

PRELIMINARY

June 1, 2009

Dover Amendment Research

Size Regulations

New Info Input since 5-28 Version is in BLUE

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• Summary of Research

We decided to take a look at what other towns Massachusetts are doing to define “reasonable” limitations to Dover Amendment projects.

Methodology:

We gathered up names of towns that had news coverage for either a “Dover Amendment Challenge” or interest by a Dover Amendment developer. That list was about 30. We targeted that list by looking at the newness of the activity, and the seriousness of the activity. Town Counsel provided additional names for us to target. To supplement this target list, we sent out a general mailing to various listservs, which cover all Towns in the Commonwealth. The listservs only provided input from a few towns. The most effective research tool, not surprisingly, was the internet and the phone. Online research of bylaws were supplemented with phone calls to planners.

Research Disclaimer:

The reader is warned to look directly at the bylaw and seek legal counsel before taking anything in this report seriously. This report is simply a collection of what we found. It is intended only as a “point of info” to help you in your more detailed research.

Summary of Findings:

• **Size regulations**

Size of buildings appears to be controlled mostly via setbacks and buffers, and some towns have very strict buffer requirements where buffers have to be dense and left in their natural state. Buffers and setbacks range from 10’ to 75’ or more in certain circumstances. Buffer rules can include being left in its “natural state”.

Size limits applying to childcare facilities in residential districts: Wellesley 2,500 sq ft, Westford 2,500 sq ft (if “for profit), Needham 0.3. Additionally, Wellesley provides for a ratio open space to include not less than 75 square feet for every child at play,

Sherborn talks to the architectural traditions of the town.

• **Health/Environmental Review**

Some towns are reporting that they are having luck with these reviews in helping create “more reasonable” projects. No specifics were followed up on during this research, because we were focused on zoning size controls.

- **Detailed Site Plan Review**

Detailed Site Plan Review process appears to be a trend. In Brookline and Hopkinton, the process seems both reasonable, valuable, but also expensive for the builder. Brookline requires “façade elevations”. The requirements for submission seem to place a high priority on safety and the impact to the neighborhoods. Although, we don’t have any specific evidence of its effectiveness, Brookline seems very serious about maintaining town character warns applicants in its bylaw that recommendations for changes may include “major design elements”, and that:

“Wherever feasible, major topographical changes and tree and soil removal shall be minimized, and any topographic changes shall be in keeping with the appearance of the neighboring developed areas;

- **Highest and best use**

Lexington said that the sense is that the town doesn’t feel threatened as long as residential values are so high. That “the highest and best use is residential is probably our best protection.” It seems to indicate that investing in Town Character and other things that keep property values high is a good thing.

- **Few towns appear “proactive” unless a Dover challenge arises**

Few planners appear “ready” to do battle with Dover challenges, unless they’ve had “Dover Interest” in the past. Few had anything to say regarding what they plan to do, or how they plan to be proactive. Granted, the sample size was fairly small, but it was our impression that there is not widespread fear by planners of “what could happen” until a Town reacts. The sample size is not big enough to make any firm conclusions regarding what “type” of Town is reactive vs proactive. But it seems that those that are, either have had a “Dover scare” or are generally very concerned about Town Character. There seems to be a general attitude that “it won’t happen to us”. Sort of how smokers tend to view cancer. “It won’t happen to me.”

Summary of Findings, by Town:

• Andover

Andover has a separate section on Child Care facilities in residential districts. The minimum lot area for a facility shall be one acre. The maximum building coverage of the facility shall not exceed three thousand square feet. At least thirty-five percent (35%) of the minimum lot area shall be retained in open space. Open space shall mean areas without structures, parking lots or driveways.

Outdoor play areas and parking lot areas located along property lines common with residential property or property zoned as SRA, SRB or SRC shall be screened with not less than a six foot high sight obscuring fence or wall or with evergreen plants five feet in height at the time of planting.

Single Residence districts (A, B, and C) have area, frontage, yard depth, and building height requirements, but no lot coverage maximum. Minimum lot areas in square feet are 15,000 (SRA), 30,000 (SRB), and 43,560 (SRC). Minimum setbacks (front/side/rear, in feet) are 35/20/30 (SRA), 40/25/30 (SRB), and 50/30/30 (SRC). Other districts (apartment, business, and industrial) have coverage maxima from 25 – 50%. See Appendix A, Table 2.

• Bedford

Bedford residents voted at the annual town meeting in March 2009 to change the zoning bylaw provision specific to child care facilities. The maximum GROSS FAR was decreased from 25 to 15%. See specifics in Appendix of this document. Calculation of FAR does NOT include Wetlands. Setbacks 15 to 30. The minimum lot area shall be one (1) acre. Where the developed area adjoins land zoned for residential use, the minimum side yard shall be 30 feet.

The minimum lot landscaping shall be 35% exclusive of the playground area. A green belt shall be provided to screen the proposed development from adjoining land zoned for residential use as specified in Section 6.2.12.

The minimum front yard shall be 35 feet, minimum side yards shall be 25 feet and minimum rear yard shall be 30 feet. No playground area (an area designed or set aside for children for recreation or play) shall be located closer to a lot line than the minimum yard set back

"Janet Powers, Chair Planning Board commented that one of the reasons for amending the existing bylaw for child care facilities and religious uses was because when the LEAP School was developed it utilized the entire current 25% F.A.R. dimensional requirement creating a very large structure in a residential area."

"The Board had a further discussion regarding 1)the importance of reducing F.A.R. to discourage creating oversized facilities in residential areas, 2) that proper setbacks are in place, 3) that adequate buffers for screening between adjoining properties are provided and 4) try to maintain as much green space as possible when considering parking setbacks."

See minutes in Appendix of this document. From the minutes:

Chair Powers reviewed a chart that shows examples of existing child care facilities and religious uses in Bedford and compared them to the *existing* dimensional requirements under Child Care Facilities listed in the current zoning bylaws to the *proposed* dimensional requirements for both child care facilities and religious uses. Ms. Powers pointed out that the most significant change being proposed is reducing the maximum floor area ratio (F.A.R.) from 25% to 15% and the minimum side setbacks will be less restrictive; changing from 30% to 25%.

Chair Powers stated that if an existing child care or religious use facility comes before the Board, the Board would take into consideration before making a determination that the development already existed prior to amending the bylaw. The Board had a further discussion regarding 1)the importance of reducing F.A.R. to discourage creating oversized facilities in residential areas, 2) that proper setbacks are in place, 3) that adequate buffers for screening between adjoining properties are provided and 4) try to maintain as much green space as possible when considering parking setbacks.

- **Belmont**

No size limitations for any buildings in residential areas beyond height, except that b) no more than one third of the habitable floor area of the residence is to be used for home occupations. But this is in a section for “Use Regulations”. Setbacks and max lot coverage only are only things that look like size controls. Nothing specific to daycare.

- **Brookline**

Special Site Plan review process for projects over 10,000 sq ft “for Educational Uses in Residential Districts” or any project determined to have “major impacts on the surrounding neighborhood”. Long list of submission requirements and warnings to applicants that Planning Director may recommend significant changes for the project to be in keeping with character of the neighborhood.

- **Concord**

Over past several years they have altered their bylaws to registered day care facilities in town. They have had no inquiries prior to mine involving the Dover amendment.

Summary of new bylaw (voted April 2009, subject to AG approval)

Site Plan Review required for “Substantial alteration to a building means an alteration of a single building or a group of buildings under one ownership on the same lot or contiguous lots which results in an increase in gross floor area of either five hundred (500) square feet or ten (10) percent of the existing gross floor area, whichever is less.

Site Plan Review considerations:

(a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air;

(b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;

(d) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;

(f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw; and,

(g) Impact on the Town's resources including the effect of the Town's water supply and distribution system, sewage collection and treatment, fire protection, and streets.

11.8.7 Site Plan Review for religious uses, educational uses and child care facilities:

The purpose of this section is to ensure that all religious and education uses, and all child care facilities are reasonably regulated in regards to, but not limited to, bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. The Board and the Planning Board have the authority to place reasonable conditions on the aforementioned issues, but are not permitted to withhold approval of Site Plan Review.

11.8.7.1 In reviewing the site plan submittal for religious uses, educational uses and child care facilities, the following issues shall be considered:

a) Relationship of the bulk and height of structures and adequacy of open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw, which includes, but is not limited to, building coverage requirements, yard sizes, lot areas and setbacks.

b) Physical layout of the plan as it relates to convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;

c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;

d) Physical lighting of the site, especially the adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky.

- **Hingham**

Hingham also requires special Site Plan Review and ZBA approval to determine if “the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area. It appears that the minimum lot size is 2 acres with a

minimum of 40 feet setback from the front, side and rear lot lines. Specifically talks to daycare and educational purposes.

- **Hopkinton**

New Info: The Town had an application that the builder withdrew because he couldn't meet dimensional requirements. It was 19,700 sq. ft. It did not meet the requirements for parking and for a perimeter buffer of 50 ft. There is a buffer required around non-residential uses in residential zoning districts of 25 to 75 feet (depending on the district).

Site Plan Review appears to be how they got a significant project changed to be "more reasonable". But it's not entirely clear how reasonable that it got. They have not had a court challenge on any specific regulation, which isn't surprising since they have nothing that appears to apply to daycares. But site plan review *itself*, as it applied to child care facilities was challenged in court. The town has subsequently changed its site plan review bylaw, according to the Planner, "to accommodate all exempt (i.e. Dover amendment) uses."

Structures used for nonresidential purposes in residential areas can not be higher than 35 feet. And there are strict buffer requirements: "The buffer shall be no less than 25 feet wide in a Residence A District; 50 feet wide in a Residence B and Residence Lake Front District; and 75 feet wide in an Agricultural District." It goes on to say, "Buffer areas shall remain in their natural state." "If, in the opinion of the Planning Board, the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs, plantings or fencing may be required."

Parking requirements say nothing about a "minimum". It might be worth exploring whether they've kept parking to a minimum. Child care facilities require "1 for every 10 children of rated capacity" plus "1 for each staff person on the largest shift." Parking lots shall contain around the perimeter and in the interior at least one tree per eight parking spaces.

Interesting highway buffer requirement for lots which abut major highways, in every zoning district (with the exception of some non-residential districts). There shall be "a buffer adjacent to Interstate Routes 495 and 90 a

minimum of 50 feet wide, measured from the edge of the highway right-of-way/property line. The best part of this seems to be that the “buffer areas shall remain wooded, and no clearing of trees or other vegetation or the alteration of other landscape features shall be permitted.” “No buildings, sewage disposal systems, paved areas, athletic fields, active recreation areas or any other use which requires the clearing of trees or other vegetation or the alteration of other landscape features, with the exception of wireless communication facilities, will be permitted within the buffer area.”

- **Lexington**

Per planner, no FAR limitation for child care facilities in residential zoning districts. The only dimensional controls are those limitations that apply to residences for setbacks and height. No challenges. Child care facilities are allowed by right everywhere in town. Family day care in a commercial zone requires a special permit (dwelling units would not be an allowed use in commercial districts). No ZBA variances that the planner knows about.

The bylaw makes specific Dover reference: “Such land or structures are subject to reasonable regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements as set forth in this bylaw.

In the RO district (residential) “Maximum percentage site coverage 15% (with special permit)” and “For institutional uses”, “the maximum floor area ratio shall be 0.25.”

But what’s interesting here is that in the definitions of the RO district, it states:

(a) RO One-Family Dwelling; RS One-Family Dwelling: are intended to be districts with a low density of development providing housing for families with children and small households with related public and institutional uses.

This could be a call to size control for “insitutional uses” relative to the safety of the surrounding neighborhood.

“The maximum height of a building shall not exceed either the distance in feet or the number of stories, whichever is less, set forth in Table 2 for the district in which the building is located.”

- **Lincoln**

Per planner, Lincoln is not really concerned about the Dover Amendment. There were two recent situations documented in the local paper which he failed to mention. The Korean Hope Church recently invoked the Dover Amendment on Acorn Lane. Their preliminary site plan included parking

for 83 cars and a 6, 0000 square-foot building to contain 250 seats on a 1.85 acres plot. According to the article in the newspaper” neighborhood opposition and the budget-busting cost of bringing a water main from Bedford Road large enough for the building’s required sprinkler system proved insurmountable”.

Another situation was the Corwin-Russell School who expressed interest in purchasing six acres at 44 Baker Bridge to accommodate fifty 6-12 graders having varied learning styles. A neighborhood drive resulted in raising \$500,000 towards the \$1.2 million asking price. The Rural Land Foundation financed the balance and will purchase the property. A condition of the sale was that the four abutters have a deed restriction that none of the properties can be sold to a 501c3 non profit organization and must remain single-family residences.

- **Littleton**

Per planner, have had no contested request for religious or day care use permits. Did authorize a day care which has just opened for business, The Learning Experience. This facility is located at 206 Great Road in Littleton. It is an 11,000 square foot structure located on a 4 acre residential lot. It went through the site plan process and Planning Board. The town only concerns were in regard to parking and access. These areas were mutually resolved. There were no FAR restrictions.

- **Milford**

Planner says that there are no regulations, that the town is wide open to those sorts of developments.

- **Needham**

Needham references Dover Amendment all over the place. **Maximum FAR of 0.30.** Shall not cover more than **15% of lot area**, with some seeming allowances for larger lots. Childcare facilities appear to be allowed in all districts. There’s also an interesting set of footnotes which talk to new construction on sites with existing buildings.

The setback for the Dover uses appears to be 15-35' (depending on district) and can not be paved. ZBA can reduce setback to no less than 10-30' if character of neighborhood is not impacted negatively. A buffer of 25' is required from abutters. Buffer areas can't include driveways, play areas, or "interior streets". They can be used for passive recreation like bike trails if they do not, "reduce the effectiveness of the transition area as a year-round visual screen."

- Newton

Family child care home, large family child care home, and day care centers are allowed in all districts, subject to the following provisions: Family child care homes and large family child care homes shall comply with the parking requirements of section 30-19 and the dimensional requirements of section 30-15, Table 1 [Residence Districts] or Table 3 [Commercial Districts] as applicable, except that the minimum lot size shall be 5,000 square feet. General Dimensional Requirements: Min. Lot Area: 10,000 – 25,000 SF, Min. setbacks 15-40, Max. FAR: .2 - .4, Max. Lot Coverage: 15-30%

Landscaping: A dense year-round vegetative buffer at least four (4) feet wide and six (6) feet high shall be provided along the perimeter of any outdoor play area. Any fence required by the Office for Child Care Services shall be located inside the required vegetative buffer. All landscaping that is required under this provision shall be maintained in good condition and, if diseased or dying, shall be replaced by the operator of the facility with new plant material of a similar size.

