

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 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 review Appellee's decision not to grant a demolition permit with respect to the demolition of structures located 269/271 North Avenue, Weston ("Property").

By letter dated January 2, 2008, Courtney W. Atkinson, Building Inspector for the Town of Weston ("Appellee"), denied Appellant's request for a demolition permit, stating that "the garage was taken down without [his] acknowledgement and without complying with the provision of the Town of Weston General By-Laws, Article XXVI, Demolition Delay." By way of background, Appellant and Appellee appeared before the Board for a hearing on December 18, 2007, at the conclusion of which the Board instructed Appellant to apply for a demolition permit. (See Board's Ruling on Appeal 05-507).

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 March 6, 2008 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. Walter Hayes appeared on behalf of Appellant. Courtney W. Atkinson appeared on behalf of Appellee.

**Decision**

The issue is whether the Board should order Appellee to issue a demolition permit for the Property pursuant to 780 CMR §111.1. Section 111.1 provides:

The building official shall examine or cause to be examined all applications for permits and amendments thereto within 30 days after filing thereof. If the application or the construction documents do not conform to the requirements of 780 CMR and all pertinent laws under the building official's jurisdiction, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of 780 CMR and all laws and ordinances applicable thereto, the building official *shall* issue a permit therefor. (emphasis added).

Appellee argued that "Article XXVI, Demolition Delay" of Appellee's By-Laws requires "whenever a significant building or any portion thereof has been voluntarily demolished in violation of this by-law, and for a period of two years after the date of completion of such demolition, no building permit shall be issued with respect to any premises upon which such demolition has occurred." Because the garage on the Property was within the Historic Districts Act, Appellee asserted that it was a "significant building" for purposes of Article XXVI.

Appellant argued that the demolition of the garage was not a voluntarily act; it was demolished based upon verbal instructions from Appellee under emergency circumstances.

The Board found that Appellant acted in good faith based on a verbal orders from Town officials to clear the Property, and reasonably believed that the verbal instructions were to demolish *all* the buildings located on the Property. The Board observed that the testimony, both at the prior hearing on December 18, 2007 and the instant hearing, along with the written documentation submitted, support Appellant's argument that she reasonably relied on verbal orders from Appellee.

### Conclusion

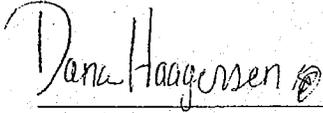
The Chair entertained a motion that the Board order Appellee to issue the demolition permit pursuant to 780 CMR 111.1 ("Motion"). Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.

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

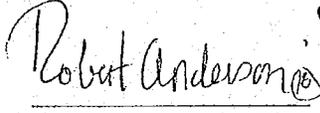
..... Granted with conditions                      ..... Dismissed

The vote was:

..... **Unanimous**                      .....  Majority



Dana Haagensen



Robert Anderson - Chair



Stanley Shuman

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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