

The Guaranty Building

370 Main Street, 12th Floor
Worcester, MA 01608-1779
TEL 508.459.8000
FAX 508.459.8300

The Meadows

161 Worcester Road, Suite 501
Framingham, MA 01701-5315
TEL 508.532.3500
FAX 508.532.3100

Cape Cod

171 Main Street
Hyannis, MA 02601
TEL 508.815.2500
FAX 508.459.8300

FletcherTilton.com

December 21, 2011

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: 348-364 Main Street
Assessor's Map: F-3, Lots 54, 61, 61.1, 32,33

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:

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

1. Letter dated December 5, 2011 requesting a Zoning Determination for a proposed Child Care Center with attached Site Plan by Hancock Associates dated December 2, 2011 and Proposed Floor Plan by J.D. LaGrasse & Associates, Inc. dated November 16, 2011;
2. Decision of the Zoning Enforcement Officer dated December 20, 2011;
3. Certified List of Abutters dated November 18, 2011.

In addition, enclosed is this Firm's check in the amount of \$125.00 representing the filing fee in accordance with Form 1. and the release form for the Beacon Community Newspaper for legal advertising.

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.

{Client Files/18610/0001/00906367.DOCX, 3 }

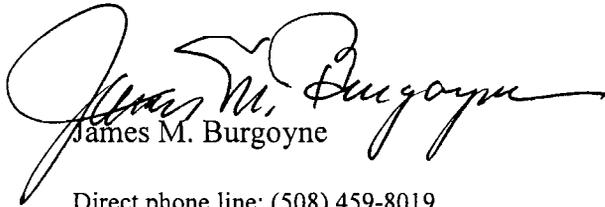
Please direct all correspondence to our Worcester office.

FletcherTilton^{PC}

Attorneys at 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.



James M. Burgoyne

Direct phone line: (508) 459-8019

Direct fax line: (508) 459-8319

JBurgoyne@ftwlaw.com

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



Date Received
TOWN CLERK

By: _____

Date Received
BOARD OF APPEALS

By: _____

TOWN OF ACTON
MASSACHUSETTS

BOARD OF APPEALS
(FORM 1)
PETITION FOR REVIEW

December 15 ~~xx9~~ 2011
(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 _____ of the Zoning By-law to allow; (b) the refusal of the Building Commissioner to enforce the provisions of Section _____ of the Zoning By-Law as follows: (Strike out inapplicable language)~~

See Attachment to Petition

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, by its Attorney

Signed James M. Burgoyne
(Petitioner) By

Name James M. Burgoyne
Fletcher Tilton PC
Address 370 Main Street
Worcester, MA 01608
Phone # 508-459-8019

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.

Revised 8/5/88

Walker Realty, LLC
Proposed Next Generation Children's Center
348-364 Main Street, Acton, Mass.

Attachment to Petition

Walker Realty, LLC, as petitioner, as owner of premises located at 348-352 Main Street, Acton, Mass., Assessor's Map F-3, Parcels 54, 61 and 61-1, and as contract purchaser of 362 and 364 Main Street, Map F-3, Parcels 32 and 33, hereby appeals from a decision of the Acton Zoning Officer determining that a building permit may not be issued for a proposed child care center to be constructed on the premises at 348-364 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 December 2, 2011 and that provisions of the Acton Zoning By-law with which the proposed plans do not comply are unreasonable and/or may be waived as applied to the proposed facility.

12/15/2011

FLETCHER TILTON PC

VENDOR #: 0699

Town of Acton

CHECK NO.: 92362

DATE	INVOICE NUMBER	DESCRIPTION	MATTER #	AMOUNT
12-14-2011	162190-jaf	Filing Fee	18610.0001	125.00
			TOTAL:	125.00

FLETCHER TILTON PC
 370 MAIN STREET
 WORCESTER, MASSACHUSETTS 01608
 TAX ID: 04-2628601

TD BANK
 WORCESTER, MA
 53-7054-2113

CHECK NO.: 92362

12/15/2011

CHECK AMOUNT
\$125.00

PAY ONE HUNDRED TWENTY-FIVE AND 00/100 USD

TO THE ORDER OF
 Town of Acton

VOID AFTER 90 DAYS

Peggy Roh

⑈92362⑈ ⑆211370545⑆ 8240403662⑈

FD Security features. Details on back.

