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**MEMORANDUM**

**To:** Board of Appeals **Date:** October 20, 2008  
**From:** Roland Bartl, AICP, Planning Director/Zoning Enforcement Officer  
**Subject:** **Hearing #08-06**  
**Petition for Review re: 40 Newtown Road**

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The petitioners are appealing the zoning approval and building permit issued for a residential addition to an existing house on an existing lot at 40 Newtown Road in Acton (Town Atlas page E-3, parcel 106). The lot is in the R-2 residential zoning district. The petitioners are either abutters to the subject property or reside in its general vicinity.

On May 28, 2008 the Connolly's, owners of the 40 Newtown Road property (the Owner) submitted 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 Owner indicated that they intend to move in with their elderly parents; that 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 themselves". On June 12, 2008 I 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, I signed off on a change to the building plans for an upgrade from the covered breezeway connection to a fully enclosed connection 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.

Between August 14 and 25, 2008, or about 2 months after the original building permit this office received several letters from individuals requesting that I enforce the zoning bylaw as they interpret it and halt further construction activity. I responded to one of them, Mr. Flumerfelt on September 10, 2008, which was later than the 14 day time frame provided in M.G.L. Ch. 40A, S. 7. Mr. Flumerfelt's name does not appear on the September 17, 2008 petition to the Board of Appeals.

The time lapses and disconnects may raise questions if the petitioners are eligible or qualified. I recommend that the Board, whatever the doubts, hear the petition on its merits. The following addresses only questions about zoning. The petitioners also raise issues concerning Title V, a subject that is not properly before the Board of Appeals. The Owner has recorded a deed restriction that limits the dwelling to four bedrooms. The Health Department has signed the building permit application.

## **Zoning Review**

### **Dimensional Basics (ZBL Section 5):**

The lot area, frontage and lot width exceed the minimum requirements. The front -, side -, and rear yards for the existing house and the proposed addition exceed the minimum requirements. The height of the existing house and the proposed addition are below the maximum limits.

### **ZBL Section 3.3 – Residential Uses**

This section states that “Not more than one building for dwelling purposes shall be located upon a lot.” The exemptions from this rule do not apply here.

I have considered whether or not the addition as proposed constitutes a second building. The prefabricated portion of the addition could be a stand-alone dwelling unit under different circumstances. Here, it is used as an addition to an existing house with a covered breezeway connection. The connection in itself constitutes a building, in that it has exterior walls and a roof (ZBL 1.3.3 – definition of building: “A structure enclosed with exterior walls, built or erected with any combination of materials, whether portable or fixed, having a roof....”) The end result after completion of construction as approved is one building that has several parts to it. The language of the zoning bylaw is rather plain and simple on this point.

### **ZBL Section 3.3.1 – Single Family Dwelling**

The R-2 zoning district allows single-family dwellings on lots. Discussion of the accessory apartment follows below. Section 3.3.1 defines a single-family dwelling as “a detached dwelling unit designed as the residence of one family”. The Owner represented that the individuals to live on the lot would be they themselves (a couple), perhaps one or more of their children, and the elderly parents. ZBL 1.3.6 defines a family as “A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of six or more persons shall not be deemed a family unless at least half of them are related by blood, marriage or adoption, including wards of the state.” The persons to occupy the dwelling together make up such a family.

The only question then becomes, whether the resulting dwelling unit is “designed as one residence”.

Conventionally, a residence for one family has one kitchen. As proposed, the resulting residence will have two kitchens (leaving the apartment for a later discussion). Unconventional family choices or circumstances, affiliations with certain faiths or cultures, or simply wealth and lifestyle may lead people to install one or more other kitchens in their residence. In the case at hand, the Owner represented that the existing house has a kitchen that the elderly mother loves and does not want to part with, but that she (the Owner) would prefer to prepare meals in a more modern environment, especially where she feels that she needs to plan for her increasing role in providing the entire family with meals. Second kitchens are also commonly associated with party/entertainment rooms and suites, especially in large homes. Some families have two kitchens for religious or cultural reasons. For instance Jewish households with orthodox traditions maintain a regular and kosher kitchen.

The sprawling nature of the resulting dwelling might call into question whether it is truly designed for just one family. The added covered breezeway is a fairly substantial division between the existing house and the rest of the addition. The zoning bylaw does not provide standards for a floor plan or room arrangement that would constitute a “design as one residence”.

After considerable thought, I concluded that the internal design, layout, and facilities in a residence, or how family members choose to arrange their personal lives and relations among themselves

within the space of a dwelling unit, is best left to their own devices. In this case at least, it certainly seemed inappropriate and overreaching for me to interpret the meaning of the zoning bylaw in way so as to effectuate a different outcome. Therefore, I concluded for the purpose of this building permit application, that the dwelling unit is designed as one residence.