- Norfolk

Norfolk allows child-care facilities in all districts, but limits them to 2,500 square feet in the definition of "child care facility." Norfolk Zoning Bylaw § B. ("CHILD CARE FACILITY - A day care center or school age child care program as those terms are defined in G.L. c. 28A, Section 9; provided that the ground area covered by the BUILDING in which such business is located does not exceed 2,500 square feet.")

Norfolk apparently did not change this bylaw provision after the Rogers case, in which the footprint limitation was declared facially valid, but unreasonable as applied to the plaintiff's project. Rogers v. Town of Norfolk, 432 Mass. 374 (2000).

- **North Andover**

Daycare allowed in residential districts by special permit. Table of dimensions seems to have pretty low “coverage” ratios, 20% in one residential district. But the FARs seem to be WAY high... 75%. I may not be reading the table correctly.

- **Northbridge**

Per planner, they have no FAR regulations at all, nor any regulations concerning daycare centers or pre-schools. When asked what they would do if a large pre-school organization wanted to build in a residential area, and he said they would do nothing. They don't even have any strict regulations about residential areas. As he said, it is pretty wide open in terms of controls. They are south of Worcester down near the Rhode Island border.

- **Sherborn**

Sherborn's bylaws are amazingly short and simple. I don't know if this is a secret to success or a vulnerability.

Dimensional controls on daycare operations are the same as any other building. It is permissive in all districts. It should be noted that this language has not been challenged in court. Per Planner: “However, several years ago we added a table of uses to the Zoning Bylaw and the Attorney General made us delete the "P" in the table next to this use because "permissive" in our bylaw means by special permit and the use has to be "by right.””

The planner is not aware of any ZBA granted variances, or exemptions for childcare facilities. Planner encourages us to look at Norfolk's case from about 10 years ago: “They had imposed a maximum size limit of 2500 square feet for a child care facility. The bylaw was challenged and overturned in court. I believe the decision was based on the Dover amendment.”

Setbacks in residential areas appear to be 60 ft in front and 30 or 40 feet from side, which applies to daycare. It appears to go on to provide additional setback requirements:

e) **Additional Setbacks** Each building greater than 160 gross square feet on the Section 4.4 Lot shall have the following minimum setback from each street and lot line (in lieu of those specified in Section 4.2):

- 1) 100 feet in Residence A
- 2) 125 feet in Residence B
- 3) 150 feet in Residence C

It also appears that the minimum lot size for a residential lot is 1 acre. And states that no special permit projects are allowed in residential areas unless “the lot shall contain at least twice the required minimum lot size of the residence district in which it is located.

Other special permit rules of interest:

b) Lot Location

No special permit shall be granted for any land which is more than one mile by public way from the intersection of Main and Washington Streets unless at least 25% of such property is within the Business G or Business P districts as shown on the Zoning Map of Sherborn. Locations should be readily accessible to shopping, transportation, and other public facilities and services used by the elderly.

f) Architectural Design

The architectural scheme shall be harmonious within the project with respect to choice of materials, colors, style, detailing and massing, but rigidity and monotony are to be avoided by use of variations in building size, height, location, and rooflines and the judicious arrangement of landscaping elements and site features. The project shall also be harmonious with the surrounding buildings and insofar as is appropriate for the particular location, consistent with the architectural traditions of the Town.

- **Wellesley**

Specific FAR limitation for Dover facilities of 2500 square feet. This has not been challenged yet. I wrote asking the planner if she thinks that it’s just

that the town hasn't been targeted yet, or whether builders consider it reasonable and have respected it. She says: Since we have placed the limit on the size, we really haven't been challenged, nor have we had any lawyers to date question it. It could simply be a that we haven't had a new center built yet. So we really don't have any evidence that it will be considered reasonable if challenged.

Other existing requirements:

- a. The structure containing such facility and the lot containing such facility shall meet the dimensional zoning requirements for the district in which the structure is located unless the structure is a legally pre-existing, non-conforming building or structure;
- d. Fenced outdoor play area, set back a minimum of 10 feet from any abutting land in single residence use, shall be provided at a ratio of not less than 75 square feet for every child at play, exclusive of the area occupied by play equipment;

- **Westford**

Specific Dover Amendment language is used and childcare facility size restriction, in residential districts, "shall not exceed 2,500 square feet" But...the provisions "shall not apply to child care facilities which are located in buildings owned by non profit organizations and used in whole or in part by such non profit organizations for their non profit purposes.

- **Westwood**

Childcare facilities in new buildings are allowed by special permit in all districts. All of Westwood's dimensional requirements are applied by zoning district rather than by use. These include minimum lot area of 25%, front setbacks from 25 to 50 ft, side setbacks from 15-30 ft; and maximum building coverage and impervious surface requirements. They are the only town that I noticed that has specific requirements about excluding wetlands from size measurements.

Requires limited Environmental Impact Design Review (EIDR) of all uses exempt under MGL Chapter 40A, Section 3, including child care facilities. Per the planner, “this section (7.3.3) of the zoning bylaw has recently been applied in EIDR applications for several non-profit educational facilities and is currently being applied in an EIDR application for an exempt agricultural facility. Section 7.3.3 of the zoning bylaw has not been challenged in court. The Zoning Board of Appeals has not to date set aside or waived any requirements of the zoning bylaw for child care facilities based on MGL Chapter 40A, Section 3.

State Regs, Playspace Requirements & Lead Removal

(3) Lead Paint Requirement and Lead Paint Inspection. The licensee shall ensure that paint used in the center is lead free.

(a) The licensee shall provide evidence of a lead paint inspection from the local board of health, or the Massachusetts Department of Public Health, or a private lead paint inspection service and compliance with 105 CMR 460.000 (Department Of Public Health Prevention and Control of Lead Poisoning regulations).

(b) A licensee that obtained evidence of a lead paint inspection and compliance with 105 CMR 460.000 from the local board of health or the Massachusetts Department of Public Health, or a private lead paint inspection service prior to July 1, 1988, will not be required to comply with additional deleading requirements unless so ordered by the local board of health or the Massachusetts Department of Public Health to remain in compliance with 105 CMR 460.000, or when expanding to space not previously approved by the Office.

(c) The licensee shall, in addition, remove and cover any chipping, flaking or otherwise loose paint or plaster found to contain lead according to current Department of Public Health requirements.

(4) Outdoor Space. The licensee shall maintain, or have access to, an outdoor play area of at least 75 square feet per child using it at any one time.

(a) The average width of such a play area shall not be less than eight feet.

(b) The outdoor play area shall be accessible to both direct sunlight and shade.

(c) The outdoor play area shall be free from hazards including but not limited to: a busy street, poisonous plants, water hazards, debris, broken glass, and dangerous machinery or tools, or location on a porch. Any such hazard shall be fenced by a sturdy, permanently installed barrier which is at least four feet high or otherwise protected or removed, as appropriate.

(d) If the outdoor play space is located on a roof, it shall be protected by a non-climbable barrier at least seven feet high.

(e) The outdoor play space shall not be covered with a dangerously harsh, abrasive, or toxic material.

(f) The ground area and fall zones under swings, slides, and climbing structures shall be covered with an adequate depth of an impact absorbing material.

(g) In programs serving infants and toddlers, pea gravel and wood chip nuggets shall not be used.

(5) Indoor Space. The licensee shall have a minimum of 35 square feet of activity space per child, exclusive of hallways, lockers, wash and toilet rooms, isolation rooms, kitchens, closets, offices or areas regularly used for other purposes.

Interesting Opinion on “Reasonable” Dimensional Controls:

Note that the petitioner is now describing the building in terms of net square feet-

15,260 which to the layperson makes it look like they reduced the size

of the building; they didn't. To be fair, they've done the right thing in terms of the zoning code. That is, an apples to apples comparison.

(It seems peculiar that this is being done at the 11th hour).

Our zoning bylaw says a maximum of 1000 NET SQUARE FEET and they are proposing 15,260 NET SQUARE FEET. Another words, the building net to net is

15.26x our bylaw or +1,526%. In other emails I have described to you the most egregious example I could find under the Dover Amendment was the increase of the steeple height on the Mormon Church in Belmont at +93%. Perhaps other people can research this more thoroughly?

However, building mass(what you will actually see)which will be largely determined by the gross square feet is a key issue here. As far as I can determine, the 15,260 NSF has been "grossed up" to about 22,000 GSF. This is a factor of 1.44 ($15,260 \times 1.44 = 22,000$).

If we "gross up" our 1000 NSF bylaw by 1.44 it yields 1440 GSF.

So if you now compare gross square feet to gross square feet you now have

a building that is also 15.26x or + 1,526% larger ($1440 \times 15.26 = 22,000$)

Other points:

Be sure to read page 12. Their lawyer has cited the following..."the pertinent language of 3, third par., seeks to strike a balance (my

emphasis) between

preventing local discrimination against child care facilities and respecting legitimate municipal concerns." One of the town's legitimate municipal concerns here is that we approved a bylaw of 1000 NSF for child care facilities in R2 districts. Where is the balance when a proposal exceeds this by 1,526%?

Also, "The question of reasonableness of a local zoning requirement, as applied to a proposed (exempt) use, will depend on the particular facts of each case."

It seems as though the justices are saying that any Dover Amendment child care case will need (even require/demand) judicial review.

The Appeal completely distorts the Norfolk/Rogers case making it appear as though having a square foot limit is unreasonable and then attempts to link this to the Acton situation. As I've previously discussed with you, the essence of the case was that having a square foot limit was "facially valid" but imposing Norfolk's

2500 sf limit on that particular project under those particular facts was unreasonable.

I hope the ZBA has read this case cover to cover and understands this issue.

The last page of the Appeal notes that, "We have been working in good faith for over six months with the Acton town leaders and it has been to this point an excellent experience."

This is not a true statement. I would like to remind you as a BoS member that the DRB was asked to review this project in November 2008. The DRB asked Mr. Walker to attend this initial meeting with his architect. He attended the meeting not with his architect, but with a person who refused to identify herself. The DRB later learned that this person was Elizabeth Ahern, an attorney. Mr. Walker abruptly left the meeting after a short time after the DRB expressed its opinion of the project. (See DRB memo concerning this project to the BoS). No productive dialogue took place. The DRB issued a memo (Ann Sussman to Elizabeth Ahern November 6, 2008; see BoS enclosures to the ZBA) inviting Mr. Walker back and suggesting documents the DRB wished to review. No information was

supplied nor did Mr. Walker return. The DRB was asked to review the project again in April 2009. We received less information than was presented in November 2008. No one from Walker Realty or their representatives appeared at the meeting. As far as the DRB can determine, the sole outcome of six months of effort has been an adjustment to the site entrance, traffic mitigation proposals and tweaking of the parking lot to (dubiously) generate 39% open space in lieu of the required 35%.

Appendix

Raw Research Data

Detailed Town Findings

Town: Andover

Regulations Online:

<http://andoverma.gov>; click on “Code of Bylaws”

Relevant Excerpts:

Andover has a separate section on Child Care:

6.6.1. General. A proposal for a child care facility to be located in a new building shall be subject to the site plan review provisions of Section 9.5.

6.6.2. Standards. A child care facility shall comply with the zoning requirements of the zoning district in which it is located, with the following additional requirements:

1. A child care facility proposed as new construction or in existing structures in the SRA, SRB and SRC Districts shall meet the following zoning requirements:
 - a. The minimum lot area for a facility shall be one acre.
 - b. The facility shall be located in the principal structure on the property.
 - c. The maximum building coverage of the facility shall not exceed three thousand square feet.
2. At least thirty-five percent (35%) of the minimum lot area shall be retained in open space. Open space shall mean areas without structures, parking lots or driveways.
3. A minimum of one off-street drop-off/pickup area per twenty-five children shall be provided on the premises.
4. Outdoor play areas and parking lot areas located along property lines common with residential property or property zoned as SRA, SRB or SRC shall be screened with not less than a six foot high sight obscuring fence or wall or with evergreen plants five feet in height at the time of planting.
6. A copy of the license from the Office for Children authorizing the child care facility and indicating the number of children the facility

is licensed for shall be filed with the Planning Department prior to the issuance of a certificate of occupancy.

General Dimensional Requirements – see table for details.

Single Residence districts (A, B, and C) have area, frontage, yard depth, and building height requirements, but no lot coverage maximum. Minimum lot areas in square feet are 15,000 (SRA), 30,000 (SRB), and 43,560 (SRC). Minimum setbacks (front/side/rear, in feet) are 35/20/30 (SRA), 40/25/30 (SRB), and 50/30/30 (SRC). Other districts (apartment, business, and industrial) have coverage maxima from 25 – 50%. See Appendix A, Table 2.

APPENDIX A

TABLE 2

Section 4.1.2 - Table of Dimensional Requirements

District	Minimum Lot Dimensions (e)		(f) Minimum Yard Depth			Maximum Height (g)		Maximum Coverage Including Accessory Building (percent)
	Area (square feet)	Frontage (feet)	Front (feet)	Side (feet)	Rear (feet)	Feet	Stories	
Single Residence A	15,000 (a)	115	35	20 (d)	30	35	---	---
Single Residence B	30,000 (a)	150	40	25 (c)	30	35	---	---
Single Residence C	43,560 (a)	180	50	30 (c)	30	35	---	---
Apartment (h)	(i)	(i)	30	20	20	35	3	30 (b)
Limited Service	---	---	30	50	50	40	3	30 (b)
Office Park (j)	43,560	180	30	50	50	40	3	33 1/3 (b)
General Business (k)	---	---	---	---	---	50	4	---
Mixed Use (l)	---	50	10	10	10	50	4	30 (b)
Industrial G (j)	---	---	30	15	15	60	5	50 (b)
Industrial A (j)	---	---	50	40	40	60	4	30 (b)
Industrial D (j)	---	50	100	100	100	50	3	25 (b)

APPENDIX A

TABLE 2 (cont.)

Section 4.1.2 - Table of Dimensional Requirements

Exceptions and Special Requirements:

(a) See definition of “lot area”, Section 10 of this by-law.

(b) Number of stories may be increased and lot coverage decreased correspondingly if site conditions warrant. The gross floor area of the resulting building shall not exceed that allowed by right to meet the standards of the Andover Zoning By-Law and Chapter 131, Section 40 (Wetland Protection Act).

(c) The minimum yard depth of fifteen feet shall continue to apply to dwelling units which are exempt by virtue of the provisions of M.G.L. c. 40A, s. 6, and to the enlargement, restoration or reconstruction of a dwelling in existence as of the effective date of this by-law. The minimum yard depth requirement for a cluster development under Section 7.1 of this by-law may be reduced by the Planning Board to twenty (20) feet.

