

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board  
Docket No. 05-298

Robert Franklin,	)
Appellant,	)
	)
v.	)
	)
Town of Brookline and James	)
Nickerson	)
Appellees	)

**BOARD'S RULING ON APPEAL**

**Procedural History**

This matter came before the State Building Code Appeals Board ("the Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant requests that the Board grant a variance from 780 CMR 118.8, 780 CMR 108.3.5.1 and 780 CMR 113.3 of the Massachusetts State Building Code ("MSBC") in regards to 135 LaGrange Street, Brookline, MA. In accordance with MGL c. 30A, §§ 10 and 11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the Board convened a public hearing on September 19, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and representing Robert Franklin (the "Appellant") was Michael Field, Esq. Present and representing the Town of Brookline Building Department was Jim Nickerson (the "Building Commissioner"), Frank Hitchcock (the "Building Inspector") and John Buchheit, Esq. ("Associate Town Counsel"). There was no representative present from the Town of Brookline Fire Department.

**Exhibit<sup>1</sup>**

The following Exhibit was entered into evidence:

Exhibit 1: Town of Brookline Building Commissioner's Motion to Dismiss Appeal

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<sup>1</sup> The Board takes administrative notice of its own records. 801 CMR 1.01(10)(h)(administrative notice); M.G.L. 30A, §11(5).

### **Findings of fact**

1. The subject property is located at 135 LaGrange Street, Brookline, MA.
2. On or about August 25, 2006 a building permit (no. BL0501130) was issued to Terry O'Reilly for the construction of a single family residence at the subject property.
3. On or about January 25, 2006 building permit no. BL0501130 was transferred<sup>2</sup> to Evangelos Sterianos. A new number (BL0600114) was assigned to said permit.
4. On or about February 22, 2006 building permit no. BL0600114 was transferred to Gabriel Avram. A new number was assigned to said permit.
5. A "transfer permit" is a valid building permit despite the fact that the Town of Brookline refers to it as a "transfer permit".
6. Gabriel Avram falls within the homeowner exception to 780 CMR 108.3.5.1 because he has not built a new home in the State of Massachusetts within the past two years.
7. The construction plans for the subject property were stamped by the Town of Brookline Planning department and said plans are on file with the Town of Brookline. The subject property was constructed in accordance with the stamped plans on file with the Town of Brookline.

### **Discussion**

A motion was made to **DENY** the Appellant's request for a variance from 780 CMR 118.8, 780 CMR 108.3.5.1 and 780 CMR 113.3 of the MSBC. Based upon testimony given by the representatives from the Town of Brookline Building Department the Board has determined that there is a valid building permit issued for the subject property; the homeowner exemption is applicable for the subject property and the construction documents on file with the building department are approved construction documents. The zoning issues in regards to whether the correct plans were approved by the Town of Brookline Planning Board should be addressed at the Town of Brookline zoning Appeals Board as this Board does not have jurisdiction over zoning matters. Motion carried 3-0.

### **Conclusion**


The Appellant's request for variance from 780 CMR 118.8, 780 CMR 108.3.5.1 and 780 CMR 113.3 of the MSBC is **DENIED**.

**SO ORDERED.**

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<sup>2</sup> The Town of Brookline refers to a permit that has been transferred as a "transfer permit".

  
HARRY SMITH

  
ALEXANDER MACLEOD

  
KEITH HOYLE

DATED: November 30, 2006

*\* In accordance with M.G.L. c. 30A § 14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after the date of this decision.*