

Comments to the Zoning Board of Appeals

re Remand Hearing Walker Realty
Land Court Case No. 12 MISC 459564 (AHS)

Submitted by
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March 2, 2015

It is frankly with great regret that I am compelled to once again file comments and testimony before the Zoning Board of Appeals (ZBA) regarding the proposed Next Generation "revised plan." I will not review the already lengthy history of Mr. Walker and Mrs. Kelleher's attempts to force something upon the town of Acton which the town has repeatedly said it does not want. I will remind the ZBA, however, that in April 2011, Town Meeting voted overwhelmingly to support a resolution that in effect opposed construction of a Next Generation Children's Center on the proposed site. The Town and its leadership have spoken clearly and repeatedly that we do not want a child care facility of this size at this location. It would be nice if Mr. Walker and Mrs. Kelleher had gotten the message, but here we are again faced with the same plan as before.

I will touch briefly on the following points:

1. The Land Court decision did not grant Walker authority to build a building of 21,000 square feet and he has to work with the ZBA on a realistic plan with a building size under 12,000 square feet.
2. The "plan," a one page rendering of the site, is insufficient for review or analysis by staff or anyone else and Walker should be ordered to submit a *real* plan that shows elevations, drainage, landscaping, parking, site work, etc.
3. What the plan appears to show is exactly what the ZBA denied before. The size of the building being proposed is inconsistent with the Land Court's remand and is 76% larger than what the Land court recommended the town consider. Therefore this plan should be denied immediately.
4. The open space that the plan shows is only 21% of the total lot size and we require it to be 35%. Playgrounds are not "open space."
5. The site plan appears to show 3 different curb cuts which seems excessive and dangerous - a traffic engineer should review this. The turning lane is insufficient traffic mitigation, particularly given the recommendation for "a more thorough proposal for traffic alleviation" as noted in the Land Court decision.

After hearing all of the evidence, the Land Court has remanded this case back to the ZBA for further discussion. It is important to note that the Land Court did NOT issue a permit for construction of a 21,200 square foot day care facility. In effect it denied a plan that encompassed a building of 21,200 square feet. Yet despite what the Court has stated, Mr. Walker and Next Generation appear to have come back with a proposal for a facility that is exactly the same size as what was before the ZBA and Land Court before, 21,200 square feet! I believe the arrogance of the proponent in submitting a plan that is exactly the same size as they proposed before is perhaps only outdone by the extraordinary lack of detail and specificity in Walker's most recent submission. Walker has provided a single conceptual site plan with little or no information on elevations, grading, drainage, erosion and sedimentation plan, site work details, parking, landscaping and all of the other elements typically found in a site plan. In my nine years as a Selectman reviewing a multitude of site plans, I can honestly say I have never seen any submission so lacking in detail or information as this one. Staff can hardly be expected to comment on this "plan" as there is simply insufficient information upon which staff can reliably comment. The ZBA should immediately send this "plan" back to Mr. Walker and request that he submit a proper proposal.

In addition, it is particularly galling that Walker and Kelleher have submitted a plan that envisions a building encompassing 21,290 square feet (19,460 net). As the ZBA is no doubt aware, this is exactly the same size as was proposed before and flies in the face of the Land Court remand and recommendation regarding a significantly smaller sized building. The Land Court in its decision stated "it would be prudent for the town to consider a NFA [net floor area] comparable to Walker's smaller schools (12,000 sq. ft.)." Indeed the Land court states that this is its "recommendation." Yet what Walker is now proposing is at least 76% larger than what the Land Court recommended. The ZBA should immediately reject any plan that includes a building of this size for all of the reasons that have been discussed in the past, especially traffic concerns which even the Land Court indicated were in dispute. Furthermore, the ZBA should make clear that based on the Land Court's remand that it expects that Next Generation should come back with a plan that includes a building which is *no larger* than 12,000 square feet.

The plan also indicates that although 35% (71,572 sq. ft.) of the site is required by zoning to be open space, the plan only provides 21% (44,290 sq. ft.) of open space. It attempts to include another 20,386 sq. ft.¹ of playground space as "open space" however our zoning does not permit playgrounds to be considered open space nor should they be since numerous structures would be located on such playgrounds. The proponent should be directed to provide a plan that meets the open space requirements of our zoning.

Finally the plan also appears to show three separate curb cuts to the facility. It is well recognized traffic planning that excessive curb cuts can lead to traffic safety issues and the entire traffic circulation into and out of the site should be reviewed by a traffic engineer. Indeed the Land Court specifically stated that "a more thorough proposal for

¹ Even this sleight of hand with the numbers does not bring the total amount to the required 35%, but only to 31%!

traffic alleviation is necessary before any more work is conducted by Walker.” Where is that work? At the very least there should be an updated traffic study which is available for public and town staff review. Traffic in this area has only increased from the earlier time period when the prior studies were done. Again, as before, I am extraordinarily concerned about the potential impact on public safety of this proposal from a traffic perspective as well as the potential for grid lock that could occur around the public safety building.

It is unfortunate that the town is faced again with a proposal to build a 21,000 square foot day care facility in the middle of a residential area that is an important part of the heritage of this town. I recognize that the Land Court has ruled that because of the Dover Amendment, Next Generation may not be precluded from building a child care facility of reasonable size. However, the Land Court has also ruled that for this site a reasonable size is no larger than 12,000 square feet and therefore, the ZBA should remain adamant that a facility of 21,000 square feet is not what the town wants and is not required by the Land Court. The ZBA should clearly indicate to Mr. Walker and Next Generation that it will not consider a facility any larger than 12,000 square feet as the Land Court has respectfully recommended.