(d) The minimum yard depth of fifteen feet shall continue to apply to dwelling units which are exempt by virtue of the provisions of M.G.L. c. 40A, s. 6. This by-law shall not be required for work which is performed in connection with the ordinary maintenance or improvement of a single-family house lawfully in existence or for which a building permit had been issued on or before January 1, 1999, including, but not limited to, building additions and conversion of lawn to accessory structures such as decks, sheds, patios and pools.

(e) See Section 4.1.3.1.

(f) See Sections 4.1.3.2 and 4.2.

(g) See Section 4.1.3.3.

(h) See Section 4.1.4.1.

(i) The minimum lot area and frontage requirements shall be the same as applies to the adjoining single residence district sharing the longest common boundary, but not less than thirty-five hundred (3,500) square feet for each dwelling unit in a multi-family development. In the event there is no adjoining single residence district, the requirements of the nearest single residence district shall apply.

(j.) See Section 4.1.4.3.

(k) See Section 4.1.4.2.

(l) See Section 4.1.4.4.

Town: Bedford

Zoning Bylaws Online:

<http://www.town.bedford.ma.us/publications.html>

Relevant Excerpts:

Bedford residents voted at the annual town meeting in March 2009 to change the zoning bylaw provision regarding child care facilities. The maximum FAR was decreased from 25 to 15%.

Old Bylaw:

6.6 Child Care Facility

In all districts the following dimensional requirements shall apply to child care facilities.

6.6.1 Minimum Lot Area

The minimum lot area shall be one (1) acre.

6.6.2 Maximum Floor Area Ratio

The maximum floor area ratio shall be 25 percent.

6.6.3 Minimum Side Yard

Where the developed area adjoins land zoned for residential use, the minimum side yard shall be 30 feet.

6.6.4 Minimum Lot Landscaping

The minimum lot landscaping shall be 35% exclusive of the playground area.

6.6.5 Greenbelt

A green belt shall be provided to screen the proposed development from adjoining land zoned for residential use as specified in Section 6.2.12.

New Bylaw:

Article 7

Zoning Bylaw Amendment – Child Care Facilities and Religious Uses

To see if the Town will vote to amend the Bedford Zoning Bylaws by deleting Section 6.6 and replacing it with the following:

6.6 Child Care Facilities and Religious Uses

In addition to the standards set forth in Table II Dimensional Regulations the following standards shall apply to child care facilities and religious uses located in residential districts or on lots which are not in a residential district but any portion of which lot is directly contiguous to a lot in a residential district.

6.6.1 Minimum Lot Area

The Minimum Lot Area shall be one acre as further defined in Section 6, Dimensional Regulations.

6.6.2 Maximum Floor Area Ratio

The maximum floor area ratio shall be 15 percent. The maximum floor area ratio is defined as the total gross floor area of the building(s) on the site, including accessory buildings, divided by the total area of the site not including any area in the Flood Plain/Wetland district.

6.6.3 Minimum Front, Side and Rear Yards

The minimum front yard shall be 35 feet, minimum side yards shall be 25 feet and minimum rear yard shall be 30 feet. No playground area (an area designed or set aside for children for recreation or play) shall be located closer to a lot line than the minimum yard set back.

6.6.4 Minimum Lot Landscaping

The minimum lot landscaping shall be 35% exclusive of any playground area.

6.6.5 Greenbelt

A greenbelt shall be provided to screen the proposed development from adjoining land zoned for residential use as specified in Section 6.2.12.

6.6.6 Parking

All parking spaces and driveways, other than entrances, shall be set back at least 35 feet from front property lines, 25 feet from side property lines and 30 feet from rear property lines. Parking spaces shall be located behind or beside buildings.

6.6.7 Waivers

In the case of proposed child care use facility or religious use, the Planning Board may waive any requirement of the bylaw upon written application of the project proponent, based upon a showing that the requirement sought to be waived is unreasonable in the particular circumstances; pass any vote or take any action relative thereto.

Dimensional Requirements (Unchanged By 2009 Town Meeting):

Residence Districts (R, A, B, C), Standard Subdivisions:

Min. Lot Area: 25,000 – 60,000 SF
Min. Setbacks (front/side/rear in feet): 35/15/30
Max. FAR: None

Residence Districts (R, A, B, C), Cluster Development:
Min. Lot Area: 15,000 – 40,000 SF
Min. Setbacks (front/side/rear in feet): 35/15/30
Max. FAR: None

Business and Industrial Districts:
Min. Lot Areas and Setbacks: Wide range
Max. FAR: 25-50% (no maximum in Commercial District)

Selectmen's Meeting Room Town Hall

BEDFORD PLANNING BOARD Zoning Amendments Public Hearing

MINUTES

February 10, 2009

MEMBERS PRESENT: Janet Powers, Chair; Margot Fleischman, Clerk; Steven Spector; Sandra Hackman; Lisa Mustapich

MEMBERS ABSENT: None

STAFF PRESENT: Cathy Silvestrone, Administrative Assistant

STAFF ABSENT: Richard Joly, Planning Director

OTHERS PRESENT: (See Attached)

Chair Powers opened the Zoning Amendments Public Hearing at 7:34pm.

Note: All submittals are available for review at the Planning Office.

Margot Fleischman, Clerk, read for the record a Legal Notice stating that the Bedford Planning Board will be discussing (2) Zoning Bylaw Amendments; 1) Amend Section 2.2 of the Zoning Bylaws to adopt an electronic Zoning Map to replace the existing Zoning Map and 2) Amend section 6.6 of the Zoning Bylaws to change the dimensional requirements for Child Care Facilities and to provide dimensional requirements for Religious Uses.

Chair Powers reviewed for the record the following submittals:

Language to amend the existing zoning map to an electronic zoning map.

Language to amend the zoning bylaws to delete section 6.6 of the current bylaws and replace section 6.6 with dimensional requirements for Child Care facilities and Religious Uses.

Memo from Director Joly dated 2/9/09 regarding the proposed Zoning Amendments.

A chart sharing examples of existing child care and religious use facilities dimensions

1. Digital/Electronic Zoning Map

Adrienne St. John, Town Engineer and Chris Nelson, G.I.S. Analyst prepared a presentation explaining the need to convert the existing paper zoning map to a

digital/electronic zoning map. Ms. St. John commented that it took a group of individuals a long period of time, to digitize the February 1998 version of the town's zoning map to the proposed December 2008 digital version.

Chris Nelson stated that the new digital map represents the same existing zoning districts as the current map, but with more accurate boundaries; and that all current zoning boundaries were verified by referencing relevant zoning articles. Mr. Nelson shared that the new digital zoning map will provide the following benefits: 1) the proposed zoning map will be available on the internet and can be emailed; 2) there will be an increase in accuracy at all scales and map sizes; and 3) the new zoning map will have easier and more accurate updating methods. Mr. Nelson demonstrated how to view digital zoning map and use its functions on the Town of Bedford's website.

Margot Fleischman mentioned that it took a lot of research to get the proposed zoning map to this level of accuracy; and therefore suggested that an explanation of this research be shared at Annual Town Meeting during this article's presentation. Steven Spector agreed that it would be advantageous to know the resources it took to create the digital version of the zoning map.

All Board members agree with the submitted/proposed language for the Electronic Zoning Map; therefore no changes on this article are needed to be forwarded to the Selectmen.

2. Child Care Facilities and Religious Uses

Chair Powers reviewed a chart that shows examples of existing child care facilities and religious uses in Bedford and compared them to the *existing* dimensional requirements under Child Care Facilities listed in the current zoning bylaws to the *proposed* dimensional requirements for both child care facilities and religious uses. Ms. Powers pointed out that the most significant change being proposed is reducing the maximum floor area ratio (F.A.R.) from 25% to 15% and the minimum side setbacks will be less restrictive; changing from 30% to 25%. Ms. Powers continued to review the language and ask others for their comments.

Chris Laskey, Code Enforcement Director, stated that he reviewed the proposed language for this bylaw and finds no problem with the dimensional aspects; however he did have a discussion with Mr. Joly regarding the right to waive regulations for child care facilities and religious uses under site plan review and whether it is necessary to include additional language in the proposed bylaw to clarify that dimensional requirements shall apply unless it can be proven otherwise that a regulation is not reasonable before waiving that regulation. Mr. Joly informed Mr. Laskey during that discussion that he has asked Town Counsel to provide a legal review of the bylaw; and also inquired if it is advisable to include language in the bylaw regarding the right to waive regulations.

Janet Powers commented that one of the reasons for amending the existing bylaw for child care facilities and religious uses was because when the LEAP School was developed it utilized the entire current 25% F.A.R. dimensional requirement creating a very large structure in a residential area. *Zoning Amendments Public Hearing February 10, 2009 Page - 3 -*

Kevin Latady, 2 Myers Lane, asked if there is a F.A.R. requirement for houses and commented that individuals could choose to convert their homes into sizeable religious or child care facilities within a neighborhood.

Sandra Hackman stated at this point it is illegal to place a F.A.R. requirement on houses; however some communities are working towards that legislation.

Paul Kruger, 14 Alaska Avenue, (and representing St. Paul's Church) stated that the proposed setback for parking is currently a problem for St. Paul's Church; as they may need to expand their parking.

Ken Larson, 79 Pine Hill Road, (also representing St. Paul's Church) did note that if St. Paul's Church were to construct additional parking on site they would look to park on a permeable service.

Lisa Mustapich explained that when developers come before the Board, the Board considers the developer's situation regarding unique site/building limitations and is willing to work with the developer, within reason, to mitigate their needs as well as the towns.

Ken Larson reiterated his concerns with the new bylaw amendment and how it would affect sites such as St. Paul's, if they were to expand their parking.

Margot Fleischman said that the Board mostly thought of new development when discussing new setback requirements.

Chair Powers stated that if an existing child care or religious use facility comes before the Board, the Board would take into consideration before making a determination that the development already existed prior to amending the bylaw.

The Board had a further discussion regarding 1) the importance of reducing F.A.R. to discourage creating oversized facilities in residential areas, 2) that proper setbacks are in place, 3) that adequate buffers for screening between adjoining properties are provided and 4) try to maintain as much green space as possible when considering parking setbacks.

Although not related directly to the proposed zoning bylaw amendment, Paul Kruger mentioned that he finds the language in section 6.2.12 of the zoning bylaw (which mentions planting staggered rows of trees for a greenbelt) to be unclear; and that in the future this language should be clarified.

Chair Powers mentioned that the Board may want to continue the Zoning Amendments Public Hearing until they have received Town Counsel's response to the Child Care Facilities and Religious Uses proposed zoning bylaw amendment.

MOTION: Lisa Mustapich, second Steven Spector move to take an advisory vote to have the Child Care Facilities and Religious Uses Zoning Bylaw Amendment forwarded to the Selectmen, as written, for placement in the Warrant; however changes to that language may still occur prior to or at Town Meeting pending Town Counsel review.

VOTE: 5-0-0

MOTION: Lisa Mustapich, second Steven Spector move to take an advisory vote to approve forwarding the language to amend section 2.2 of the Bedford Zoning Bylaws to adopt an electronic Zoning Map to replace the existing Zoning Map, as written, to the Selectmen for placement in the Warrant; however, if needed, the language can be changed before or at Town Meeting.

VOTE: 5-0-0

*MOTION: Lisa Mustapich, second Margot Fleischman move to **continue** the Public Hearing on Zoning Amendments to **March 10, 2009**.*

VOTE: 5-0-0

PRESENTING THE ARTICLES:

MOTION: Margot Fleischman, second Lisa Mustapich move that Steven Spector present the Electronic Zoning Map bylaw amendment at Town Meeting.

VOTE: 5-0-0

MOTION: Margot Fleischman, second Lisa Mustapich move that Janet Powers will present the Child Care Facilities and Religious Use bylaw amendment at Town Meeting.

VOTE: 5-0-0

Lisa Mustapich stated that she is unable to attend Town Meeting; however she is willing to create Power Point presentations of the two articles for Mr. Spector and Ms. Powers to present.

TIME: Zoning Public Hearing ended at 8:30PM

Town: Belmont

Researcher: DC and TF

Planner: Jay Skzklut (Jeffrey Wheeler person to contact DC)

Phone: 617-993-2666

Email: jszklut@town.belmont.ma.us

Contact Status:

Contacted 5/18/09-DC

Other Comments:

DC: Small inhome daycare centers only in residential areas. No FAR zoning for these centers. Have other larger daycare centers in business zones, no FAR zoning for these either. [TF: so have they experienced a Dover challenge? Are they afraid? Why/why not? Get him to answer the other survey questions]

Specific Regulations:

http://belmontma.virtualtownhall.net/Public_Documents/BelmontMA_ZoningBylaws/index

Relevant Exerpts:

TF: They seem to have general setback, lot coverage and height restrictions for “buildings” (with pictures)

This section talks about floor area ratio, but does not specifically mention daycares:

http://www.town.belmont.ma.us/Public_Documents/BelmontMA_ZoningBylaws/SECTION4.pdf

	MINIMUM LOT AREA	MINIMUM LOT FRONTAGE	MAXIMUM FLOOR AREA RATIO	MAXIMUM LOT COVERAGE	MINIMUM OPEN SPACE
DISTRICTS	SQ. FT.	FEET	% OF LOT	% OF LOT	
SR-A	25,000	125	--	20%	50%

DISTRICTS	MINIMUM SETBACK DIMENSIONS FEET ⁸			MAXIMUM BUILDING HEIGHT ¹	
	Front	Side	Rear	Feet	Stories
SR-A and SR-D	30 ²	15 ⁶	40 ^{3,4}	36 ⁵	2½ ⁵
⌚ Dwelling	30 ²	15 ⁶	25 ⁶	36 ⁵	2½
⌚ Other					

4.2.2 Schedule Footnotes (those applicable to above sample table):

- 2) No building need be set back more than 30% of the depth of the lot in a Single Residence A or D District, 25% of the lot depth in a Single Residence B or C District, nor 20% of the lot depth in a General Residence District, nor more than the average of the setbacks of the buildings on the lots contiguous thereto on either side, a vacant lot, a lot occupied by a building set back more than the required minimum, or an intersecting street being counted as though occupied by a building set back at that minimum. However, in no case shall the setback be less than 10 feet in the General Residence District or 15 feet in Single Residence Districts.
- 3) On lots having depth of less than 100 feet, dwelling setback from the rear lot line shall equal not less than 40% of lot depth in the Single Residence A and D Districts, not less than 30% of lot depth in Single Residence B and C Districts, and not less than 20% of lot depth in General Residence Districts; but in no event shall the rear setback equal less than 25 feet in Single Residence Districts or less than 16 feet in General Residence Districts.
- 4) The Board of Appeals may grant a Special Permit reducing the rear setback requirement of corner lots and other unusually configured lots to not less than the side requirement, taking into consideration the configuration of the lot, and the effect upon the neighboring property.
- 5) Greater height is permitted provided the building setback from each street and lot line exceeds otherwise applicable requirements by 10 feet plus one foot for each foot of excess height, but in no case shall building height exceed 60 feet or 4 stories in height.
- 6) For accessory buildings, see Section 4.3.5. On lots having depth of less than 100 feet, principal building setback from the rear lot line shall equal not less than 25% of lot depth in Single Residence Districts or 15% of lot depth in General Residence Districts.

