio maximum. The only manner in which a proposed project would be permitted to exceed the 0.40 Floor Area Ratio limit would be to propose a development consisting of a mixture or combination of uses and compliant with the mathematical formula identified.

Basic planning principles tell us that a successful and vibrant village center or district is dependent upon a focused concentration of a diverse mixture of uses within a defined area. Acton currently has four (4) village districts as well as multiple other commercial corridors and centers. The Town's planning policies are crafted to attempt and focus commercial development to the greatest extent possible into the existing commercial or village district centers. The most vital, sustainable and successful village districts rely on a mixture of complementary land uses. Successful businesses in a village district rely on not only the individual who is driving through on their way home, but just as importantly the neighborhood residents and their ability to walk to and from the local establishments.

ARTICLE ZD (2011ATM) #
(Two-thirds vote)

**AMEND ZONING BYLAW - FLOOR AREA
RATIO IN THE SOUTH ACTON VILLAGE
(SAV) ZONING DISTRICT**

To see if the Town will vote to amend the Zoning Bylaw, section 5, Table of Standard Dimensional Regulations by changing the cell in line "SAV" and column "Maximum Floor Area Ratio" from 0.20 (13) to 0.40 (13), and by deleting footnote (13) and replacing it with a new footnote (13) as follows:

- (13) Within the Maximum FAR of 0.40, a project can consist entirely of habitable residential NET FLOOR AREA, or it can consist of a mix of habitable residential and non-residential NET FLOOR AREA; provided, however, that for every square foot of non-residential NET FLOOR AREA built above the FAR of 0.20, an equal amount or more of habitable residential NET FLOOR AREA must be provided simultaneously and set aside exclusively for residential USE.

[Note: Footnote (13) currently reads:

(13) The maximum Floor Area Ratio (FAR) may be increased to .40, provided that for every square foot of non-residential NET FLOOR AREA built above FAR of .20 an equal amount or more of habitable residential NET FLOOR AREA is provided simultaneously, and set aside for exclusive residential USE.]

, or take any other action relative thereto.

SUMMARY

Simply put, the Floor Area Ratio (FAR) is the result of the division of the internal floor area of all buildings on a lot by the land area of the lot, on which the buildings are on. For example, on a 10,000 square foot lot with a building having 5,000 square feet floor area the FAR would be 0.50. In other words, the building floor area comprises 50% of the lot area. In this simple example, the footprint of a single-story building would cover 50% of the lot area, the footprint of a two-story building would cover 25% of the lot area, the footprint of a three-story building would cover 16.67% of the lot area, and so on.

Currently, the Table of Standard Dimensional Regulations states that the FAR limit in the South Acton Village (SAV) District is 0.20, and footnote (13) increases the FAR limit to a higher 0.40 for lots with residential land uses. On lots with an FAR at or below 0.20 the land uses may be commercial, industrial, residential, or any combination thereof. Footnote (13) only affects the uses in the floor area that exceeds FAR 0.20. Since the adoption of the SAV zoning provisions in 1995, the Town's Zoning Enforcement Officers' interpretation of Footnote (13) has been that not more than half of the floor area in excess of FAR 0.20 may be used for non-residential uses, but that non-residential uses are not required within the floor area above FAR 0.20. As a result, the floor area in excess of FAR 0.20 may be used 50% commercial and 50% residential, 25% commercial and 75% residential, 0% commercial and 100% residential, or any ratio in between. Further, this meant that on one end of the spectrum a lot in the SAV district with only commercial uses on it is limited to an FAR of 0.20, whereas on the other end of the spectrum a lot with only residential uses on it is allowed a maximum FAR of 0.40. The Town has established considerable precedent under this interpretation in approving by right or by special several purely residential building or rehabilitation projects in the SAV district where the FAR exceeds 0.20.

However, the language in Footnote (13) is arguably subject to interpretation. The Town's current Zoning Enforcement Officer is of the opinion that any residential floor area above FAR 0.20 must necessarily be accompanied by an equal amount of non-residential floor. This article will sharpen the language of Footnote (13) so that the future regulatory outcome will be consistent with more than 15 years of precedent and policy. The Town is in the process of developing and writing its new Comprehensive Plan (Acton 2020). It is the hope and expectation that the Comprehensive Plan will offer clear guidance for future development in Acton's villages. The guidance may confirm past policies, set new directions, or do both. It is much better planning and zoning practice to affect significant zoning changes and development outcomes through community planning processes rather than through administrative interpretation changes.

