

**MINUTES OF THE HEARING ON THE PETITION
BY ANDREW SHLESINGER FOR 40 NEWTOWN RD.**

HEARING #08-06

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, October 27, 2008 at 7:30 PM on the application of Andrew Shlesinger and Mary Di Nino for a **PETITION FOR REVIEW** for the refusal of the Zoning Enforcement Officer to enforce the provisions of Section 3.3 et al of the Zoning bylaw for the property located at 40 Newtown Road. Map E3/Parcel 105.

Present at the hearing were Board Members, Cara Voutselas, Chairwoman; Ken Kozik, Alternate; Marilyn Peterson, Clerk; Cheryl Frazier, Board of Appeals Secretary; Roland Bartl, Town Planner and Zoning Enforcement Officer; and Scott Mutch, Assistant Town Planner. Also present at the hearing was the petitioner Andrew Shlesinger and Mary Di Nino, his Attorney Kevin Sullivan and some abutters to the property.

Chairwoman Voutselas opened the hearing and read into the record the documents included in the file. She then proceeded to check the certified mail receipts from the Petitioner.

Chairwoman Voutselas asked Roland Bartl, Zoning Enforcement Officer to begin.

Roland Bartl began his presentation by stating that on May 28th the Connolly's, owners of the property filed a Building Permit application for a residential addition to the existing house consisting of a prefabricated unit and a covered breezeway connection to the existing house. The owners indicated that they intend to have their adult daughter and family move in, so therefore they wanted to enlarge the overall floor space in the dwelling and that they wanted to create an apartment within the addition as a space or retreat for them. On June 12, 2008 Roland signed the building permit application indicating zoning approval after the applicant had made several changes to the plan. The Building Commissioner issued the building permit on June 19, 2008. On September 2, 2008, Roland signed off on a change to the building plans for an upgrade from the covered breezeway connection to a fully enclosed sunroom between the existing home and the prefabricated addition.

Chapter 40A, S. 15 provides that appeals must be filed within 30 days of the action that is being appealed. The petition was formally filed on September 17, 2008, which is nearly 3 months after the issuance of the original building permit.

In August there were formal complaints from individuals in the neighborhood asking for the bylaw to be looked at closely because they believed it was a zoning violation. Roland stated that in Section 3.3 of the Zoning bylaw it states that "Not more than one building for dwelling purposes shall be located upon a lot." He concluded it was one building. Section 3.3.1 defines a single family dwelling as a "detached dwelling unit designed as

the residence of one family.” The plan submitted was an addition to an existing dwelling on the site. It was to be one family living in the structure so it meets the zoning bylaw in that case. Roland concluded in the end that it wasn’t for him to decide the layout of a residence and how it should be used. It was designed in his opinion in this case as a single family residence. He then looked at the Accessory apartment Section 1.2.2. The apartment as it was proposed was 600 square feet where 800 square feet is allowed. It met the bylaw as far as accessory apartment. He looked at the history of the Town of Acton in granting accessory apartments and found that the Building Permit was issued in accordance with the zoning bylaw.

Following Zoning Enforcement Officer Roland Bartl’s presentation the Board requested a brief half hour recess from Hearing # 08-06 40 Newtown Road to hear the petition of 54 Knox Trail, #08-07. At 8:30 the Board resumed the hearing for 40 Newtown Road.

Attorney for the petitioner Kevin Sullivan, representing the petitioners, Mary Di Nino and Andrew Shlesinger began his presentation stating the application that was applied for by the owners, the Connolly’s, was to add a 28 X 68 Hud home. The home in question, the double wide modular home is what they are here to discuss tonight. He listed chronology as to how the facts occurred and got to this point. The building permit was filed on May 28th and granted on June 19th. On August 13th the petitioner’s filed a written request to the ZEO. On August 27th a letter from the petitioner’s, abutters, and interested parties was sent to the Board of Appeals. On September 10th one of the abutters received a letter from the ZEO refusing to enforce the Bylaws. On September 17th the petitioner’s filed their appeal to the Board of Appeals. They saw a hole being dug next to their house and that prompted them to go to the Town Hall on the last day of July first day of August. The Zoning Enforcement officer had 14 days to respond to the petitioners and he did not.

Attorney Sullivan then made reference to the Floor Plan that was filed with the application. The floor plan was given by the modular home company. The floor plan shows a three bedroom modular home. Attorney Sullivan said the building is in violation of Acton Zoning Bylaw 3.3.2.2 which states “There shall be no more than two bedrooms in the apartment.” This building is in violation of this bylaw because the modular home, as purchased comes complete as a pre-fabricated three bedroom modular home. Clearly the double wide modular home was installed on a separate foundation 28 feet apart from the existing home. Section 3.3.2 states a single family dwelling cannot be used for more than two **DWELLING UNITS** where this house has now three separate dwelling units. The Board should overturn the Building Permit application and overturn the Zoning Enforcement Officer’s determination.

Cara would like to make it clear for the record the chronological order of the building permit. It was applied for on May 28, 2008 and the Building Permit was issued on June 19th. The petitioners first became aware of construction as soon as it started since it occurred right next to their home. Construction started soon after the building permit was issued on June 19. At first they thought it was work on the septic system, but later realized it was something else. It wasn’t until they saw a foundation with windows that

they realized it was an addition. The petitioners said they thought the foundation went in in late July/early August and went to the building department at that point. Roland said there was no record of them coming in, but that was to be expected because the building department doesn't keep those kinds of records. The petitioner sent a letter of APPEAL to the town on August 13th 2008. This letter asked Roland to enforce the bylaw. It was not a formal appeal to the Board of Appeals. The petitioners properly filed their appeal on September 17.