From Section 6 (a particular residential district):

- 22. Height, Building** – The vertical distance from the grade to:
- a. the highest point of the roof or parapet for flat or shed roofs;
 - b. the midpoint between the lowest and highest points of the roof for gable, hip and gambrel roofs (upper roof pitch 4" per foot or greater); or
 - c. the point of change in roof slope for mansard roofs (upper roof pitch under 4" per foot).

Also, some language referring to "Home Occupation", but it's not entirely clear whether this includes daycare and it's in a section for "Use Regulations":

3.4.2 Home Occupations

Home occupations are permitted within a dwelling (but not its accessory buildings), subject to the following:

- a) there is no exterior display or visible storage of supplies or equipment to be used on or off the premises or other variation from the residential character of the premises,
- b) no more than one third of the habitable floor area of the residence is to be used for home occupations,

Town: Brookline

Researcher: TF

Planner's Name: Jeff Levine

Planner's Phone: 617 730-2130

Planner's Email: jeff_levine@town.brookline.ma.us

Contact Status:

5-28: TF: online, email sent

Other Comments:

Specific Regulations:

http://www.brooklinema.gov/index.php?option=com_docman&Itemid=483

Relevant Exerpts:

Apparently the two paragraphs below from the Principle uses table on page 31 don't apply for "S" zones, which are "Single Family" districts.

15. Day care center defined as any facility operated on a regular basis, whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage, under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include any religious or educational use exempt from use regulation by **The Zoning Act, M.G.L. ch. 40A, §3** or a family day care home.

15B. Large family day care home defined as any private residence, operated by the occupant of that residence, which on a regular basis receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Commonwealth's Department of Early Education and Care; provided, however, in either case, that the total number of children under sixteen in a large family day care home shall not exceed ten, including participating children living in the residence.**
*(Use 15, 15A and 15B) A day care center or a family day care home shall be licensed in accordance with M.G.L. chapter 28A, §10. If such facility has an outdoor play area, that area shall be at such a distance and so screened from any lot line and from any residential structure on an adjoining lot to avoid a noise nuisance.

** THIS USE SHALL BE PERMITTED UNTIL JUNE 1, 2010

Parking:

4. Institutions shall include Uses 10, 11, 15, 15A, 17, and 19 as listed in **Article IV**.
 - a. Institutional uses intended primarily for children under 15 need not provide more than one-third the requirement specified.

Site Plan Review:

§9.11 - ADMINISTRATIVE SITE PLAN REVIEW REQUIREMENTS FOR EDUCATIONAL USES IN RESIDENCE DISTRICTS

1. A project plan application for an educational use in a residence district shall be filed for any proposed development, which is an outdoor structure, exterior alteration, or addition, greater than 10,000 square feet, or any project which the Planning Director and Building Commissioner determine shall have major impacts on the surrounding neighborhood. The application shall be filed with the Planning Director at least forty-five (45) days prior to the application for a building permit. Such application shall consist of ten (10) sets of a written explanation of the project and plan(s) prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Site plan(s) shall be drawn at a minimum scale of 1" equal 20'. In an initial meeting with the

Planning Director, it shall be determined which of the following should reasonably be required for submission given the scope of the project.

- a. Evidence of the applicant's nonprofit educational status, except if a child care facility;
- b. Boundaries, dimensions and area of the subject lot(s);
- c. Use of the existing building or structures on the subject lot(s);
- d. Existing and proposed topography of the subject lot(s) at two (2) foot intervals;
- e. Existing and proposed easements and existing and proposed wetlands and watercourses, if any;
- f. All existing and proposed buildings, structures, parking lots, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, pickup and drop-off areas, and natural areas and landscaping on the subject lot(s) with the dimensions thereof;
- g. Vehicular and pedestrian circulation both within the site and in relation to adjacent streets, properties and proposed project, and a traffic study, in accordance with §5.09, to evaluate safety impacts if the Planning Director determines in his/her reasonable judgment that a significant traffic impact will result;
- h. All facilities for sewage, refuse and other waste disposal, for surface water, drainage, utilities, and proposed screening, associated with the proposed development;
- i. All landscaping, including fencing, walls, planting areas, signs, exterior storage, and lighting associated with the proposed development;
- j. Facade elevations, floor plans and roof top utilities for any proposed new construction and/or alteration to the existing building or structure.

2. At the time the applicant files an application, the Planning Director shall give written notice of said filing to Town Meeting members in the precinct in which the proposed project is located and to immediate abutters of the property. The applicant shall give all reasonable assistance to the Planning Director in his/her review of the site plan, including, but not limited to, attendance of at least one meeting called by the Planning Director.

3. The Planning Director, upon receipt of the application, shall forthwith transmit a copy to the Building Department, Public Works, Transportation Division, Preservation and Conservation Commissions, and Fire and Police Chiefs. These departments shall respond with their comments and recommendations to the

Planning Director within twenty-one (21) day period thereof. Upon the receipt

of any responses by the above-mentioned departments, and/or, upon the expiration of said twenty-one (21) day period, the Planning Director shall review said submittal for completeness and the proposed project for compliance with the dimensional and parking requirements in the Zoning By-law. Further, the Director may consider the application in light of the criteria set forth below:

- a. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible;
- b. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage;
- c. Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site;
- d. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means.
- e. Wherever feasible, major topographical changes and tree and soil removal shall be minimized, and any topographic changes shall be in keeping with the appearance of the neighboring developed areas;
- f. Location of utility service lines underground wherever possible. Consideration of the site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines;
- g. Avoidance of the removal or disruption of historical resources on or off-site. Historical resources include designated historical structures or sites, historical architectural elements or archaeological sites.

4. After said review the Planning Director may make recommendations to the applicant for changes in the site plan, which changes shall be consistent with accepted and responsible planning principles. Upon completion of the review process, the Director shall indicate, in writing, to the Building Commissioner that there has been compliance by the applicant with the procedural requirements as stated above and whether in his/her opinion, the applicant has complied with the Zoning By-law. This statement shall be made within forty-five (45) days after receipt of the site plan application. If no such statement is received by the Building Commissioner within the above-stated time period, he/she shall accept an application for a building permit without receipt of such statement. If the applicant does not apply for a building permit within one (1) year from the date of the original site plan application to the Planning Director, the applicant must refile under the procedures set forth above.

Town: Concord, MA

Marcia Rasmussen
Planning Board Director
978-318-3290

Spoke with Marcia (pron Marsha) on 19 May, 2009.

Over past several years they have altered their bylaws to registered day care facilities in town. They have had no inquiries prior to mine involving the Dover amendment.

Town of Concord

Office of the Town Clerk
22 Monument Square
P.O. Box 535
Concord, Massachusetts 01742-0535

2009 Annual Town Meeting
April 27, 28 and 29

Subject to approval of the Massachusetts Attorney General

SITE PLAN REVIEW

ARTICLE 39. On a **MOTION** duly made and seconded, the following was

VOTED BY A TWO-THIRDS MAJORITY, and so declared by the Moderator:

Amend Zoning Bylaw **Section 7.7 Off-street Parking, Loading, and Site Plan Requirements** and **Section 11. Administration and Enforcement** by making the following revisions:

ITEM 1. In **Section 7.7 Off-street Parking, Loading and Site Plan Requirements**, delete subsection *7.7.3 Site Plan Approval* in its entirety and renumber existing **Section 7.7.4 Design Standards** and all related subsections as new **Section 7.7.3** and change the title of the Section to **Section 7.7. Off-street Parking, Loading and Design Standards**.

ITEM 2. Add a new subsection **11.8 Site Plan Review** to **Section 11. Administration and Enforcement** as follows:

11.8 Site Plan Review

11.8.1 Applicability: In all instances specified in Section 4, Table I, Use Regulations, indicating site plan approval, no building permit to establish a new building or to alter substantially an existing building shall be issued by the Building Inspector; no change in use of an existing building or lot shall be permitted; no area for parking, loading, or vehicular

access shall be established or substantially altered; and, no exterior light fixtures shall be installed or substantially altered unless a site plan has been submitted and approved in accordance with the requirements set forth in this section.

11.8.2 Site plan compliance: No certificate of occupancy shall be issued by the Building Inspector until the site has been developed in compliance with the approved site plan, unless completion is delayed by seasonal considerations. In such instances, the Building Inspector may issue a temporary occupancy permit and shall require sufficient security to insure full compliance within six (6) months.

11.8.3 Interpretation: Substantial alteration to a building means an alteration of a single building or a group of buildings under one ownership on the same lot or contiguous lots which results in an increase in gross floor area of either five hundred (500) square feet or ten (10) percent of the existing gross floor area, whichever is less. The calculation of substantial alteration shall be determined based upon the aggregate of all expansions undertaken within a consecutive five-year period.

Change in use means a change in part or all of an existing building or lot from one use category to another. However, in a mixed or multi-use building, change or rearrangement of uses that does not result in an increase of required parking or loading spaces shall not be construed as a change in use.

Substantial alteration to areas for parking, loading or vehicular access shall mean a change in the layout or location of parking spaces, an increase in pavement area of more than three hundred (300) square feet, or any relocation, addition or change in driveways. Resurfacing shall not be construed as a substantial alteration unless it involves a change of surface material.

Substantial alteration to exterior lighting shall mean an increase in more than ten (10) percent of the number of exterior light fixtures, an increase in height of any free standing light fixture, or a change in the coloration or an increase in the brightness/luminance produced by a fixture. Change in coloration from non-white light to white light; installation of full cut-off fixtures, positioned to prevent glare and light spillover, and with a height equal to or less than existing free standing light fixtures; and the use of temporary holiday lighting shall not be construed as a substantial alteration. Furthermore, when Site Plan Review is required based solely on the installation or alteration of exterior light fixtures, review by the Board or the Planning Board shall be limited to the proposed exterior lighting and to issues directly related to the proposed exterior lighting.

11.8.4 Procedure: Anyone seeking Site Plan Review shall obtain an application and checklist from the office of the Town Planner. A completed application form, the plan and supporting materials shall be submitted to the Planning Board in accordance with the rules and regulations of the Planning Board in effect at the time.

11.8.5 Site Plan Review: In reviewing the site plan submittal, the following matters shall be considered:

(a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air;

(b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;

(c) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;

(d) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;

(e) Adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;

(f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw; and,

(g) Impact on the Town's resources including the effect of the Town's water supply and distribution system, sewage collection and treatment, fire protection, and streets.

11.8.6 Decision: Where a special permit from the Board is required or a variance from the Bylaw is requested in connection with any action subject to Site Plan Review, a site plan decision shall be made by the Board. In such case the Planning Board shall submit a report to the Board concerning the matters described in subsection 11.8.5 prior to any public hearing. In considering a site plan, the Board shall insure a reasonable use of the site consistent with the uses permitted in the district in which the site is located. The Board shall give due consideration to the report of the Planning Board and where the decision of the Board differs from the recommendations of the Planning Board the reasons therefore shall be stated in writing.

Where a special permit or a variance is not required or requested, the Planning Board shall render a site plan decision and shall file its decision with the Town Clerk within ninety (90) days of receipt of an application, unless such time is extended in writing by agreement with the applicant and notice of such extension is filed with the Town Clerk. The Planning Board may impose such appropriate conditions, limitations, and safeguards as will insure compliance with the terms of approval.

11.8.7 Site Plan Review for religious uses, educational uses and child care facilities: The purpose of this section is to ensure that all religious and education uses, and all child care facilities are reasonably regulated in regards to, but not limited to, bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. The Board and the Planning Board have the authority to place reasonable conditions on the aforementioned issues, but are not permitted to withhold approval of Site Plan Review.

11.8.7.1 In reviewing the site plan submittal for religious uses, educational uses and child care facilities, the following issues shall be considered:

- a) Relationship of the bulk and height of structures and adequacy of open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw, which includes, but is not limited to, building coverage requirements, yard sizes, lot areas and setbacks.
- b) Physical layout of the plan as it relates to convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- d) Physical lighting of the site, especially the adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky.

11.8.7.2 Where a special permit from the Board is required or a variance from the Bylaw is requested in connection with any action subject to site plan review for religious uses, educational uses and child care facilities, site plan approval shall be by the Board. In such case the Planning Board shall submit a report to the Board concerning the matters described in subsection 11.8.7 prior to any public hearing. In considering a site plan for religious uses, educational uses and child care facilities, the Board shall insure a reasonable use of the site consistent with the uses permitted in the district in which the site is located. The Board shall give due consideration to the

report of the Planning Board and where the decision of the Board differs from the recommendations of the Planning Board the reasons therefore shall be stated in writing.

11.8.7.3 Where a special permit or a variance is not required or requested, site plan approval for religious uses, educational uses and child care facilities shall be by the Planning Board. The Planning Board shall file its decision with the Town Clerk within ninety (90) days of receipt of an application, unless such time is extended in writing by agreement with the applicant and notice of such extension is filed with the Town Clerk. The Planning Board may impose such appropriate conditions, limitations, and safeguards as will insure compliance with the terms of approval.

11.8.8 Term of approval: Site plan approval shall lapse if construction has not commenced within two (2) years from the date of approval. For site plan approval by the Planning Board, an extension of time may be granted for up to six (6) months.

11.8.9 Appeal. Decisions of the Planning Board regarding site plan approval shall be appealed as set forth in G.L. Chapter 40A, Section 17 to a court of competent jurisdiction.

ITEM 3. Renumber existing Sections **11.8 Bylaw Construction** and **11.9 Validity and Separability** and all related subsections as new Sections 11.9 and 11.10, respectively.

ITEM 4. Delete the following reference to the old section 7.7.3 and substitute a reference to new Section 11.8 therefore (changes below are underlined for the warrant only):

3.2.4 Site plan approval in accordance with subsection 11.8 is required for a use where the letter “R” appears...

ITEM 5. Renumber references to other subsections as follows:

In the new subsection 7.7.3.8 renumber references to 7.7.4.1 and 7.7.4.2 so the last sentence of the second paragraph shall read, “Parking and loading spaces shall be marked clearly in accordance with the dimensions specified in subsections 7.7.3.1 and 7.7.3.2, above.”

