

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-507

Eileen McMann,)
Appellant)
v.)
Town of Weston,)
Appellee)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant a variance from 780 CMR §§110.0 and 112 of the Massachusetts State Building Code ("Code") with respect to the demolition of structures located 269/271 North Avenue, Weston ("Property").

By letter dated October 3, 2007, Courtney W. Atkinson, Building Inspector for the Town of Weston ("Appellee"), informed Appellant that 780 CMR §§110.0 and 112 had been violated because Appellant had demolished a two car garage on the Property without first obtaining a permit. According to October 3, 2007 letter, the fire at the Property on September 14, 2007, which had burned the house on the Property, had nothing to do with the demolition of the garage.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on December 18, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appellant and Paul McMann were present at the hearing. In addition, the following individuals were present: Alfred Elk, Roland Anderson, Joseph S. Daniele, Courtney Atkinson, and Mary L. Giorgio.

Decision

The issues before the Board were whether 780 CMR §§110.0 and 112 should be interpreted to require obtaining a permit prior to the demolition of buildings on the Property and, if so, whether, under these circumstances, a variance should be granted.

By way of background, fire had greatly damaged the house located on the Property and there was evidence that Town officials had verbally ordered Appellant to have the house demolished, for safety reasons, soon after fire fighters had finished their duties on the Property . The Property also contained a detached garage, which had not been damaged by fire. In addition to having the remains of the house demolished, the owner had the garage demolished. There was confusion as to whether the verbal order to demolish included the demolition of the garage, which had not been damaged by the fire. The owner did not obtain a permit prior to demolishing either the garage and/or the remains of the house.

Conclusion

The Chair entertained a motion that the Board interpret the Code to require the issuance of a permit prior to demolition of all structures on the Property, rather than grant a variance from the requirement to obtain a permit under these circumstances ("Motion"). Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below. The Board also advised Appellant that the remedy under the code, in these circumstances, was to apply for a permit, after the fact of demolition.

..... **Granted** Denied Rendered Interpretation

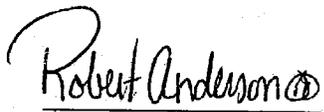
___.....Granted with conditions Dismissed

The vote was:

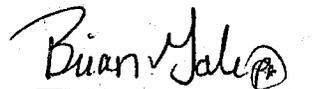
.....**Unanimous** Majority



Dana Haagensen



Robert Anderson - Chair



Brian Gale

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: March 13, 2008



Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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