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FletcherTilton.com

December 5, 2011

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

Re: Proposed Next Generation Children's Center, 348 - 364 Main Street

Dear Mr. Mutch:

As you know, this firm represents Walker Realty, LLC, owner of premises located at 348, 350 and 352 Main Street in Acton. The premises are shown as Lots 54, 61 and 61I on Map F-3 of the Acton Assessors Maps. Walker is also under contract to purchase abutting premises located at 362 and 364 Main Street which are lots 32 and 33 of Map F-3. The combined premises are over 4.6 acres in lot area and are located in the R-2 Zoning District.

In 2008 and 2009, Walker Realty, LLC had previously proposed the development of the 348-352 Main Street premises for use as a next Generation Children's Center, a child care facility as defined in the Acton Zoning By-law and as defined in G.L. c. 40 §3. Although the proposed use is permitted as a matter of right, previous proposed plans did not conform to various dimensional and parking provisions of the Acton By-law. Following your zoning determination in 2009, the Board of Appeals determined that certain provisions of the By-law with which the prior plans did not comply would not be reasonably applied to the proposed use. In addition to a number of parking design and access provisions, most notably, the Board found that compliance with a 1000 square foot net floor area limitation contained in Section 5.3.9 of the By-law was "unreasonable as applied to the proposed facility in that it would effectively prohibit any child care at the Property, and is unduly restrictive where the Property is almost 2 ½ acres." As you also know, however, the Board's decision to exact compliance with the .10 maximum Floor Area Ratio (FAR) requirement of Section 5.3.9, the only remaining provision with which the plan did not comply, prevented the project from being approved and resulted in a judicial appeal which is pending in Land Court.

{Client Files/18610/0001/00905532.DOCX }

Please direct all correspondence to our Worcester office.

Scott Mutch, Zoning Enforcement Officer
Town of Acton
December 5, 2011
Page 2 of 4

Walker Realty remains committed to the development of its property for child care use and has continued to offer modified design solutions to accommodate the needs and concerns of the Town of Acton. Most recently, Walker Realty has contracted to acquire the adjacent property currently in agricultural use in order to bring its plans into compliance with the .10 Net Floor Area maximum of Section 5.3.9 of the By-law.

Attached hereto is a Conceptual Site Plan prepared by Hancock Associates dated December 2, 2011 which proposes the construction of a child care facility and relocation of the Kennedy agricultural use on the combined premises now owned or controlled by Walker Realty. The lot area consists of 204,493 square feet (4.69 acres) of land as compared to the previous 2.5+/- area subject to previous proceedings.

The current proposal is to construct a single story building with accessory playground, parking areas, landscaping and utilities as shown on the Conceptual Site Plan. The size of the building has been reduced from that proposed in 2009 and it has been reduced to a single story. The Kennedy agricultural use will be relocated and will be served by a single 800 square foot (600 sf net floor area) building substantially as shown on the site plan, together with a parking area and landscape storage area as shown. The precise location of the proposed Kennedy building and paved area may be slightly shifted within the lease area as final plans are developed but will comply with all dimensional requirements. All other buildings on the Kennedy property will be removed. Also attached is a floor plan of the proposed buildings to be constructed which has been prepared by the architectural firm of J.D. LaGrasse & Associates, Inc. The floor plans are submitted to confirm that the floor area ratio (FAR), which now complies with the .10 limit of Section 5.3.9, has been calculated strictly in accordance with the By-law, excluding only bathrooms and building service areas from the calculation of net floor area.

