

August 13, 2008

Board of Appeals
472 Main St
Acton, MA 01720

Re: Letter of APPEAL: 40 Newtown Road Building Project, Permit #021763

Dear Members of the Board of Appeals:

On behalf of the undersigned citizens of Acton, Massachusetts, we hereby submit this Appeal to the decision to grant permit #021763 for the building project located at 40 Newtown Road, Acton, Massachusetts because **the project is in violation of: Acton Zoning Bylaws 3.3, 3.3.2, 3.3.2.1, 3.3.2.2, and Massachusetts State Title V regulation 15.204.**

Acton Zoning Bylaws 3.3 et al mandate a second dwelling be: 1) limited to an alteration to the existing dwelling, and 2) under 800-square-feet. This building is neither.

Instead, the building is a nearly 2000-square-foot, wholly separate single-family home with full basement. It was built in the side and back yard of the existing single-family home, on a lot and in a zone that allows for no more than one house.

The Town Planner calls it an addition to the existing dwelling. Granting a permit to build a second single-family home (over 28-feet away from the existing home) and insist it is an "addition" represents a flagrant disregard for the Acton Zoning Bylaws and by extension the rights of the citizens of Acton to expect their administrators to act with lawful integrity.

Furthermore, if by some extraordinary measure one does consider this separate building an "addition," then the law is clear: the gross floor area of said addition cannot exceed 800-square-feet. The building, as constructed, is 1859-square-feet, not even including the proposed connector deck.

The Building is in Violation of Acton Zoning Bylaw 3.3

Acton Zoning Bylaw 3.3 states, "Not more than one BUILDING for dwelling purposes shall be located upon a LOT." The building, alternately referred to herein as "Second Dwelling," is being built on parcel E3 106, PL#861, in zoning district R-2; no exceptions to 3.3 apply to this district.

This fact in itself is sufficient to render this project wholly in violation of Acton Zoning Bylaws, for if 3.3 is not met then, of course, any statutes under 3.3 are also not met by default. I will, however, provide you with details on how the remaining statutes are also in violation because in previous discussions with the Town Planner it was clear he is interested in pursuing the far-flung notion that this Second Dwelling - constructed 28-feet away from the existing dwelling and as large as the original dwelling - is merely an “alteration” to the existing dwelling.

It must be noted that no construction blueprints exist for the “proposed breezeway” spanning the 28-foot expanse; it is just a note and a rectangle on an overall layout drawing marked “Proposed Breezeway”. If the Town Planner were genuinely expecting a covered deck of 28-feet in length to be built in the town of Acton, due diligence would require him to obtain blueprints to assess if the deck meets code *prior to* granting permit.

Furthermore, Commodore Corporation, the manufacturer of the building, refers to the house as not an addition but “your new home,” “three bedroom home,” and a “manufactured home” throughout the building guidelines and plans.

The Building is in Violation of Acton Zoning Bylaw 3.3.2

Acton Zoning Bylaw 3.3.2 allows the **existing house** “to be altered and used for not more than two DWELLING UNITS”. This building is in violation of this bylaw because it is not an alteration to the existing dwelling but is a wholly separate dwelling.

The dwelling under construction is a wholly separate house, it is a Single Family Dwelling as defined by Acton Zoning Bylaws 3.3.1 “A detached DWELLING UNIT designed as the residence of one FAMILY.” It also meets the Massachusetts Building Definition of a single-family home: a “single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation”. The Second Dwelling was constructed over 28 feet away from the existing dwelling, on an entirely separate concrete foundation. The Second Dwelling is a three-bedroom house with full eat-in kitchen, laundry room, cathedral ceilings, two full bathrooms, and living room atop a full walk-in basement.

Absolutely no alterations have been made to the existing dwelling to construct the Second Dwelling.

The Building is in Violation of Acton Zoning Bylaw 3.3.2.1

Acton Zoning Bylaw 3.3.2.1 states “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.” As noted above, the lesser is 800-square-feet. This building is in violation of this bylaw because it is 1859-square-feet, well over double the maximum allowed.

The Building is in Violation of Acton Zoning Bylaw 3.3.2.2

Acton Zoning Bylaw 3.3.2.2 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.

In another act of contempt for the Acton Zoning Bylaws, the computer-drafted words "Bedroom 2" and "Bedroom 3" were removed with White-Out and replaced, by hand, with the words "Den" and "Retreat". To underscore the implicit and purposeful nature of these changes, the closet walls in those rooms were also removed with White-Out, indicating full-knowledge that closets in rooms constitute "bedrooms."

Commodore Corporation, the manufacturer of the second house, and the installer, Fairlane MH/Lunenburg, have indicated to me that they have no means to remove closets on their pre-fabricated houses prior to shipping, and no blueprints were submitted to the Planning Department depicting the removal of said closets after delivery. Considering these facts, one must conclude that building as it stands has three bedrooms. To call a room a "Retreat" instead of a "Bedroom" is pure semantics, specifically devised to circumvent the intent of the law.

The Building Does Not Meet State Title V Regulations

The Second Dwelling contains two full bathrooms and a full kitchen, adding a total of five sinks, two toilets, a bathtub, a Jacuzzi, a shower, a dishwasher, and a washing machine to the existing septic system. These facilities, along with the fact that another family is moving in to the house, clearly constitute an "Increase in Design Flow to System" (i.e. more waste is going into the existing septic system).

As noted in Acton General Bylaws, all septic systems in Massachusetts must be in compliance with Title V of the State Environmental Code (310 CMR 15.00), which states in section 15.204, *Increases in Design Flow to System*, "No person shall increase the actual or design flow to any cesspool or to any other system above the existing approved capacity, or change the type of establishment of a facility served by a cesspool, unless the cesspool or system is upgraded first." The actual and design flow was increased (at least doubled), but the system has not been upgraded as required by Title V.