In the new subsection 7.7.3.12 renumber references to 7.7.4.1 to 7.7.3.1 so the first sentence shall read, “The Board may, upon advice of the Planning Board, grant relief from the design standards contained in subsection 7.7.3.1 where...”

Passed by a Declared Two-Thirds Majority Vote
April 29, 2009

A True Copy Attest:

Anita S. Tekle
Town Clerk

Town: Hingham

Researcher: AA and TF

Planner's Name: Katy Lacy

Planner's Phone: 781-741-1420

Planner's Email: LacyK@hingham-ma.com

Contact Status:

5-28 TF: online, emailed planner.

Other Comments:

Email from planner Katy:

“Each building permit for a day care permit is reviewed individually on a case by case basis to ensure compliance with "reasonable regulations" (language from Dover) regarding bulk, massing, parking, etc. We have no restrictions or limits written down, and that is my understanding of how the AG wants it!

Our Board of Health used to do some sort of inspection, but my understanding is that responsibility has now shifted to the State.”

See comments marked by “TF” below in Exerpts.

Specific Regulations:

<http://www.hingham-ma.gov/document/ZoningBy-Law.pdf>

Relevant Exerpts:

Table III-A SCHEDULE OF USES

3.4 Nursery school or other use for the day care of children, other than as exempted under Massachusetts General Laws Chapter 40A, Section 3, or a privately organized camp, providing any outdoor play area is at such a distance and so screened from any residential structure on an adjoining lot as to avoid a noise nuisance, subject to Special Condition 8 of Section III-B

TF: It appears to refer to A1 special permit processes which allow approval by ZBA if they determine:

c. the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area;

Daycare is designated as being subject to A1 Special Permit Review. Then it goes on to state in **III-B Special Conditions to Schedule of Uses**, that special conditions apply to those projects subject to A1 Special Permit Review, as noted in **III-A Schedule of Uses**. Section III-A projects appear subject to one or more of the following special conditions:

1. The minimum lot size on which such use will be permitted shall be 2 acres. All buildings not used for residence shall be placed a minimum of 40 feet from the front, side and rear lot lines.

2. No part of such use shall be located within 1,000 feet of any residence district. [[TF: this is odd, since the table is "about" projects listed as allowed in residential districts]]

8. The uses allowed in Section III-A, Subsections 3.1, 3.2, 3.3 and 3.4, to the extent provided under M.G.L. c.40A, §3, are allowed as of right, but subject to Site Plan Review in accordance with Section I-I.

The site plan review under this Section III-B (8) shall apply to:

i. land or structures, or the expansion of existing structures, used for religious purposes, or for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit educational corporation;

ii. land or structures, or the expansion of existing structures, used for the primary, accessory or incidental purpose of operating a child care facility; and shall be limited to developing guidelines and to determining compliance with regulations under this By-Law concerning bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements, or such other matters subject to reasonable requirements under M.G.L. c.40A §3 as the same may be from time to time amended. A building permit shall only issue upon the completion of the site plan review in accordance with Section I-I.

TF: I couldn't tell if this mattered or not:

The Planning Board shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity. This limitation shall be imposed upon the proposed development regardless of the intensity of development otherwise permitted by this Zoning By-Law.

TF: The rest of this is not applicable specifically to daycare, but seems of interest:

Page 31

Section IV-A

Floor Area Ratio: That FAR permitted as-of-right (a) as if the property were governed by the regulatory, environmental and zoning restrictions then in effect and applicable to the Industrial Park District, but not this South Hingham Development Overlay District, or, (b) in the case of office use, in excess of an FAR of 0.25, and in the case of any other as-of-right or Special Permit use, in excess of an FAR of 0.35, whichever is less. - 0.45 maximum by Special Permit

page 32-33

Accessory Use

Uses such as cafeterias, day care facilities, health and fitness facilities, education and training facilities, and similar facilities designed for the use of on-site employees shall be allowed as part of any use permitted as-of-right or by Special Permit. Further, up to fifteen percent (15%) of the gross first floor area of any structure may, as-of-right, be used for office, engineering or architectural supply stores, newsstands, bookstores, photocopy stores, and other retail services deemed by the Board of Appeals to be directly related to and supporting business activities within the Office Park District.

Dimensional Sign, and Parking Criteria

For properties zoned Office Park that are included within the Overlay District, the following modifications to Section IV-A, Schedule of Dimensional Requirements, pertaining to floor area ratio and maximum height shall apply; further, properties

within the Overlay District shall be subject to Section V-A, Off-Street Parking, and Section V-B, Signs, as noted below.

Section IV-A

Floor Area Ratio: 0.15 permitted as-of-right, 0.25 maximum by Special Permit A2

Maximum Height: forty-eight feet (48), but not more than four stories

b. South Hingham Development Overlay District Assessment

i. Industrial Park District: The rate of contribution for properties whose underlying zoning is Industrial Park shall be as follows:

For every square foot of gross floor area to be constructed above the gross floor area allowed (a) as if the property were governed by the regulatory, environmental and zoning restrictions then in effect and applicable to the Industrial Park District, but not this South Hingham Development Overlay District, or, (b) in the case of office use, in excess of an FAR of 0.25, and in the case of any other as-of-right or Special Permit use, in excess of an FAR of 0.35, whichever is less, a payment amounting to five percent (5%) of the building construction costs pertaining to that portion of the building(s) beyond what is allowed by-right shall be paid into a Traffic, Safety, and Infrastructure Improvement Fund. For the purposes of this Section, building construction costs shall be calculated using the upper quartile of square foot unit costs for "Factories" as noted in an appropriate annual edition of Building and Construction Cost Data published by the R.S. Means Company, Inc. of Kingston, Massachusetts.

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IV-A Schedule of Dimensional Requirements (continued)

minimum lot size
maximum height
maximum percentage
which may be covered by all buildings
minimum yard
dimensions

special requirements
applicable to
each district
area frontage feet stories front side rear

INDUSTRIAL DISTRICT

80,000 sq. ft. 200' 3 40% / floor area

ratio of 0.35 permitted;

0.50 allowed by Special Permit A2

40' 25' 25' 1, 3, 6

MIXED USE PROJECT IN INDUSTRIAL DISTRICT

All dimensional requirements for projects in the Industrial District authorized by a Mixed Use Special Permit under Section IV-G are set forth in Section IV-G.

RETAIL GROUP IN INDUSTRIAL DISTRICT

5 acres 300' 30' 30% / floor area

ratio 0.60

40' 30' 30' 1, 2, 3, 4, 6, 7, 8

INDUSTRIAL PARK DISTRICT

2 acres 250' 40' 40% / floor area

ratio 0.35 permitted;

0.45 allowed by Special Permit A2

35' 35' 50' 1, 2, 3, 6, 14

RETAIL GROUP IN INDUSTRIAL PARK DISTRICT
15 acres 500' 30' 20% 50' 50' 50' 1, 3, 4, 5, 6, 7, 8, 14
OFFICE PARK DISTRICT
5 acres 200' 35' Floor area
Ratio of 0.15
100' 50' 50' 5, 6, 14
LIMITED INDUSTRIAL PARK DISTRICT
2 acres 250' 30' not to
exceed 2
stories
30% / floor area
ratio of 0.35
35' 35' 50' 1, 2, 3, 6
OFFICIAL AND OPEN SPACE DISTRICT
20' 35' 10% 40' 40' 40' 1, 2, 5, 6, 15

Town: Hopkinton

Researcher: Terra

Planner: Elaine Lazarus

Phone: 508 497 9755

Email: elainel@hopkinton.org

Contact Status: Survey Completed. See below.

- [Some additional phone followup would help. See questions in brackets]
- May 28th: TF: See email from Planner below with survey answers.
- Friday May 15th: TF: Talked to the assistant that answered the phone.

Other Comments:

The assistant said that Next Generation has “expanded” recently. She said that there was a change in the zoning bylaw that seemed to be related to daycares. The change was so that application is not a special permit, but rather went through a special “Site Plan Review” process. She said that it “made a difference”. Not sure how/why. Will have to talk to Elaine. [Ask Elaine how this change helped]

The assistant said that I should also talk to Chuck, zoning enforcement officer, building inspector. ChuckK@hopkinton.org This was not done as of 5-28.

Specific Regulations:

<http://www.hopkinton.org/gov/clerk/bylaws/Chapter210.pdf>

Structures used for nonresidential purposes in said Districts shall not be erected to a height greater than 35 feet.

For non-residential users in residential areas: “The buffer shall be no less than 25 feet wide in a Residence A District; 50 feet wide in a Residence B and Residence Lake Front District; and 75 feet wide in an Agricultural District.”

Buffer areas shall remain in their natural state. If, in the opinion of the Planning Board, the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs, plantings or fencing may be required.

Parking: nothing about a “minimum”.

Child care facility 1 for every 10 children of rated capacity
[5-3-2004 ATM, Art. 29] of the facility plus 1 for each staff person
on the largest shift

Parking lots shall contain around the perimeter and in the interior at least one tree per eight parking spaces.

Interesting highway buffer requirement:

~ 210-119.2. Highway buffer. . [Added 5-2-2000 ATM, Art. 31, amended 5-7-2007 ATM, Art. 26]

On all lots which abut Interstate Routes 495 and/or 90, in every zoning district with the exception of the Rural Business and Industrial A and Industrial B Districts, there shall be a buffer adjacent to Interstate Routes 495 and 90 a minimum of 50 feet wide, measured from the edge of the highway right-of-way/property line. Buffer areas shall remain wooded, and no clearing of trees or other vegetation or the alteration of other landscape features shall be permitted. No buildings, sewage disposal systems, paved areas, athletic fields, active recreation areas or any other use which requires the clearing of trees or other vegetation or the alteration of other landscape features, with the exception of wireless communication facilities, will be permitted within the buffer area

TF: the assistant said that Article 20 was what they changed in response to the Dover challenge

http://www.hopkinton.org/gov/clerk/bylaws/Chapter210_XX.pdf

Title of Article: "Site Plan Review"

TF: It appears to be specifically designed for Dover.

Relevant Exerpts:

See also, planner's email below.

"MAJOR PROJECT -- Any construction project which requires new construction or will result in a change in the outside appearance or a change of use of a building or buildings or premises, and which includes one or more of the following:

- A. Construction of 1,500 or more square feet of gross floor area; or
- B. An increase in gross floor area by 50% or more which results in gross floor area of at least 1,500 square feet; or
- C. Grading or regrading of land to planned elevations and/or removal or disturbance of the existing vegetative cover, over an area of 5,000 square feet or more; or
- D. Construction, enlargement or alteration of a parking area containing 25 or more parking spaces."

It provides that:

"The Planning Board shall approve an application for site plan review if it finds that:

- A. The site plan conforms to the purpose and intent of this article and proposes an appropriate and beneficial development of the site;

- B. The surrounding area will be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, odors, dust and vibration and the preservation of adequate light and air;
- C. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways is ensured;
- D. Environmental features of the site and surrounding areas are protected;
- E. The site plan is consistent with the Master Plan;
- F. The proposed building scale and/or site development plan is consistent with the surrounding neighborhood; and
- G. All variances or special permits required from the Board of Appeals have been granted.
- H. Notwithstanding the above, regulation of uses and structures referred to in MGL c. 40A, ~ 3 shall be limited to the extent allowed under said section of the General Laws.”

EMAIL FROM PLANNER:

Date: Mon, 18 May 2009 10:50:42 -0400 [02:50:42 PM UTC]
From: "Elaine C. Lazarus" <elainel@hopkinton.org>
To: Terra Friedrichs <terra@citizenactionteam.org>
Subject: RE: [Massplanners] Daycare/Dover/FAR

Terra,

Hopkinton's answers:

1. * Does your town have a floor area ratio (FAR) limitation for child care facilities in residential zoning districts? If so, what is that limitation?

Answer: No

2. Does your town impose any other dimensional controls on child care facilities in residential districts? If so, what are the other limitations?

Answer: Yes, but not only for child care - applies to all non-residential uses in residential districts.

3. Please provide the following information:

- town Hopkinton
- town manager contact info Position vacant, current Interim
Town Manager: Clayton Carlisle 508-497-9700
- town planner contact info Elaine Lazarus - 508-497-9755 -
elainel@hopkinton.org
- * zoning bylaw language, including the section number

210-121.1 - Buffers around nonresidential uses in residential districts

- see bylaw

- web link to the zoning language, if the zoning language is online http://www.hopkinton.org/gov/clerk/bylaws/Chapter210_XVIII.pdf

4. * Has the zoning bylaw on child care facilities been challenged in court? If so, what was the result? (if you have copies of news articles or documents providing details, please include)

Answer: Not applicable. However, site plan review, as it applied to child care facilities was challenged in court. The town has subsequently changed its site plan review bylaw to accommodate all exempt (i.e. Dover amendment) uses.

5. Has the town's Zoning Board of Appeals made any determination in the past that set aside or waived the local zoning bylaw for child care facilities in light of the M.G.L. Chapter 40A, S. 3 exemption (Dover Amendment). If so, what were the grounds for vacating the local zoning bylaw.

Answer: No

6. Has the town's Zoning Board of Appeals granted any variances for child care facilities? If so, what were the nature of the variance and the reasons for granting them.

Answer: No

Elaine Lazarus
Hopkinton Planning Director

Terra,

I do not recall stating that Hopkinton got an exempt use to be "more reasonable", but we have structured our site plan review procedure so that the uses are not exempt from it by virtue of their use. Hopkinton requires that ALL non-residential projects which meet the following thresholds go through the site plan review process:

Major Project - Any construction project which requires new construction or will result in a change in the outside appearance or a change of use of a building or buildings or premises, and which includes one or more of the following: 1) Construction of 1,500 gross floor area (gfa) or more; or 2) an increase in gfa by 50% or more which results in gfa of at least 1,500 sf; or 3) grading or re-grading of land to planned elevations and/or removal or disturbance of the existing vegetative cover, over an area of 5,000 sf or more; or 4) construction, enlargement or alteration of a parking area containing 25 or more parking spaces.

Minor Project - Any construction project or change of use, not included within the definition of a "major project" which includes one or more of the following: 1) a change in the outside appearance of a building or premises, visible from a public or private street, requiring a building permit; or 2) construction, enlargement or alteration of a parking area containing 5 or more parking spaces.

Then, in the bylaw's approval criteria, there is one at the end which states "Notwithstanding the above, regulation of uses and structures referred to in MGL c.40A, sec. 3 shall be limited to the extent allowed under said section of the General Laws."

Major projects require a public hearing with newspaper publication and abutter notification, etc. and minor projects have a shorter time frame and only require that abutters be notified of a public meeting at which the project will be discussed.

