

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO: 08-537

EILEEN MCMANN,

Appellant,

v.

TOWN OF WESTON,

Appellee.

BOARD'S RULING ON APPELLEE'S MOTION FOR RECONSIDERATION

The Town of Weston ("Town") has filed the instant Motion for Reconsideration of the Building Code Appeals Board's ("Board") March 13, 2008 decision to order that a demolition permit be issued by the Town for the free standing garage located at 269-271 North Avenue, Weston, MA ("property"). The Board now denies the Town's motion. As grounds therefore, the Board states that the Town was on notice of the issues to be discussed at the second hearing by virtue of the decision and discussion at the first hearing as well as the events leading up to the second hearing. The Town capably argued its position at the second hearing and never raised this notice issue. It may not do so now for the first time.

It was the Town's own missteps in improperly issuing the demolition order that lead to the confusion which gave rise to this case in the first place. Pursuant to G.L. c.143, §6 and 780 CMR 121.2, a destruction order of the sort at issue in this case must be issued in writing. Here, a verbal order was issued. The Board previously found that the homeowners reasonably relied upon this verbal order in demolishing their house and garage. This would likely not have happened if the Town had followed the law. The Town is now seemingly attempting to hide behind its Demolition Delay by-law in an effort to obscure the Board's jurisdiction in this matter. Their argument is unavailing. The Board ordered the Town to issue a demolition permit for the garage. That order is based upon 780 CMR 111.1 as it relates to G.L. c. 143, §100; not the Town By-law. The order is, accordingly, within the purview of the Board's jurisdiction and remains in effect.

By a 2-1 vote, the Town's motion is hereby **DENIED**.

SO ORDERED.



Robert Anderson



Stanley Shuman

(Dana Haagensen- opposed)

DATED: April 11, 2008