The Site Plan contains extensive data to facilitate your review. With two exceptions noted below, the Site Plan appears to conform with all applicable

{Client Files/18610/0001/00905532.DOCX }

Please direct all correspondence to our Worcester office.

Scott Mutch, Zoning Enforcement Officer
Town of Acton
December 5, 2011
Page 3 of 4

use, dimensional and parking provisions of the Acton By-law, including the FAR requirement of Section 5.3.9.

The Site Plan notes that two dimensional requirements of Section 5.3.9, applicable to child care facilities in residential districts, are not satisfied. The maximum Net Floor Area limit of Section 5.3.9 (2500 square feet increased from 1000 square feet since 2009), is exceeded. Significantly, however, the revised plan now proposes a somewhat smaller building on a larger lot and the adjacent Kennedy buildings have been significantly reduced in total area in this combined plan. Second, the minimum open space requirement of 35% is not met and the plans show open space, calculated at over 61,000 square feet, comprises 30% of the lot area. It should be noted however, that in order to measure the open space strictly in accordance with the By-law definitions, the calculation excluded 11,722 square feet of perimeter buffer proposed around the parking areas. If that area were included, the open space would exceed 35%. Additionally, the open space calculation does not take into account substantial open space that will be provided by undeveloped and landscaped portions of play areas, interior landscaping areas within the parking lots, and significant areas to be used for storage of landscaping materials and plants which greatly increase the actual amount of open space that will be provided as a practical matter.

Walker Realty, LLC requests that you issue a zoning determination concerning compliance of the Conceptual Site Plan with requirements of the Acton By-law. In the event you determine that upon submittal of required construction plans that a building permit may not be issued, it is requested that you issue a written denial determination in order that Walker may process a timely appeal to the Acton Board of Appeals.

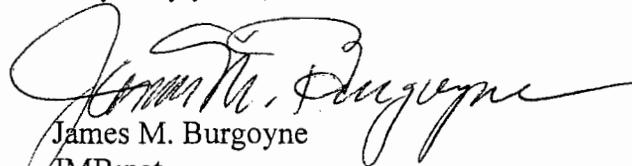
{Client Files/18610/0001/00905532.DOCX }

Please direct all correspondence to our Worcester office.

Scott Mutch, Zoning Enforcement Officer
Town of Acton
December 5, 2011
Page 4 of 4

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@ftwlaw.com

{Client Files/18610/0001/00905532.DOCX }

Please direct all correspondence to our Worcester office.



TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 929-6340
planning@acton-ma.gov
www.acton-ma.gov

Zoning Enforcement Officer

December 20, 2011

Mr. James M. Burgoyne
Fletcher Tilton PC
The Guaranty Building
370 Main Street
Worcester, MA 01608

Subject: Zoning Determination Letter
348-364 Main Street, Acton, MA
Proposed Construction of New Next Generation Child Care Facility

Dear Mr. Burgoyne,

This letter responds to your request for a zoning determination on behalf of your client, Walker Realty LLC, made in your email to Anderson & Kreiger LLP, dated November 4, 2011.

The subject property is located at 348-364 Main Street, Acton, MA and is identified as Lots 32, 33, 54, 61 and 61-1 on Acton Assessors Map F-3. The subject properties are located in an R-2 Residential Zoning District. I am in receipt of the most recent Site Plan drawing dated December 2, 2011, prepared by Hancock Associates, which consists of only one page. I am also in receipt of the most recent Floor Plans and Net Floor Area Diagrams for the proposed child care facility and Kennedy horticultural business, both of which are dated November 16, 2011, prepared by JD LaGrasse & Associates, Inc. and consist of two pages. The development proposal reflects a single story, 21,290 ft² (gross floor area) child care structure with outdoor play areas for enrolled children, a 92-space parking lot and associated landscaping areas; as well as a single story 800 ft² (gross floor area) structure with a 15-space parking lot for the Kennedy agricultural operations.