So this is how Hopkinton has handled it - most of the uses need to go through site plan review, where most (but not necessarily all) of the issues can be addressed and worked out, depending on the 40A sec. 3 language. There was one project where the Planning Board wanted the use to be reduced in size but was not successful, and indeed had no supportable grounds to force it to do so. However, they were able to modify the design of the building and parking area/traffic pattern through negotiation with the applicant. There was another project proposed where the dimensional requirements just could not be met, and the proponent eventually withdrew the application.

The most typical changes we see as a result of site plan review are internal traffic pattern improvements, stormwater management, building design and landscaping/screening/lighting changes. Projects reviewed and approved include churches, day care centers and schools.

I hope this is helpful.

Elaine Lazarus

-----Original Message-----

From: Terra Friedrichs [mailto:terraf@compuserve.com]

Sent: Thursday, May 28, 2009 2:16 PM

To: Elaine C. Lazarus

Subject: quick question, dover

Thank you for your help thus far...

My notes say that with site plan review, you got your Dover project to

be "more reasonable". I can't figure out how that note got into my list of things to check on. But I'm wondering if you think this is true:

- How effective has Site Plan Review been in getting Dover projects to be more reasonable?

And can you describe what changes you got, using the process? Like did the project go from 20,000 sq ft to 5,000 sq ft?

I'm sorry for all the questions. I hope this research is worth the trouble...

Terra
Acton

Elaine C. Lazarus wrote:

- > Terra,
- >
- > The day care center (Next Generation Children's Center) that was
- > eventually approved (and built) was about 20,000 sq. ft. The Planning
- > Board recently approved a 5,860 sq. ft. addition to it, which is under
- > construction.
- >
- > The one that was withdrawn was 19,700 sq. ft. and it did not meet the
- > requirements for parking and for a perimeter buffer of 50 ft. A buffer
- > around non-residential uses in residential zoning districts of 25 to 75
- > feet is required (depending on the district). The Planning Board has
- > the ability to waive it under certain circumstances.
- >
- > Elaine Lazarus

Town: Lexington

Researcher: TF

Planner's Name: Maryann McCall-Taylor x242

Planner's Phone: 781-862-0500 Ext. 245

Planner's Email: mmccall@ci.lexington.ma.us

Aaron Henry, Senior Planner, ahenry@ci.lexington.ma.us

Contact Status:

5-28: TF: Online, emailed planner.

Other Comments:

New email from planner:

Maryann McCall-Taylor
Planning Director
Town of Lexington
1625 Massachusetts Avenue
Lexington, MA 02420
(781) 862-0500 x242

When writing or responding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

-----Original Message-----

From: Terra Friedrichs [mailto:terraf@compuserve.com]
Sent: Thursday, May 28, 2009 4:43 AM
To: Maryann McCall-Taylor; Aaron Henry
Subject: Dover Amendment Research, need input asap

Maryann/Aaron,

Can you take a couple minutes and do what you can to answer the following questions? We'll share the results...

This message has gone out over the planner's listserv and the MMA Town Manager's list. We are looking to get info by the end of the week, if possible by Thursday...

Terra

-----Forwarded Message-----

From: terraf, terraf
To:
CC: terraf, [102533,3476]

Date: 5/14/2009 4:33 PM

RE: Dover Amendment research letter

Dear Planner/Town Official,

Our town (Acton) is considering amending the zoning bylaw applicable to child care facilities in residential zoning districts, so we are assembling information on how other towns have zoned for these facilities.

We would greatly appreciate your help in answering the following questions (* priority questions):

1. * Does your town have a floor area ratio (FAR) limitation for child care facilities in residential zoning districts? If so, what is that limitation? Not within residential zones

2. Does your town impose any other dimensional controls on child care facilities in residential districts? If so, what are the other limitations? Only those limitations that apply to residences for setbacks and height.

3. Please provide the following information:

- town Lexington
- town manager contact info Carl Valente; 781-862-0500 ext. 275; cvalente@ci.lexington.ma.us
- town planner contact info Maryann McCall-Taylor; 781-862-0500 ext. 242; mmccall@ci.lexington.ma.us
- * zoning bylaw language, including the section number
- web link to the zoning language, if the zoning language is online <http://www.lexingtonma.gov/planning/Bylaws-Regs/2008%20Zoning%20Bylaw.pdf>

4. * Has the zoning bylaw on child care facilities been challenged in court? If so, what was the result? (if you have copies of news articles or documents providing details, please include) No

5. Has the town's Zoning Board of Appeals made any determination in the past that set aside or waived the local zoning bylaw for child care facilities in light of the M.G.L. Chapter 40A, S. 3 exemption (Dover Amendment). If so, what were the grounds for vacating the local zoning bylaw. Child care facilities are allowed by right everywhere in town. Family day care in a commercial zone requires a special permit (dwelling units would not be an allowed use in commercial districts)

6. Has the town's Zoning Board of Appeals granted any variances for child care facilities? If so, what were the nature of the variance and the reasons for granting them. Not that I know of.

Thank you for your help in this. We will be forwarding the results of our research to the towns that help in the project. We are on a fast turn around for this information. If you can't provide it all, if you can just jot down what you know in your head, and send it back, that would be great. It would at least give us "something" to work with...

Terra

~~*~*

Terra Friedrichs
Member, Acton Board of Selectmen
Resident, West Acton Village
terra@citizenactionteam.org
bos@acton-ma.gov
Town Hall: 978 264 9612
Personal: 978 266 2775

Specific Regulations:

<http://ci.lexington.ma.us/planning/bylaws.cfm>

<http://ci.lexington.ma.us/planning/Bylaws-Regs/2008%20Zoning%20Bylaw.pdf>

Relevant Exerpts:

Certain districts require a special permit for daycare/childcare.

C. Determination of maximum floor area for a structure with a child care facility. The floor area of any structure shall be measured exclusive of any portion of such structure in which a day-care center or school age child care program (See definitions.) is to be operated as an accessory or incidental use, and the otherwise allowable floor area of such structure shall be increased by an amount equal to the floor area of such child care facility up to a maximum increase of 10%. In any case where the otherwise allowable floor area of a structure has been increased pursuant to the provisions of this section, the portion of such structure in which a child care facility is to be operated as an accessory or incidental use shall not be used for any other purpose unless, following the completion of such structure, the Board of Appeals shall have granted a variance, with the written concurrence of the State Office for Children, that the public interest and convenience do not require the operation of such facility. (See also Chapter 40A, § 9C, the Zoning Act, MGL, as amended for other provisions dealing with child care facilities operated as an accessory or incidental use.) [Added 3-27-1991 ATM by Art. 33]

TF: this is clever:

C. Description, purpose of districts.

(1) Residential districts. Each of the residential districts is intended to secure for residents a pleasant environment retaining as many natural features as possible and secure from the intrusion of incompatible and disruptive activities that belong in other zoning districts.

(a) RO One-Family Dwelling; RS One-Family Dwelling: are intended to be districts with a low density of development providing housing for families with children and small households with related public and institutional uses.

(b) RT Two-Family Dwelling: is intended to be a district with a low density of development providing housing for both families and small households and

opportunities for both ownership and rental.

Table of dimensions: (page 135)

In the RO district (residential)

Maximum percentage site coverage 15% (with special permit)

i. For institutional uses (see Table 1, lines 2.11 through 2.19), the maximum floor area ratio shall be 0.25.

A. The maximum height of a building shall not exceed either the distance in feet or the number of stories, whichever is less, set forth in Table 2 for the district in which the building is located.

Parking Factor (minimum number of parking spaces to be provided)

Day-care center, school age child care program, nurseryschool, kindergarten
1/500 s.f.

Definitions:

FAMILY DAY-CARE HOME -- Any private residence which on a regular basis receives for temporary custody and care during part or all of the day children under seven years of age, or under 16 years of age if such children have special needs; provided, however, in either case, that the total number of children under 16 in a family day-care home shall not exceed six, including participating children living in the residence, and as further described in Chapter 28A, § 9, MGL, as amended. Family day-care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. (See also day-care center.) [Added 3-27-1991 ATM by Art. 33]

SCHOOL AGE CHILD CARE PROGRAM -- Any program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is not more than 14 years of age, or 16 years of age if such child has special needs. Such a program may operate before and after school and may also operate during school vacation and holidays. It provides for a planned daily program of activities that is attended by children for specifically identified blocks of time during the week, usually over a period of weeks or months, and as further described in Chapter 28A, § 9, MGL, as amended. (See also day-care center.) [Added 3-27-1991 ATM by Art. 33]

E. Limited exemptions from zoning. [Added 3-27-1991 ATM by Art. 30]

(1) Religious, nonprofit educational institutions. The use of land or structures for religious purposes or for educational purposes on land owned or leased by a religious sect or denomination or by a nonprofit educational corporation, as described in Chapter 40A, the Zoning Act, § 3, MGL, is permitted as a matter of right in all zoning districts. Such land or structures are subject to reasonable regulations concerning the bulk and height of structures, yard sizes, lot area,

setbacks, open space, parking and building coverage requirements as set forth in this bylaw.

(2) Child care facilities. [Added 3-27-1991 ATM by Art. 33]

(a) The use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility is permitted as a matter of right in all zoning districts. Such land or structures are subject to regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this subsection, the term "child care facility" shall mean a day-care center or a school age child care program, as those terms are defined in § 135-8 of this bylaw and as further described in Chapter 28A, § 9, MGL, as amended.

(b) A family day-care home (See definition.) for not more than six children is not covered by the partial exemption from zoning regulations afforded by Chapter 40A, § 3, the Zoning Act, MGL, as amended and is subject to the provisions of this bylaw.

Town: Lincoln, MA

Mark Whitehead
Town Planner
781-259-2610

Talked to Mark on 18 May 2009.

Mark stated that they were not really concerned about the Dover Amendment,

There were two recent situations documented in the local paper which he failed to mention.

The Korean Hope Church recently invoked the Dover Amendment on Acorn Lane. Their preliminary site plan included parking for 83 cars and a 6,000 square-foot building to contain 250 seats on a 1.85 acres plot. According to the article in the newspaper "Neighborhood opposition and the budget-busting cost of bringing a water main from Bedford Road large enough for the building's required sprinkler system proved insurmountable".

Another situation was the Corwin-Russell School who expressed interest in purchasing six acres at 44 Baker Bridge to accommodate fifty 6-12 graders having varied learning styles. A neighborhood drive resulted in raising \$500,000 towards the \$1.2 million asking price. The Rural Land Foundation financed the balance and will purchase the property. A condition of the sale was that the four abutters have a deed restriction that none of the properties can be sold to a 501c3 non profit organization and must remain single-family residences.

Town: Littleton

Maren Toohill
Permit Coordinator/Planning Administrator
978-486-9733
toohell@littletonma.org

Spoke to Maren on 19 March 2009

MGL 40A sec 3 included by reference in town by-laws.

Have had no contested request for religious or day care use permits. Did authorize a day care which has just opened for business, The Learning Experience. This facility is located at 206 Great Road in Littleton. It is an 11,000 square foot structure located on a 4 acre lot. It went through the site plan process and Planning Board. The town only concerns were in regard to parking and access. These areas were mutually resolved. There were no FAR restrictions.

Town: Milford

Planner's Name: Larry L. Dunkin

Planner's Phone: 508-634-2317

Planner's Email: ldunkin@townofmilford.com

Contact Status:

Email sent – 5/30/09 DAC

Email Received – 6/1/09 DAC

Other Comments:

Larry Dunkin said that there are no regulations, that the town is wide open to those sorts of developments.

<http://www.milford.ma.us/zoning-by-laws.pdf>

1. * Does your town have a floor area ratio (FAR) limitation for child care facilities in residential zoning districts? **NO.**
2. Does your town impose any other dimensional controls on child care facilities in residential districts? **NO.**
3. Please provide the following information:
 - town manager contact info **Louis J. Celozzi, Town Administrator**
 - town planner contact info **Larry L. Dunkin, AICP, Town Planner**
4. * Has the zoning bylaw on child care facilities been challenged in court? **NO.**
5. Has the town's Zoning Board of Appeals made any determination in the past that set aside or waived the local zoning bylaw for child care facilities in light of the M.G.L. Chapter 40A, S. 3 exemption (Dover Amendment). **NO.**
6. Has the town's Zoning Board of Appeals granted any variances for child care facilities? **NO.**

Specific Regulations:

Relevant Exerpts:

Zoning by laws

www.milford.ma.us/zoning-by-laws.pdf

A link to this site appears at:

www.milford.ma.us/planning.htm

Town: Needham

Researcher: TF

Planner's Name:

Lee Newman, Planning Director
Alexandra Clee, Assistant Planner

Planner's Phone: (781) 455-7526

Planner's Email: none available on website (!)

<http://www.needhamma.gov/index.aspx?NID=1149>

Contact Status:

5-28: online only

Other Comments:

Specific Regulations:

A pain to search, because each section is a different page:

<http://www.needhamma.gov/index.aspx?NID=1614>

Relevant Exerpts:

Childcare facilities appear to be allowed in all districts.

See use table:

<http://www.needhamma.gov/DocumentView.aspx?DID=1998>

4.2.7 Reductions in Dimensional Regulations by Special Permit

In Single Residence A, Single Residence B and General Residence Districts, the minimum front setback and the minimum side and rear line setback requirements for a building or structure devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, may be reduced by special permit granted by the Board of Appeals in accordance with Section

4.2.1. In acting upon such applications for such reductions, the Board shall consider the following, in addition to the criteria for special permits generally (Section 7.5.2):

(a) Whether, and by how much, building scale will exceed nearby structures,

- (b) whether, and by how much, shadowing on abutting land or streets will be increased, or privacy will be diminished,
- (c) whether any resulting building prominence is appropriate, in light of the functional or symbolic role of the structure,
- (d) whether there are fire protection concerns created by the reduction,
- (e) whether the requested reduction is necessary for the proposal to proceed, and
- (f) what the community benefits are from the proposal, including consideration of taxes, employment, and service.

4.2.8 Screening for Public, Semi-Public and Institutional Uses

4.2.8.1 Transition Areas

Where a building or structure devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, is to be placed within a Rural Residence-Conservation, Single Residence A, Single Residence B or General Residence District, a landscaped transition and screening area shall be provided along those segments of the lot lines necessary to screen the public, semi-public or institutional use from buildings located on abutting lots. The transition area shall be at least twenty-five (25) feet wide, as measured at its narrowest point, and shall be suitably landscaped as specified at Section 4.2.8.3. The transition area may be provided within the minimum yard required for a building.