Direct inquiries to: Roland Bartl, AICP, Planning Director
planning@acton-ma.gov / (978) 264-9636

Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

ARTICLE ZE (2011ATM) #
(Two-thirds vote)

**AMEND ZONING BYLAW - FLOOR AREA
RATIO IN THE WEST ACTON VILLAGE
(WAV) ZONING DISTRICT**

To see if the Town will vote to amend the Zoning Bylaw, section 5, Table of Standard Dimensional Regulations by changing the cell in line “WAV” and column “Maximum Floor Area Ratio” from 0.40 (11) to 0.70 (11), and by deleting footnote (11) and replacing it with a new footnote (11) as follows:

- (11) Within the Maximum FAR of 0.70, a project can consist entirely of habitable residential NET FLOOR AREA, or it can consist of a mix of habitable residential and non-residential NET FLOOR AREA; provided, however, that for every square foot of non-residential NET FLOOR AREA built above the FAR of 0.40, an equal amount or more of habitable residential NET FLOOR AREA must be provided simultaneously and set aside exclusively for residential USE.

[Note: Footnote (11) currently reads:

(11) The FLOOR AREA RATIO may be increased to .70 provided that for every 1000 square feet of non-residential NET FLOOR AREA built above a FLOOR AREA RATIO of .40 an at-least-equal amount of residential NET FLOOR AREA is provided simultaneously.]

, or take any other action relative thereto.

SUMMARY

Simply put, the Floor Area Ratio (FAR) is the result of the division of the internal floor area of all buildings on a lot by the land area of the lot, on which the buildings are on. For example, on a 10,000 square foot lot with a building having 5,000 square feet floor area the FAR would be 0.50. In other words, the building floor area comprises 50% of the lot area. In this simple example, the footprint of a single-story building would cover 50% of the lot area, the footprint of a two-story building would cover 25% of the lot area, the footprint of a three-story building would cover 16.67% of the lot area, and so on.

Currently, the Table of Standard Dimensional Regulations states that the FAR limit in the West Acton Village (WAV) District is 0.40, and footnote (11) increases the FAR limit to a higher 0.70 for lots with residential land uses. On lots with an FAR at or below 0.40 the land uses may be commercial, industrial, residential, or any combination thereof. Footnote (11) only affects the uses in the floor area that exceeds FAR 0.40. Since the adoption of the WAV zoning provisions in 1994, the Town’s Zoning Enforcement Officers’ interpretation of Footnote (11) has been that not more than half of the floor area in excess of FAR 0.40 may be used for non-residential uses, but that non-residential uses are not required within the floor area above FAR 0.40. As a result, the floor area in excess of FAR 0.40 may be used 50% commercial and 50% residential, 25% commercial and 75% residential, 0% commercial and 100% residential, or any ratio in between. Further, this means that on one end of the spectrum a lot in the WAV district with only commercial uses on it is limited to an FAR of 0.40, whereas on the other end of the spectrum a lot with only residential uses on it is allowed a maximum FAR of 0.70. The Town has established considerable precedent under this interpretation in approving by right or by special several purely residential building or rehabilitation projects under the comparable footnote (13) that applies in the South Acton Village district.

However, the language in Footnote (11) is arguably subject to interpretation. The Town's current Zoning Enforcement Officer is of the opinion that any residential floor area above FAR 0.40 must necessarily be accompanied by an equal amount of non-residential floor. This article will sharpen the language of Footnote (11) so that the future regulatory outcome will be consistent with more than 15 years of precedent and policy. The Town is in the process of developing and writing its new Comprehensive Plan (Acton 2020). It is the hope and expectation that the Comprehensive Plan will offer clear guidance for future development in Acton's villages. The guidance may confirm past policies, set new directions, or do both. It is much better planning and zoning practice to affect significant zoning changes and development outcomes through community planning processes rather than through administrative interpretation changes.

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