The Building Commissioner and Town Planner Know it is in Violation, Yet Continue to Act with Impunity for the Law

The Interim Building Commissioner and Town Planner were notified in writing on July 31, 2008 of this complaint and declined to act. In addition to renaming rooms, on August 13, 2008, the Interim Building Commissioner presented a newly marked-up plan that added an interior wall of approximately 3-feet in width between the living room and Master Bedroom, thus splitting the trailer into two "additions:" 1.) an "apartment addition" under 800sq ft and 2.) a non-apartment addition. To gain access to this walled-off "apartment area," the Town Planner drew in a new door about four feet away from the previous entrance, and marked this door "Deadbolt Door." The end result: when the interior deadbolt door is not dead-bolted, the house is whole as usual. When the deadbolt is bolted, only a bedroom and bath remain in the "apartment area." The original house, to which The Building Commissioner and Town Planner would have you believe this

“apartment” was added, is 76-feet away. The remaining kitchen, living room, two bedrooms (“den” and “retreat”), bath, and utility room all comprise the “non-apartment addition,” yet meet the Massachusetts Building Definition of a single-family home. In short, the new wall does one thing: it superficially splits the Second Dwelling into two apartments, neither of which are legal, because they were not built as an alteration to the existing house, and one side is still over 1000-feet of new home even if it were an addition. However, common sense tells us this is one project, not two, and the fact that only one permit was granted for this project proves it. To claim this project is two separate additions, when in fact the house was delivered pre-fabricated and placed upon a single basement foundation, is ludicrous, and sets a precedent for anyone else interested in building a second house in their backyard: just claim it is several 800-square-foot apartments instead of one house.

Also, when informed that the project has no blueprints of the proposed “breezeway,” the Interim Building Inspector indicated that they were “misplaced.”

These facts represent the embarrassing extent to which the town planners are willing to subvert the Acton Zoning Bylaws and the will of Acton citizens. I have great hope that you will see these maneuvers for what they are: flagrant attempts to circumvent the law, and an insult to the intelligence of The Board of Appeals and the citizens of Acton.

The fact that the Building Commissioner and Town Planner are concocting these elaborate and deceptive schemes proves precisely what they are denying: they agree it is illegal and are actively inventing loopholes to circumvent the intent of the law. Renaming of rooms or drawing a line across a floor plan does not magically change a nearly 2000-square-foot single-family home into an 800-square-foot apartment addition any more than an undocumented breezeway would make a second house an alteration to an existing house.

Conclusion and Summary

We conclude the project underway at 40 Newtown Road does not conform to Acton Zoning Bylaws or Massachusetts State Title V Regulations, as the Building is:

1. **In violation of Acton Zoning Bylaws 3.3 and 3.3.2** because the Second Dwelling does not reasonably constitute an alteration to the Existing Dwelling, but is in fact an entirely separate house.
2. **In violation of Acton Zoning Bylaw 3.3.2.1** because the structure is over twice the maximum square footage (and nearly *three times* the maximum square footage when counting the “proposed breezeway”).
3. **In violation of Acton Zoning Bylaw 3.3.2.2** because the structure as built has over two bedrooms.

4. **In violation of State Title V Regulation 15.204** because the septic system has not been upgraded to accommodate the increased waste from the full kitchen, five sinks, two toilets, bathtub, Jacuzzi, stand-up shower, dishwasher, washing machine, and additional family.

For the foregoing reasons, we respectfully request that the Board of Appeals review this case. We are confident that with careful review of the Acton Zoning Bylaws you too will find this project to be clearly and unambiguously in violation of law, and will act to revoke permit #021763, halt further construction, and begin the process of removing the violating construction forthwith. Furthermore, a favorable ruling is in the best interest of the Town of Acton and its citizens. For the Town of Acton, it would avoid the costs and negative publicity involved in lengthy Superior Court proceedings, and would prevent setting a precedent allowing the building of second homes on single lot properties. For the citizens of Acton, it would restore faith and trust in their administrators.

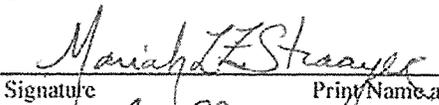
Thank you in advance for your time and consideration, and we eagerly await your ruling.

Sincerely,

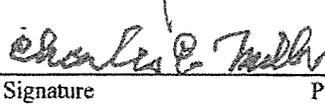
 MARY DININO, 36 NEWTOWN RD, ACTON 8/16/08
Signature Print Name and Address Date

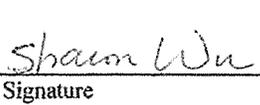
 ANDREW SALESINGER, 36 NEWTOWN RD, ACTON 8/16/08
Signature Print Name and Address Date

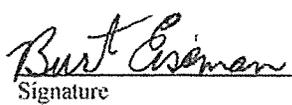
 Tracy A West 8-16-08
Signature Print Name and Address Date

 21 Minuteman Rd, Acton 8-16-08
Signature Print Name and Address Date

 21 Minuteman Rd, Acton 8/16/08
Signature Print Name and Address Date

 29 Minuteman Rd Acton 8-16-08
Signature Print Name and Address Date

 SHARON WU 5 Patriots Road, 8-22-08
Signature Print Name and Address Date

 BURT EISEMAN 33 NEWTOWN RD. 8-23-08
Signature Print Name and Address Date

 Christina Pharo 14 Minuteman Rd. 8-23-08
Signature Print Name and Address Date