4.2.8.2 Use of Transition Areas

Only necessary driveways or interior drives shall be located across a required transition area. No building, structure, parking area, play area or interior street may be located in this transition area. A transition area may be used for passive recreation; it may contain pedestrian, bike or equestrian trails, provided they do not reduce the effectiveness of the transition area as a year-round visual screen. No other uses are permitted in a transition area.

(a) Buildings and structures on any lot in a Single Residence A District devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, shall have a minimum front yard setback of thirty-five (35) feet. The setback area shall be kept open and landscaped with grass or other plant materials; such area shall be unpaved except for walks and driveways. The Board of Appeals may grant a special permit reducing the minimum front yard setback required by this footnote to no less than thirty (30) feet. (See Section 4.2.7)

(b) Buildings and structures on any lot in a Single Residence B or General Residence District devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, shall have a minimum front yard setback of twenty-five (25) feet. The setback area shall be kept open and landscaped with grass or other plant materials; such area shall be unpaved except for walks and driveways. The Board of Appeals may grant a special permit reducing the minimum front yard setback required by this footnote to no less than twenty (20) feet. (See Section 4.2.7)

(c) Buildings and structures on any lot in a Single Residence B or General Residence District devoted to a public, semi-public or institutional use, as listed in Section 3.2. Schedule of Use Regulations, shall have a minimum side yard setback of twenty-five (25) feet. The Board of Appeals may grant a special permit reducing the minimum side yard setback required by this footnote to no less than twenty (20) feet. (See Section 4.2.7)

(d) Buildings and structures on any lot in a Single Residence A, Single Residence B or General Residence District devoted to a public, semi-public or institutional use, as listed in Section 3.2. Schedule of Use Regulations, shall have a minimum rear yard setback of twenty-five (25) feet. The Board of Appeals may grant a special permit reducing the minimum rear yard setback required by this footnote in a Single Residence A District to no less than fifteen (15) feet and the minimum rear yard setback required by this footnote in Single Residence B and General Residence Districts to no less than ten (10) feet. (See Section 4.2.7)

(e) Buildings and structures on any lot in a Rural Residence-Conservation, Single Residence A, Single Residence B or General Residence District devoted to a public, semi-public or institutional use, as listed in Section 3.2. Schedule of Use Regulations, shall have a maximum Floor Area Ratio of 0.30.

(f) Buildings and structures on any lot in a Single Residence A, Single Residence B or General Residence District devoted to a public, semi-public or institutional use, as listed in Section 3.2 Schedule of Use Regulations, shall not cover more than fifteen (15) percent of the lot area.

(k) Except where lesser lot coverage is required in another provision of the By-Law, in the Single Residence B District, building and structures created on any lot through "New Construction" shall not result in lot coverage exceeding the following specified maximum percentages of the area of such lot: For lots containing less than 5,500 square feet – 30%; For lots containing at least 5,500 square feet but less than 6,000 square feet – 29%; For lots containing at least 6,000 square feet but less than 6,500 square feet – 28%; For lots containing at least 6,500 square feet but less than 7,000 square feet – 27%; For lots containing at least 7,000 square feet but less than 7,500 square feet – 26%; and For lots containing at least 7,500 square feet – 25%.

In the General Residence District, building and structures created on any lot through "New Construction" shall not result in lot coverage exceeding the following specified maximum percentages of the area of such lot:

For lots containing less than 7,000 square feet – 35%; For lots containing at least 7,000 square feet but less than 7,500 square feet – 34%; For lots containing at least 7,500 square feet but less than 8,000 square feet – 33%; For lots containing at least 8,000 square feet but less than 8,500 square feet – 32%; For lots containing at least 8,500 square feet but less than 9,000 square feet – 31%; For lots containing at least 9,000 square feet – 30%. For purposes of this section lot coverage shall be defined as that portion of a lot that is covered or occupied by buildings or structures, but excluding

*unenclosed porches and decks, and pools. This requirement shall not apply to buildings and structures on any lot in a Single Residence B or General Residence District devoted to a public, semi-public or institutional use as listed in Section 3.2 Schedule of Use Regulations which uses are governed by footnote (f) herein.**

**As used in footnotes (g), (i), (j), and (k) of the Table of Regulations the terms “New Construction” shall be defined as any one or any combination of the following: (a) Any construction of a structure on a vacant lot; (b) Any construction which involves demolition of more than 50% (fifty percent) of the exterior frame or exterior envelope of an existing structure; (c) Any addition to an existing onestory structure which results in a gross floor area greater than 240% (two hundred forty percent) of the gross floor area of the existing structure; (d) Any addition to an existing one and one-half story structure which results in a gross floor area greater than 220% (two hundred twenty percent) of the gross floor area of the existing structure; and (e) Any addition to an existing two-story or two and one-half story structure which results in a gross floor area greater than 175% (one hundred seventy five percent) of the gross floor area of the existing structure. Gross floor area for purposes of this definition is as defined in Section 1.3 of the Zoning By-Law under the heading “Floor Area, Gross”. For purposes of calculating the percentages of any construction, addition or demolition under this definition, all construction shall be taken into account which commenced, or could have commenced, pursuant to an issued permit within two (2) years prior to the date of any request for any permit to construct, re-construct, alter, add, extend or otherwise structurally change any structure.*

Town: Newton

Zoning Ordinance Online:

<http://www.ci.newton.ma.us/legal/ordinance/Chapter-30.pdf>

Relevant Excerpts:

Child-Care Facilities:

Family child care home, large family child care home, and day care centers are allowed in all districts, subject to the following provisions:

Chapter 30-5(a)(3)

- a) Purpose: The purpose of this subsection is to accommodate child care needs of the general public in all areas of the city, to distinguish between family child care homes and day care centers which are more intensely used, to encourage larger facilities to co-locate within other existing large institutions, to encourage safe access to and egress from the site, and to minimize potential congestion at drop-off and pick-up times.
- b) Family child care homes and large family child care homes shall comply with the parking requirements of section 30-19 and the dimensional requirements of section 30-15, Table 1 [Residence Districts] or Table 3 [Commercial Districts] as applicable, except that the minimum lot size shall be 5,000 square feet.
- c) Day care centers as defined by section 30-1, accessory to religious and non-profit educational institutions, shall comply with the parking provisions of section 30-19 and the institutions in whose premises they are located shall comply with the dimensional requirements of section 30-15, Table 2 [Religious and Non-Profit Educational Uses].
- d) Day care centers as defined by section 30-1, which are not accessory to religious and non-profit educational institutions, shall follow the procedures and criteria for review under section 30-5(a)(2), meet the dimensional requirements including minimum lot area in section 30-15, Table 1 [Residence Districts] for lots created after December 7, 1953, or Table 3 [Commercial Districts] as applicable, and meet the provisions and standards set forth below:
- i) *Landscaping:* A dense year-round vegetative buffer at least four (4) feet wide and six (6) feet high shall be provided along the perimeter of any outdoor play area. Any fence required by the Office for Child Care Services shall be located inside the required vegetative buffer. All landscaping that is required under this provision shall be maintained in good condition and, if diseased or dying, shall be replaced by the operator of the facility with new plant material of a similar size.

ii) *Parking*: Day care centers shall comply with the parking requirements of section 30-19 as applicable, except that in a residential district, there shall be provided a dense year-round vegetative buffer with dimensions as described in section 30-5(a)(3)d)i) above. Day care centers shall comply with the provisions of section 30-19(i) relating to the screening of parking areas, excepting the dimensions stated therein for the vegetative buffer.

iii) *Drop-off*: In addition to complying with the parking requirements of section 30-19, there shall be provided for drop-off and pick-up at least one (1) on-site parking space for each five (5) children or fraction thereof. Such parking spaces shall comply with the applicable parking setback requirements and parking dimensional and design standards of section 30-19(g) or (h).

iv) *Compliance with Office for Child Care Services Regulations*: Until the operator of a day care center provides to the director of planning and development evidence of current valid licensure by the Office for Child Care Services, the day care center shall not be eligible for issuance of a certificate of occupancy, but shall be eligible for issuance of a temporary certificate of occupancy if the commissioner of inspectional services upon review certifies that the day care center is in compliance with all other applicable requirements.

v) *Parking management and compliance plan*: The operator of a day care center shall submit to the director of planning and development a parking and drop-off management plan which shall outline where and when staff shall park as well as the alleviation of potential congestion during peak drop-off and pick-up times as required herein. Said plan shall be reviewed by the city traffic engineer, and his recommendations shall be sent to the director of planning and development. Upon completion of said review process, the director of planning and development shall indicate, in writing, to the commissioner of inspectional services whether there has been compliance by the operator with the procedural requirements stated herein, and whether, in his opinion, the owner has complied with the dimensional regulations of section 30-15 and the parking regulations of section 30-19. This statement shall be made within sixty (60) days after receipt of the parking management and compliance plan.

vi) *Trash location and screening plan*: The operator of a day care center shall also submit to the

director of planning and development a trash location and screening plan which shall provide the precise means and location of trash collection and removal for the site as well as screening therefor to alleviate health and aesthetic concerns.

General Dimensional Requirements:

Newton has a large number of residential districts, including both single residence and multi-residence districts. For lots created after 1953, dimensional requirement ranges are as follows:

Single Residence Districts:

Min. Lot Area: 10,000 – 25,000 SF

Min. Setbacks (in feet):

Front: 30-40

Side: 10-20

Rear: 15-25

Max. FAR: .2 - .35

Max. Lot Coverage: 15-30%

Multi-Residence Districts:

Min. Lot Area: 10,000 SF

Min. Setbacks (in feet):

Front: 15-30

Side: 7.5-10

Rear: 15

Max. FAR: .4

Max. Lot Coverage: 30%

Town: Norfolk

Bylaw Online:

http://www.virtualnorfolk.org/public_documents/F0001937C/F0001939A/F000193E1/zoningbylaws

Relevant Excerpts:

Norfolk allows child-care facilities in all districts, but limits them to 2,500 square feet in the definition of “child care facility.” Norfolk Zoning Bylaw § B. (“CHILD CARE FACILITY - A day care center or school age child care program as those terms are defined in G.L. c. 28A, Section 9; provided that the ground area covered by the BUILDING in which such business is located does not exceed 2,500 square feet.”)

Norfolk apparently did not change this bylaw provision after the Rogers case, in which the footprint limitation was declared facially valid, but unreasonable as applied to the plaintiff’s project. Rogers v. Town of Norfolk, 432 Mass. 374 (2000).

Dimensional regulations for zoning districts are as follows:

District	Residence 1	Residence 2	Residence 3	Business 2-4	Commercial 2, 3, 5
Minimum Lot Size (sq. ft.)	30,000	43,560	55,000	30,000	30,000
Minimum frontage (in feet)	150	200	200	150	150
Required Circle (in feet)	150	200	200		
Minimum yard setback (in feet)					
Front	50	50	50	25	50
Side	25	25	25	25	25
Rear	25	25	25	25	25
Maximum Lot Coverage**	25%	25%	25%	30%*	30%*
Maximum Building Height					
Stories	2-1/2	2-1/2	2-1/2		
Feet	35	35	35	40	40

** Including ACCESSORY BUILDINGS

Town: North Andover

Planner's Name: [Judith M. Tymon, AICP](#)

Planner's Phone: 978-688-9535

Planner's Email: JTymon@townofnorthandover.com

Contact Status:

5-28 TF: Online, emailed planner

Other Comments:

Specific Regulations:

http://www.townofnorthandover.com/Pages/NAndoverMA_planning/ZoningBylaw-FinalAll.pdf

Relevant Exerpts:

Daycare allowed in residential districts by special permit.

Table of dimensions (p 188) seems to have pretty low “coverage” ratios, 20% in one residential district. But the FARs seem to be WAY high... 75% (?)

Town: Northbridge

Planner's Name: Gary Bechtholdt

Planner's Phone: (508) 234-2447

Planner's Email: gbechtholdt@northbridgemass.org

Contact Status:

Email sent – 5/30/09

Phone call – 6/31/09

Other Comments:

Per Gary Bechtholdt they have no FAR regulations at all, nor any regulations concerning daycare centers or pre-schools. He did know that the pre-schools were an exempt usage, and I mentioned that within reasonable usage per a court decision. I asked him what they would do if a large pre-school organization wanted to build in a residential area, and he said they would do nothing. They don't even have any strict regulations about residential areas. As he said, it is pretty wide open in terms of controls. They are south of Worcester down near the Rhode Island border.

Specific Regulations:

None

Relevant Exerpts:

Zoning by laws at:

www.northbridgemass.org/pdf/zoning_chapter_173_town_of_northbridge.pdf

A link to this site is at

www.northbridgemass.org.planbrd.htm

Town: Sherborn

Researcher: TF

Planner's Name: Gino Carlucci

Planner's Phone: 508-651-7855

Planner's Email: info@sherbornma.org

planning@sherbornma.org

moderator: cclincoln@comcast.net

http://planning.sherbornma.org/town_planner.htm

<http://sherplan.blogspot.com/>

Contact Status:

5-28: TF: Online, emailed planner.

Other Comments:

Email from Planner:

Hi Terra, I will answer the questions below as best I can on behalf of Sherborn. However, if you have not already contacted the Town of Norfolk, you should do so or look up its case from about 10 years ago. They had imposed a maximum size limit of 2500 square feet for a child care facility. The bylaw was challenged and overturned in court. I believe the decision was based on the Dover amendment.

Thanks,

Gino Carlucci
Town Planner
19 Washington St
Sherborn MA 01770

-----Original Message-----

From: Terra Friedrichs [<mailto:terraf@compuserve.com>]

Sent: Thursday, May 28, 2009 4:46 AM

To: Gino Carlucci

Subject: Dover Amendment Research, need input asap...

Gino,

Can you take a couple minutes and do what you can to answer the following questions? We'll share the results...

This message has gone out over the planner's listserv and the MMA Town Manager's list. We are looking to get info by the end of the week, if possible by Thursday...

Terra

-----Forwarded Message-----

From: terraf, terraf
To:
CC: terraf, [102533,3476]
Date: 5/14/2009 4:33 PM
RE: Dover Amendment research letter

Dear Planner/Town Official,

Our town (Acton) is considering amending the zoning bylaw applicable to child care facilities in residential zoning districts, so we are assembling information on how other towns have zoned for these facilities.