One of the uses proposed at the site is subject to special zoning status and certain protections afforded specifically to child care facilities under Massachusetts General Laws Chapter 40A, Section 3, para. 3. Despite those protections, child care facilities are subject to reasonable dimensional regulations.

The Town of Acton's Zoning Bylaw ("Bylaw"), Section 5.3.9 sets forth zoning standards governing child care facilities located in residential districts. The proposed facility does not satisfy those standards, as outlined below. Additionally, the proposed site plan as currently designed does not comply with the Parking Standards set forth in Bylaw Section 6. The Town of Acton's Zoning Enforcement Officer is an administrative position. In that position, it may be inappropriate for me to determine whether application of those Bylaw Sections to the proposed child care facility is

reasonable under the state statute. Even if not inappropriate, I decline to exercise that authority 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 in addition to those within the general Table of Standard Dimensional Regulations.

Minimum Open Space (not including outdoor play areas or perimeter landscaping areas) – The minimum open space required is 35%. The proposed site plan indicates that 29.27% open space is being provided. The required perimeter landscaping being proposed is 5.73% but does not count towards the minimum open space calculation.

Maximum Net Floor Area – The maximum permitted net floor area is 2,500 square feet. The proposed site plan and floor plan drawings indicate a total net floor area of over 20,000 square feet, well in excess of the maximum square footage permitted.

In addition to the above Bylaw requirements with which the proposed project does not comply, the proposed project appears not to comply with the following dimensional requirements of the Bylaw:

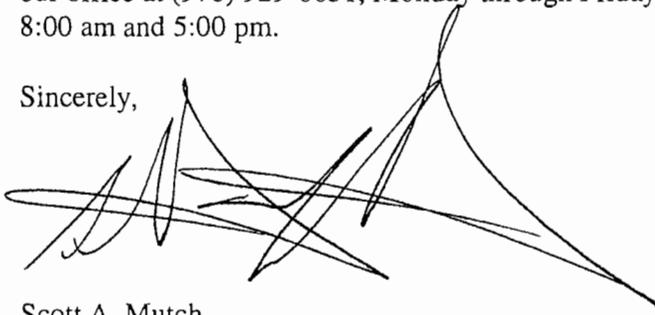
Section 6.7.3 of the Bylaw states that “*each lot may have one access driveway through its frontage which shall be 24 feet wide*”. The submitted site plan proposes three separate access driveways providing vehicular entry into the property. All three access driveways proposed have a dimension greater than 24 feet at the point where the access drive intersects through the Main Street frontage of the property. However, a Special Permit Granting Authority could waive this requirement based upon safety considerations.

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 depicts a parking lot cell with 26 parking spaces, yet does not show compliance with this requirement. The parking lot cell in question is located in the middle of the property up against the Main Street front yard setback and consists of 2 rows of 90 degree parking – 1 row of 11 spaces and the other with 15 spaces. The numbers written on the plans indicate only 25 parking spaces, however, when actually counted, there are 26 parking spaces in the cell drawn and shown.

Based upon the above noted items, I am determining that the proposed site plan for the Next Generation Child Care Facility at 348-364 Main Street is in violation of the Acton Zoning Bylaw. As a result, I will not sign-off on or approve any 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. It is my understanding that you are prepared for such an appeal and intend to do so.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Mutch". The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner

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



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

Brian McMullen
 Assistant Assessor

Parcel Location 348 MAIN ST, 352 MAIN ST, 350 MAIN ST, 362 MAIN ST AND 364 MAIN ST
Parcel I.D.: F3, LOTS 54,61,61-1,32 & 33