### **ZBL Section 3.3.2 and Subsections – Single Family Dwelling with One Apartment**

The owner proposed an apartment within the proposed addition for their own private retreat as I recall the meaning of their words. Consequently, I advised the applicants what they needed to change in their proposed design in order to have a legal accessory apartment. The changes were made so that the proposed apartment unit in the addition meets all criteria of section 3.3.2 of the zoning bylaw and its various subsections. My compliance review with section 3.3.2 yielded the following:

- The existing building is older than 1990 and therefore may be "altered and used for ..... the Principal Unit plus one Apartment, ... ". (s 3.3.2).
- The gross floor area of the pre-existing building (the principal unit) is 3,372 sq. ft. based on assessors' records (gross floor area includes all covered interior floor space - 1st and 2nd floors, basement, and finished attic). The addition now under way will measure 2,488 square feet. It consists of:
  1. an addition to the principal unit (rooms labeled breezeway connector, kitchen, bath, utility room, living room, den, and retreat), and
  2. an accessory apartment showing a bathroom, a bedroom, and one unspecified room that could be a kitchenette. The accessory apartment measures approximately 600 square feet in gross floor area. Therefore, it complies with zoning bylaw section 3.3.2.1 that the " gross floor area of the Apartment shall not exceed the lesser of fifty percent of the gross floor area of the Principal Unit or 800 square feet."
- Section 3.3.2.2 limits the accessory apartment to two bedrooms. One bedroom is proposed.
- Section 3.3.2.3 requires a separate entrance from the exterior or a common hallway. As a modification within the prefabricated addition, there will be a common hall way with separate entrances from it to the principal unit and to the accessory apartment.
- Section 3.3.2.4 requires that stairway to upper floor must be inside building. No upper floor is proposed; there may be a low attic.
- Section 3.3.2.5 specifies not more than one driveway together for the principal and accessory unit. The building permit application did not propose any additional driveway to what pre-exists on the lot.
- Section 3.3.2.6 requires one additional parking space for the accessory apartment. The principal unit requires two parking spaces. There are at least three parking spaces available on the lot.
- Section 3.3.2.7 requires that the property owner must reside on the premises. The Owner has indicated that they will live at the premise.
- Section 3.3.2.8 – requires that accessory apartments must remain in common ownership with the principal unit. Nothing in the case at hand suggests otherwise.
- Section 3.3.2.9 requires a minimum lot area for R-2 at 20,000 square feet. The lot has more than twice this area.
- Section 3.3.2.10 addresses accessory apartments in separate buildings. This is not applicable here.
- Section 3.3.2.11 states that no accessory apartment shall be created without building and occupancy permits. A building permit has been issued, the project is underway and close to finish. Final inspections for occupancy permit are this week – week of 10/20. I can report at the hearing what I saw.

### **ZBL Section 3.3.2 - Meaning of “Altered and Used”**

In hindsight, it may not have been necessary to specify full compliance with the accessory apartment standards given that it is one family living on the premises and given the foregoing considerations and conclusions regarding the design of a residence for one family.

Now that the apartment was approved so as to comply with the accessory apartment standards, and thus may be rented to a non-family entity at some future date, it may be useful to consider the specific meaning of the words “altered and used for ..... the Principal Unit plus one Apartment” in section 3.3.2. At the time of the building permit application I gave their meaning quite some thought. Does alteration as used here include addition, or is it strictly a change contained within the existing building envelope. Referring to encyclopedias, textbooks, and planning/zoning dictionaries was not particularly helpful. There was no general agreement on the matter. I looked, whether the zoning bylaw differentiates anywhere else between alternation and expansion in a context that could relate here. There was none apparent.

It appears relevant then, what I recalled as the previous regulatory history on this issue. On previous occasions the Building Commissioner/Zoning Enforcement Officer had issued building permits for additions with accessory apartments to qualifying buildings. Attached is a spreadsheet that shows four such previously issued building permits for accessory apartment additions to qualifying single-family homes: 216 Parker Street, 218 Parker Street, 1 Brookside Circle, and 7 Pope Road. All four cases are in single-family residential zoning district (R-2 and/or R-4). Also attached are the assessors’ records, aerial photos, and floor plans where available.

Finally, people have many different preferences in terms of the layout of their homes, what they like to buy, build, or add onto. The case at hand is a somewhat sprawling layout. While many of today’s conventional single-family homes in the northeast have relatively compact footprints, two additional samples in the spreadsheet without accessory apartments (3 Fort Pond Road, 151 Pope Road, plus attached information plans and photos) show that the less conventional does exist in Acton.

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