Chairwoman Voutselas would like to discuss the apartment. She asked if the portion of the addition on the far left can be an apartment without a kitchen. Roland said there's a bedroom, a bathroom and another room that could be used as a kitchen even though the appliances are not installed at the present time. Roland said the Board of Health does not count the rooms as bedrooms if they do not have a closet.

Laureen Kessloff, of 40 Newtown Road stated that per the Board of Health they are the rooms in the addition that they are talking about are not bedrooms if they don't have closets. The septic system was updated to a 4 bedroom septic system back in May. Chairwoman Voutselas's question is that it's hard to get away from the fact of how this accessory apartment is going to be used. Scott Kessloff of 40 Newtown Road said there will be five of them living in the house. They are a family of five and will enjoy the space together. When they entered into this arrangement with Laureen's parents, they made the accessory apartment so they could have some privacy for themselves. They have floor plans with them tonight if the Board would like to see them showing that it is a four bedroom home.

Ken Kozik expressed concern with the possibility of a sale of the property and the possibility of the future owners removing the breezeway making the structure look like two separate houses. How do you counteract that it's not two dwelling units. Cara asked if there is any way to insure that this dwelling would not be used as two dwelling units. Ken said that the issue in front of the Board is that the owners applied for a building permit, the permit was issued, and now the Board is needs to determine if the permit should have been issued. Ken asked Attorney Sullivan what their intention is if the Board overturns the Zoning Enforcement Officer. Attorney Sullivan said they would like the building permit revoked and the building removed.

Chairwoman Voutselas asked the owner of the property what they would do if the Board upheld the petitioner's request. Laureen Kessloff said they would be devastated. They have already spent \$250,000 on this project. She and her parents would like to continue to live there for many years to come.

Cara asked abutters to speak.

Wayne Friedrichs asked if the permit was it for 800 square feet or 1800 square feet when it came in.

Leslie Duffy of 25 Minuteman Rd., abuts the property at 40 Newtown Road. She has no objections at all and feels it was exaggerated.

Bob Miller of 84 Windsor Ave. said his interest in coming here tonight is because the town seems to be in betwicks and in between. He said he's sorry but he thinks the structure is very ugly. He thinks the town has set a precedent and if this is approved he will be in line to do the same thing to his house. Cara asked Roland to respond to Mr. Miller.

Roland responded by saying if and when Mr. Miller comes in for a building permit he would do his zoning interpretation and decide if he could do what he is proposing to his house or not.

Richard Elder of 39 Newtown Road said that every time he walks out of his door and sees the structure he can't help but feel that in 20 years or so that will be two houses on one lot.

David Hahn of School Street. He's not sure if the breezeway was constructed to code in regards to the foundation.

Carl Flummerfelt of 60 Newtown Road said he believes it's the town's fault that this happened.

Chuck Collet of 47 Newtown Road said the owners were doing exactly what they were told to do and he believes the town made a huge mistake.

Ron Beck, of 80 Esterbrook Rd. finds it to be an extremely unfortunate situation and he feels that the town made a huge mistake. The town needs to make this good and clear the violations. The Board of Appeals are the residents only recourse in a case like this, and if you allow clear violations to remain and allow things like this to go forward it would not be for the good of the town.

Steve Murra, of 48 Newtown Road said in listening, the zoning enforcement officer clearly did his job. The people now have their occupancy permit. They meet the zoning requirements, they did what they were allowed to do.

Ken Kozik asked the petitioner if they had any closing comments. Attorney Kevin Sullivan, speaking on behalf of the petitioner said that he feels if the Board lets this existing two family remain, a precedent will be set with the town and this will create something that they do not want for their town.

Michael Connolly, 40 Newton Rd., owner of the property stated that the Attorney keeps referring to the addition as a mobile home but he said it's really a single family dwelling with an addition on a foundation.

Wayne Friedrichs asked if the Design Review Board would be involved with a decision like this. Roland Bartl replied to Mr. Friedrichs that the Design Review Board only regulates Commercial projects at this time.

Cara moved to close the hearing. She stated that the petition requires a unanimous vote. The Board will deliberate and come to a decision. Ken Kozik moved to close Hearing #08-06.

The Board deliberated for more than an hour. Ken Kozik made a motion that the petition be granted. Cara said that although she feels it will be used as a single family dwelling by this family, the design of the addition makes two dwelling units. There are two kitchens, two laundry rooms and living space in each dwelling unit and she just can't get past that even though she believes that is not the intent. The modular part appears to be a stand alone structure. Ken would like to echo Cara's decision. Marilyn wanted to add that the owner of the property acted in good faith and took all the procedural steps they needed to.

The Board voted unanimously to **GRANT** the **PETITION** to **OVERTURN** the Zoning Enforcement Officer's decision.

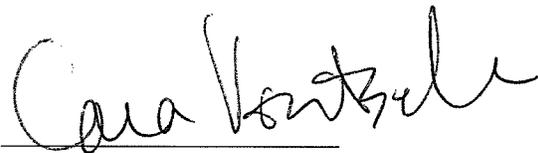
Cara Voutselas to write.

Respectfully submitted,



Cheryl Frazier

Board of Appeals Secretary



Cara Voutselas

Chairwoman of the Board of Appeals