



**MINUTES OF THE HEARING ON THE PETITION
OF LEARN & PLAY PRESCHOOL, 245 MAIN STREET**

HEARING # 09-02

SESSION I

A public hearing of the Acton Board of Appeals was held on Monday, June 1, 2009 at 8:30 pm in the Francis Faulkner Room of Town Hall. The hearing is at the request of Learn & Play Preschool on a PETITION FOR REVIEW under Section 10.1.1 of the Acton Zoning Bylaw to appeal the denial of a building permit by the Zoning Enforcement Officer set forth in a letter dated April 24, 2009. The building permit denial letter provided the basis and reasoning as to why a building permit could not be issued for the proposed expansion of an existing child care center, due to a number of Bylaw non-compliance issues. The subject property and existing child care facility is located at 245 Main Street and identified on Tax Map G-3 as Parcel 22.

Present at the hearing were Board of Appeals members: Cara Voutselas (Chairperson), Ken Kozik (Member), and Marilyn Peterson (Member); Roland Bartl, Planning Director; Scott Mutch, Zoning Enforcement Officer (ZEO); Arthur Kreiger, Acton Town Counsel; Cheryl Frazier, Secretary to the Board of Appeals; Petitioners Brian & Stacey Regan - owners and operators of Learn & Play Preschool; project architect Lisa Pecora Ryan of The Office of Michael Rosenfeld, Inc. Also in attendance were approximately fifteen Town of Acton residents and staff of existing Acton daycare providers.

Cara Voutselas opened the hearing and read through the contents of the file. She then asked the petitioner to begin with a short presentation and overview of their project.

Brian Regan began by stating he and his wife Stacey are the owners and operators of Learn & Play Preschool. Mr. Regan stated that he continues to teach while his wife, Stacey oversees the daily operations of Learn & Play Preschool. Learn & Play Preschool currently consists of two locations - one at 245 Main Street and the other at 481 Main Street. Both Stacey and Brian are long-term teachers by trade as well as Acton residents. They are also the parents of four children, two currently attend the Gates School, while the other two attend Learn & Play Preschool. After their first child was born, Stacey decided to not teach any longer, but instead open a family childcare program, originally based out of their home. Two years later, and due to the success of the business, the couple decided that they would purchase 245 Main Street. The business continued to grow and due to the 1,000 square foot maximum bylaw requirement they needed to purchase another property. The second location is located at 481 Main Street in Acton, across from Town Hall. In 2007, a small renovation was completed with an additional classroom at the 245 Main Street location, which maximized their child care facility space to the 1,000 square foot maximum. The entire first floor of the former ranch-style

home is approximately 1,570 square feet. Learn & Play would like to expand their classroom space by 1,023 square feet which would result in a total of 2,128 square feet. The expansion, if permitted, would allow Learn & Play to consolidate their two locations into one central school. Even with the proposed additional space, Learn & Play Preschool will remain one of the smallest child care facilities operating in Acton. The current total capacity between the two schools is 45 children which would be maintained, but all in one location based upon the proposal currently before the Board of Appeals.

Lisa Pecora Ryan, project architect then began her portion of the presentation by stating the daycare has two existing classrooms on the main level. The owner would like to use the existing, unfinished basement space of 1,023 net square feet to add two additional classrooms. The petitioner has already appeared before and received approval from the State of Massachusetts' Board of Building Regulations and Standards for a variance due to existing lower than minimum ceiling height clearance in the basement space.

Cara Voutselas then asked Scott Mutch (ZEO) to discuss his memo, specifically the non-compliant issues, as well as the applicable sections of the Zoning Bylaw which apply to this petition.

Scott Mutch, Zoning Enforcement Officer, stated that he had reviewed and previously denied on April 24, 2009 a building permit application for the expansion of the existing child care facility located at 245 Main Street. The proposed expansion plan as currently designed and proposed, does not comply with Section 5.3.9 and parts of Section 6 of the Town of Acton's Zoning Bylaw. Section 5.3.9 of the Zoning Bylaw sets forth minimum standards and dimensional requirements specifically for child care facilities located in residential districts such as minimum open space, maximum floor area ratio (FAR) and maximum net floor area. Section 6 of the Bylaw, sets forth a number of parking lot design standards which the current plan does not comply with. The minimum open space required is 35% with the proposed site plan indicating that 39.6% open space is being provided. It is unclear at this time, but the landscaping percentages proposed, may be inaccurately calculated, as some areas need to be deducted from "open space". The applicant must also address the requirements of Section 6.7.6 which deals with and regulates minimum perimeter landscaping around parking lots. The maximum floor area ratio permitted FAR is 0.10. The proposed site plan also indicates a number which staff does not currently believe is accurate. Therefore, based upon some quick preliminary calculations by staff, an estimate of approximately 0.14 FAR could be more accurate as it is based upon currently excluded areas actually being included. The maximum permitted net floor area is 1,000 square feet. Again, the proposed site plan indicates a number which staff does not currently believe is 100% accurate. Therefore, based upon some quick preliminary calculations by staff, an estimate of approximately 3,184 square feet of net floor area could be a more accurate number as it is based upon currently excluded areas actually being included. Mr. Mutch cautioned however, that this might be more of a gross floor area figure, not necessarily a true net floor area. Further review will be required, upon submission of revised drawings by the petitioner.

Scott said in addition to the Section 5.3.9 non-compliant requirements, there are also additional dimensional requirements set forth in Section 6 of the Bylaw which are currently not in conformance. Specifically, Sections 6.3.1.5 – minimum parking spaces required, 6.7.2 – minimum front setback requirement of paving and parking lots, 6.7.3 – number of permitted access driveways, and 6.7.4 – interior drive aisle widths. The applicant should speak with the necessary municipal disciplines and revise the submitted plans to address the outstanding issues

The Board of Appeals unanimously felt that additional information was needed before moving forward and making a decision. There seems to be some discrepancies and inaccuracies with regards to currently submitted documentation, specifically the net floor area, FAR and open space. The Board advised the applicant/petitioner to work with staff to try and resolve as many of these outstanding issues as quickly as possible.

The Architect agreed and stated that she would work with staff to make some changes to the plans and recalculate the floor area ratio, net and open space floor area and proposed numbers before the next meeting.

Marilyn Peterson, on behalf of the Board of Appeals, made a motion to continue Hearing # 09-02 to a date and time certain of Tuesday June 9, 2009 at 7:30 pm in Room 126 of the Town Hall.

Respectfully submitted,


Cheryl Frazier
Secretary to the Board of Appeals


Cara Voutselas
Board of Appeals Chairman