Acton Historic District Commission
472 Main Street
Acton, MA. 01720

August 18, 2008

By E-Mail

Roland Bartl
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720

Dear Mr. Bartl,

Thank you for your Memorandum dated July 29, 2008 responding to my letter of July 14, 2008 respecting the Floor Area Ratio ("FAR") limit for strictly residential uses in the South Acton Village ("SAV") district. The Historic District Commission ("HDC") is directly concerned with that limit in administering Chapter P of the Town of Acton General Bylaws (see Ch. P, par. 8.2) in the South Acton Historic District Area, as I stated in my letter, and I appreciate your prompt response.

However, having reviewed your Memorandum we respectfully disagree with your conclusion that the FAR limit for strictly residential uses in the SAV district is .40. We believe it is .20 and urge you to reconsider your conclusion, for the reasons stated below.

First and foremost, a plain reading of Acton's Zoning Bylaw solely supports the conclusion that the pertinent FAR limit is .20. The Table of Standard Dimensional Regulations on page 57 of the Town of Acton Zoning Bylaw of May 10, 2007 notes under the Maximum Floor Area Ratio the FAR for the SAV district is .20. However, the table refers the reader to note (13) on page 58. This note states the "maximum Floor Area Ratio may be increased to .40, **provided that** for every square foot of **non-residential** NET FLOOR AREA **built** above FAR .20 an **equal amount** or more of habitable residential NET FLOOR AREA is **provided simultaneously**, and set aside for exclusive residential USE." (Bolding added.) We think the Table and note (13)

clearly allow for an FAR limit above .20 and up to .40 only where there is actual non-residential net floor area above FAR .20; otherwise note (13) would not refer to "built" non-residential net floor area. The extra FAR option above .20 applies to mixed nonresidential/residential projects exclusively, because a strictly residential use does not have any non-residential net floor area. We thus fail to see how the plain text of the zoning bylaw ever allows for FAR .40 in the SAV district for strictly residential uses.

Second, we do not believe the Detail section of your Memorandum shows this interpretation of the Table and note (13) to be incorrect.

Numbered section (1) of the Detail discusses the basics of SAV zoning, and (1) properly points out note (13) only deals with FARs in excess of .20. However, (1) does not address the basic point that FARs above .20 are possible under the letter of the zoning bylaw only where there is non-residential net floor area built above the overall .20 FAR. If the project is strictly residential, this is impossible, because all of the net floor area will be residential.

Numbered section (2) of the Detail is also unconvincing. Again, note (13) specifies that "for every square foot of non-residential (net floor area) built above FAR of .20," the FAR may be increased to .40. It does not say the FAR may be increased whether or not non-residential net floor area is built above .20. Your mathematical scenarios that extend to the situation where all of the floor area up to FAR .40 is used for residential space and claim note (13) is nonetheless satisfied eviscerate note (13)'s clear requirement that there be built non-residential net floor area to allow for the higher FAR.

Numbered section (3) of the Detail supports our conclusion. As you state, note (13) requires that residential net floor area be provided simultaneously with non-residential net floor area; *i.e*, the residential space cannot be postponed or banked for provision after the non-residential space is provided. This indicates, again, that non-residential net floor area must actually be provided. We respectfully disagree with your assertion that note (13) allows for later or optional provision of non-residential space. Note (13) explicitly requires non-residential space be "built" to allow for the higher FAR option, and thus the non-residential space in fact is a prerequisite for a developer/owner to access that option. The note does not refer to "simultaneous" provision of non-residential space because the note does not apply unless and until such space is provided.

Numbered section (4) of the Detail omits to discuss the historical background that supports the requirement that a project in the SAV district be a mixed use to have an FAR above .20. Note (13) was added to the zoning bylaw under Warrant Article 37 (subpart a) by Town Meeting in 1995. Article 37 of the 1995 Warrant, entitled "South Acton Village Dimensional Regulations," was approved by the legislators with the following pertinent summary in the Warrant: "The maximum Floor Area Ratio (FAR), which defines the size of the building relative to its lot, would be increased from 0.20 to 0.40 **if the property has residential uses on it in addition to**

commercial uses. The requirement for residential uses with an increased floor area is intended to encourage a mixture of residential and commercial uses in the SAV district, which is generally desirable in village areas such as South Acton." 1995 Warrant, Article 37, Summary (emphasis added). The Summary also refers to a desire to limit the size of non-residential (commercial) uses in the SAV district by note (13). *Id.* Accordingly, this provision was advertised to the voters as having nothing to do with permitting or encouraging strictly residential uses in the SAV district up to .40 FAR.

In conclusion, we respectfully ask that you revisit the issue posed by our request. We look forward to your response.

Sincerely,

Brian C. Bendig
Chairman
Acton Historic District Commission

cc: Manager
Planning Board
Conservation Commission
Building Department/Frank Ramsbottom
(all by email)