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
23 HAYWARD RD	F3-9	GALLEN ANDREW B	DELLAGLIO EMILY K	23 HAYWARD RD	ACTON	MA	01720
19 HAYWARD RD	F3-10	FORREST JAMES R	FORREST JOANNE M	19 HAYWARD RD	ACTON	MA	01720
17 HAYWARD RD	F3-11-37	JENKS REALTY CORP.	C/O MABEL JENKS	68 SPRUCE STREET	ACTON	MA	01720
70 HAYWARD RD REAR	F3-15	ACTON-BOXBORO REG SCHOOL DIST		472 MAIN STREET	ACTON	MA	01720
52 HAYWARD RD	F3-17-1	MCCULLOUGH BRYAN	C/O MCCULLOUGH BRYAN + ELEONOR	52 HAYWARD RD	ACTON	MA	01720
52 HAYWARD RD	F3-17-1	MCCULLOUGH BRYAN	MCCULLOUGH	52 HAYWARD RD	ACTON	MA	01720
50 HAYWARD RD	F3-18-1	LU HONG	SUN XIAOYONG	50 HAYWARD RD	ACTON	MA	01720
12 ISAAC DAVIS WY	F3-19	ALBUQUERQUE RONALD J		12 ISAAC DAVIS WY	ACTON	MA	01720
10 ISAAC DAVIS WY	F3-19-1	RYDER JR JOHN ERIC	RYDER HEIDI H	10 ISAAC DAVIS WY	ACTON	MA	01720
14 ISAAC DAVIS WY	F3-19-2	COPPOLINO MICHAEL J	COPPOLINO NANCY M	14 ISAAC DAVIS WAY	ACTON	MA	01720
13 HAYWARD RD	F3-20	LEARY EDWARD M	CAROL ANN	13 HAYWARD ROAD	ACTON	MA	01720
18 HAYWARD RD	F3-29	HONG TSUEY-RONG	FILATOVA OLGA V	18 HAYWARD RD	ACTON	MA	01720
376 MAIN ST	F3-30	FORD STEVEN E	ANNE MARIE	376 MAIN ST	ACTON	MA	01720
14 HAYWARD RD	F3-30-1	SUN LIANCHAO	LIN FENG	14 HAYWARD RD	ACTON	MA	01720
370 MAIN ST	F3-33-1	BARBER BRADLEY	BARBER AMY	370 MAIN ST	ACTON	MA	01720
366 MAIN ST	F3-34	THISSELL CATHERINE		366 MAIN STREET	ACTON	MA	01720
3 ISAAC DAVIS WY	F3-45	POST MATTHEW R	POST LAURA G	6 ISAAC DAVIS WAY	ACTON	MA	01720
371 MAIN ST	F3-46	TOWN OF ACTON	POLICE STATION	472 MAIN ST	ACTON	MA	01720
363 MAIN ST	F3-56	GEISSERT JACK O ET UX TRUSTEE	ALLISON REALTY TRUST	363 MAIN ST	ACTON	MA	01720
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
3 STACYS WY	F3-70-21	LIU QING	TANG YANHUA	8 STACYS WY	ACTON	MA	01720
312 MAIN ST	F3-74-1	ACTON-BOXBORO REG SCHOOL DIST		472 MAIN STREET	ACTON	MA	01720



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

Brian McMullen
Assistant Assessor

Parcel Location 348 MAIN ST, 352 MAIN ST, 350 MAIN ST, 362 MAIN ST AND 364 MAIN ST
Parcel I.D.: F3, LOTS 54,61,61-1,32 & 33

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
321 MAIN ST	F3-82	ACTON CROSSROADS INC		321 MAIN STREET	ACTON	MA	01720
367 MAIN ST	F3-52	TOWN OF ACTON		472 MAIN ST	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 Stow, MA 01775 Westford, MA 01886 Sudbury, MA 01776

Kristen Caouette
Acton Assessors Office

11/18/2011



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 December 22, and 29 in the Beacon.

APPLICANT:

WALKER REALTY, LLC

By ITS ATTORNEY,

JAMES M. BURGOYNE
FLETCHER FULTON PC

X Signed: James M. Burgoyne, Esq.
X Address: 370 Main St
X Worcester, MA 01608
X Phone: 508-499-8019

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.