We would greatly appreciate your help in answering the following questions (* priority questions):

1. * Does your town have a floor area ratio (FAR) limitation for child care facilities in residential zoning districts? If so, what is that limitation? -- **No.**
2. Does your town impose any other dimensional controls on child care facilities in residential districts? If so, what are the other limitations? -- **Dimensional controls are the same as any other building. We do have a minimum requirement for 10 parking spaces (This is a flawed requirement as it bears no relationship to the size of the facility.)**
3. Please provide the following information:
 - town -- Sherborn
 - town manager contact info -- Dan Keyes, 508-651-7850
 - town planner contact info -- Gino Carlucci, 508-651-7855
 - * zoning bylaw language, including the section number -- Section 3.2 14)

14) Private School -- **This use is permissive in all districts.**
Day care center, private elementary or secondary school, charitable or philanthropic institution, but not a hospital, rest home or sanitorium (except as permitted by paragraph 13):

13) Educational - This use is allowed in all districts.
Educational purpose on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a non-profit educational corporation. *(Amended 1973 and 1978)*

It should be noted that this language has not been challenged in court. However, several years ago we added a table of uses to the Zoning Bylaw and the Attorney General made us delete the "P" in the table next to this use because "permissive" in our bylaw means by special permit and the use has to be "by right."

- web link to the zoning language, if the zoning language is online --
<http://sherbornma.org/2008%20Zoning%20Bylaw%20with%204.2.pdf>

4. * Has the zoning bylaw on child care facilities been challenged in

court? If so, what was the result? (if you have copies of news articles or documents providing details, please include) -- **No, but see comment above re: Norfolk**

5. Has the town's Zoning Board of Appeals made any determination in the past that set aside or waived the local zoning bylaw for child care facilities in light of the M.G.L. Chapter 40A, S. 3 exemption (Dover Amendment). If so, what were the grounds for vacating the local zoning bylaw. -- **Not that I am aware of.**

6. Has the town's Zoning Board of Appeals granted any variances for child care facilities? If so, what were the nature of the variance and the reasons for granting them.-- **Not that I am aware of.**

Thank you for your help in this. We will be forwarding the results of our research to the towns that help in the project. We are on a fast turn around for this information. If you can't provide it all, if you can just jot down what you know in your head, and send it back, that would be great. It would at least give us "something" to work with...

Terra

~~*~*

Terra Friedrichs
Member, Acton Board of Selectmen
Resident, West Acton Village
terra@citizenactionteam.org
bos@acton-ma.gov
Town Hall: 978 264 9612
Personal: 978 266 2775

Specific Regulations:

<http://sherbornma.org/2008%20Zoning%20Bylaw%20with%204.2.pdf>

Relevant Exerpts:

Private School - This use is permissive in all districts. Day care center, private elementary or secondary school, charitable or philanthropic institution.

TF: page: 20 Setbacks in residential areas are 60 ft in front and 30 or 40 feet from side.

TF: It appears that the minimum lot size for a residential lot is 1 acre.

TF: no special permits in residential areas unless:

d) **Lot Size** The Section 4.4 Lot shall contain at least twice the required minimum lot size of the residence district in which it is located.

e) **Additional Setbacks** Each building greater than 160 gross square feet on the Section 4.4 Lot shall have the following minimum setback from each street and lot line (in lieu of those specified in Section 4.2):

- 1) 100 feet in Residence A
- 2) 125 feet in Residence B
- 3) 150 feet in Residence C

Other special permit rules:

b) Lot Location

No special permit shall be granted for any land which is more than one mile by public way

from the intersection of Main and Washington Streets unless at least 25% of such property is within the Business G or Business P districts as shown on the Zoning Map of Sherborn. Locations should be readily accessible to shopping, transportation, and other public facilities and services used by the elderly.

f) Architectural Design

The architectural scheme shall be harmonious within the project with respect to choice of materials, colors, style, detailing and massing, but rigidity and monotony are to be avoided by use of variations in building size, height, location, and rooflines and the judicious arrangement of landscaping elements and site features. The project shall also be harmonious with the surrounding buildings and insofar as is appropriate for the particular location, consistent with the architectural traditions of the Town.

Town: Wellesley

Researcher: AS and TF

Planner's Name:

Hans Larsen, Executive Director
Meghan Jop, Planning Director

Planner's Phone: (781) 431-1019 X2232

Planner's Email: mjop@wellesleyma.gov

Contact Status:

5-28: Survey complete

Other Comments:

AS: The Town of Wellesley ZBA in 2008 rejected a 'french language immersion' daycare on the grounds it violated too much of their zoning because it was too large for specified site...if you google Wellesley, zba, dover amendment it will come up - I don't know what happened after - but a town zba can reject a 'daycare' project as 'unreasonable'

Specific Regulations:

http://www.wellesleyma.gov/Pages/WellesleyMA_Planning/ZB/SectionII.pdf

Relevant Exerpts:

More from Meghan:

Since we have placed the limit on the size, we really haven't been challenged, nor have we had any lawyers to date question it. It could simply be a that we haven't had a new center built yet. So we really don't have any evidence that it will be considered reasonable if challenged.

Meghan

-----Original Message-----

From: Terra Friedrichs [mailto:terraf@compuserve.com]

Sent: Thursday, May 28, 2009 4:08 PM

To: Jop, Meghan

Subject: dover, quick question

Your 2,500 sq ft FAR limit for Dover projects. You said in your "survey" that this has not been challenged. Have you actually had Dover developers "sniff around"? Like have you noticed that they have come, seen it, and respected it? Or do you think that you just haven't been targeted yet for one of these 20,000 sq ft projects? I'm wondering if there's an evidence as to whether it's considered "reasonable"...

Terra

Quoting "Jop, Meghan" <mjop@wellesleyma.gov>:

1. * Does your town have a floor area ratio (FAR) limitation for child care facilities in residential zoning districts? If so, what is that limitation? Yes -2500 square feet
2. Does your town impose any other dimensional controls on child care facilities in residential districts? If so, what are the other limitations?

Answer: Yes see below:

- Section II. Single Residence Districts

http://www.wellesleyma.gov/Pages/WellesleyMA_Planning/ZB/SectionII.pdf

3A. Child Care Facility (defined to mean a "day care center" or a "school age child care program," as those terms are defined in Section 9 of Chapter 28A M.G.L.) provided that:

- a. The structure containing such facility and the lot containing such facility shall meet the dimensional zoning requirements for the district in which the structure is located unless the structure is a legally pre-existing, non-conforming building or structure;
- b. The structure containing such facility and the facility itself shall meet all applicable local, state and federal requirements;
- c. The fire alarm system shall be installed and tested by a qualified electrician or alarm company pursuant to National Fire Protection Association standards; test certification shall be submitted to the Inspector of Buildings and the Fire Chief with periodic testing done at intervals specified by the Fire Chief;
- d. Fenced outdoor play area, set back a minimum of 10 feet from any abutting land in single residence use, shall be provided at a ratio of not less than 75 square feet for every child at play, exclusive of the area occupied by play equipment;
- e. One off-street parking space shall be provided for every paid and unpaid employee, not resident on the premises, so that there is no on-street parking by employees;
- f. Off-street drop off and pick up area shall be provided at a ratio of one space for every 3 children, unless drop off and pick up area can lawfully be provided on a street abutting the lot;
- g. off-street parking areas devoted to the parking of 5 or more vehicles shall comply with the SCREENING requirements contained in Subpart 3. Development Standards of Part D. of SECTION XXI. OFF-STREET PARKING and;

h. A child care facility located within a Single Residence District shall not exceed a floor area of 2,500 square feet.

4. * Has the zoning bylaw on child care facilities been challenged in court? If so, what was the result?

Answer: No

5. Has the town's Zoning Board of Appeals made any determination in the past that set aside or waived the local zoning bylaw for child care facilities in light of the M.G.L. Chapter 40A, S. 3 exemption (Dover Amendment).

Answer: Not yet.

6. Has the town's Zoning Board of Appeals granted any variances for child care facilities? If so, what were the nature of the variance and the reasons for granting them.

Answer: No

Town: Westford

Researcher: MC and TF

Planner's Name: [Ross Altobelli](#)

Planner's Phone: 978-692-5524

Planner's Email: raltobelli@westfordma.gov <raltobelli@westfordma.gov>

Contact Status:

5:28: TF: online, emailed planner.

Other Comments:

Specific Regulations:

<http://www.westford-ma.gov/Pages/OnlineServices/Documents/Bylaws/051008ZoningBylaw.pdf>

Relevant Exerpts:

6.5 CHILDCARE FACILITIES

In Residence A and Residence B, the footprint of a building which is principally used as a child care facility shall not exceed 2,500 square feet. As used in this paragraph, the term "footprint" shall mean the land area occupied by a building, at the surface of the ground, excluding open porches. As used in this paragraph, the term "child care facility" shall mean a day care center or school age child care program as those terms are defined in Massachusetts General Laws Chapter 28A, Section 9.

The provisions of this paragraph shall not apply to child care facilities which are located in buildings owned by non profit organizations and used in whole or in part by such non profit organizations for their non profit purposes.

3.2 ACCESSORY USES

3.2.1 Residential Accessory Uses. The following accessory uses are allowed as set forth in the Table of Accessory Use Regulations, Appendix B.

1A. *Family Day Care, Small.* Small family day care homes, registered with and licensed by the Commonwealth of Massachusetts Office of Children, with not more than six nonresident children served on the premises.

1B. *Family Day Care, Large.* Large family day care homes, registered with and licensed by the Commonwealth of Massachusetts Office of Children, are allowed in all districts only upon the grant of a special permit by the Planning Board.

2A. *Adult Day Care, Large.* Such facilities are allowed in all districts only upon the grant of a special permit by the Planning Board.

2B. *Adult Day Care, Small.* Such facilities are allowed in all districts only upon the grant of a special permit by the Planning Board.

Town: Westwood

Researcher: DC

Planner: Nora Loughnane, Town Planner

Phone: 781-251-2581 (Mon Wed Fri 9-1 DAC)

Email: nloughnane@townhall.westwood.ma.us

Contact Status: Survey Complete

Voice mail – 5/18/09

Email sent – 5/18/09 DAC

Email Received – 5/20/09

Relevant Exerpts:

<http://www.townhall.westwood.ma.us/index.cfm?pk=download&pid=10116&id=19012>

For some reason, their bylaws are set up so they are not searchable. I also could not copy any sections that seemed relevant. I gave the document a quick skim. Floor Area Ratio was discussed on page 6-26 in section 6.5

Specific Regulations:

- Zoning Regulation referenced by Nora oughnane, town planner

7.3 ENVIRONMENTAL IMPACT AND DESIGN REVIEW (EIDR)

7.3.1 **Purpose.** The purpose of this Section is to provide individual detailed review of certain uses and structures which have a substantial impact upon the character of the Town and upon traffic, utilities and property values therein, thereby affecting the public health, safety and general welfare thereof. The environmental impact and design review process is intended to promote the specific purposes listed in Section 1.1, Purpose.

7.3.2 **Applicability.** The following types of activities and uses which require a building permit under applicable building codes (exclusive of signs governed by the provisions of Section 6.2) shall require, except as otherwise hereinafter provided in this Section, impact and design approval under the environmental impact and design review procedures and standards hereinafter specified, unless found to be de minimis by the Building Inspector notwithstanding anything to the contrary in this Zoning Bylaw. In addition, any change in use which results in a use prohibited or requiring a special permit in a Water Resource Protection Overlay District, whether or not within such a district and whether or not requiring a building permit, shall be subject to review by the Building Inspector and, if applicable, requirement for approval hereunder. Nothing herein shall be deemed to permit any use or structure not otherwise permitted as of right or by special permit under this Zoning Bylaw, or to give rise to an implication as to whether or

not a particular use or structure is permitted as of right or by special permit under this Zoning Bylaw. The following shall require approval hereunder:

- 7.3.2.1 construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial or multi-family structure;
- 7.3.2.2 expansion, by three (3) or more parking spaces, of a parking area or facility containing five (5) or more parking spaces.
- 7.3.3 **Exempt Uses.** Mandatory review of uses for which M.G.L. Chapter 40A, Section 3 provides certain exemptions from zoning restrictions shall be limited consistent with those statutory provisions, and on other matters shall be advisory only. For religious, educational or child care facilities the Planning Board in its review shall make determinations of compliance with requirements governing bulk and height of structures, yard sizes, lot area, setbacks, open space and parking and building coverage. Procedure for such uses shall be the same as for others, except that the Planning Board shall waive the requirement of any submittals which are unnecessary for the Planning Board's regulatory determinations.
- 7.3.4 **Single-Family Dwelling Exemption.** Notwithstanding the foregoing, exterior alterations, exterior additions and exterior changes (including fences, walls and driveways), if made to a single-family dwelling, shall be exempt from the regulations of this Section.
- 7.3.5 **Procedures.** An application for environmental impact and design review shall be accompanied by twenty (20) copies of the site plan and other application materials in accordance with the requirements specified below and the Planning Board's rules and regulations. The Planning Board shall hold a public hearing in accordance with its rules

SURVEY:

Date: Wed, 20 May 2009 10:49:18 -0400

From: Nora Loughnane <nloughnane@townhall.westwood.ma.us>

To: "Dorothy Campbell, Acton, MA" <dac1026@cape.com>

Subject: Re: Request for Info on Daycare/Schools Zoning in Westwood

Hi Dorothy,

Here are my responses to your survey questions:

1. Childcare facilities in existing buildings are permitted uses in all districts. Childcare facilities in new buildings are allowed by special permit in all districts. Westwood does not have separate FAR requirements for particular uses. We have a maximum FAR of 0.4 (0.8 with special permit) in our Highway Business, Industrial-Office and Administrative-Research-Office districts, and a maximum FAR of 0.6 (1.0 with

special permit) in our Industrial Districts. We have no FAR limitations in residential districts.

2. All of Westwood's dimensional requirements are applied by zoning district rather than by use. These include the standard requirements for minimum lot area, frontage, and lot width; minimum front, side and rear setbacks; and maximum building coverage and impervious surface requirements.

3. Town of Westwood

Michael Jaillet, Town Manager 781-320-1009

mjaillet@townhall.westwood.ma.us

Nora Loughnane, Town Planner 781-251-2581

nloughnane@townhall.westwood.ma.us

website: www.townhall.westwood.ma.us

Zoning Bylaw is available online

4. Westwood requires limited Environmental Impact Design Review (EIDR) of all uses exempt under MGL Chapter 40A, Section 3, including child care facilities. See section 7.3.3 of the Town of Westwood Zoning Bylaw. This section of the zoning bylaw has recently been applied in EIDR applications for several non-profit educational facilities and is currently being applied in an EIDR application for an exempt agricultural facility. Section 7.3.3 of the zoning bylaw has not been challenged in court.

5. The Zoning Board of Appeals has not to date set aside or waived any requirements of the zoning bylaw for child care facilities based on MGL Chapter 40A, Section 3.

6. The ZBA has not granted any dimensional variances for child care facilities in the past four years. I am unaware of any such variances prior to that. The ZBA does not grant use variances..

Feel free to call if you'd like to discuss further.

Nora Loughnane

Town Planner

781-251-2581

