



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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TOWN OF BROOKLINE
BOARD OF APPEALS
NO BOA 060043

Gerald Atkins, the owner of 803-807 Boylston Street applied for a permit to demolish the garage structure at the rear of the subject premises. An abutter filed an objection claiming the issue of the garage was under appeal to the Norfolk Superior Court and further that Atkins required a separate permit to demolish the garage. The Building Department, after consultation with the office of Town Counsel, declined to issue the requested permit and Mr. Atkins appealed.

A hearing before this Board was scheduled for 7:00 pm on Thursday August 10th in the Selectmen's hearing room at Brookline Town Hall. Present were Harry S. Miller, Chairman, Lawrence Kaplan and Enid Starr. The petitioner was represented by Jacob Walters, of Goldenberg, Walters & Popkewitz in Brookline. Mr. Walters began by stating that the prior owner of the 803-807 Boylston Street property had applied for a permit to demolish the garage. Mr. Walters then stated that the Preservation Commission determined, after a public hearing, that the structure was significant and imposed a one year stay. Mr. Walters pointed out that Article 5.3 of the Town By-Laws regulates demolition not the Zoning By-Law. Mr. Walters went on to say that when Mr. Atkins was before this Board in BOA 040035, he was not seeking permission to demolish the garage structure. Mr. Walters submitted a copy of the Building Department's denial letter which cited Mr. Atkins for violations of the Zoning By-Law but made no mention of the garage. Mr. Walters also submitted a copy of the proposed plan for BOA 040035, which did not even show the garage structure. Mr. Walters stated that since Mr. Atkins did not seek nor need permission from the Zoning Board to demolish the garage structure, the fact that an abutter appealed the grant of relief in the zoning case has no bearing on the demolition of the garage. As for the argument that

Mr. Atkins needs a special permit before being allowed to demolish the garage structure, Mr. Walters stated that for this Board to adopt a policy requiring all demolitions within 100 feet of Boylston Street would be a new precedent not supported by the any Town By-Law.

The Chair opened the hearing to any interested members of the public. Speaking on behalf of abutter Edmund Mroz was Attorney Harvey Peters. Mr. Peters stated that the garage demolition at 803-807 Boylston Street was in integral part of the overall plan and cannot be separated from the remainder of the relief granted Mr. Atkins. Mr. Peters pointed out that the opening paragraph of the Board's decision states that the petitioner sought permission to demolish an existing garage and construct a four car parking area at the rear of the premises. Mr. Peters added that the garage structure is in fact within 100 feet of Boylston Street which triggers Section 5.09 of the Zoning By-Law. Mr. Peters concluded by stating that since the Norfolk Superior Court is scheduled to hear this matter on September 18th, this Board should defer any action until the Superior Court rules on this matter.

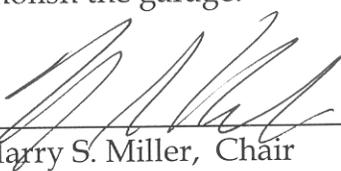
The Chair then called upon Frank Hitchcock of the Building Department. Mr. Kaplan asked Mr. Hitchcock if a demolition permit was the same as a building permit. Mr. Hitchcock responded by stating that the building code requires a permit to construct or demolish a structure and no distinction is made between the respective permits. Mr. Hitchcock submitted a memo from John Buchheit, Associate Town Counsel. Mr. Buchheit had concluded that the garage was within 100 feet of Boylston Street and likely the subject matter of the appeal pending before the Norfolk Superior Court and accordingly the permit should not issue. Mr. Hitchcock stated that since the adoption of Article 5.3 of the Town By-Laws, the Zoning By-Law has not covered demolition.

The Board then began its deliberations. Enid Starr stated that she chaired the hearing in the original case and recalled that the relief sought was for parking spaces only. Mrs. Starr went on to say that she had a clear recollection of the hearing and it was not related to the garage. Ms. Starr stated that the garage was not part of the deliberations or the decision of the case. Mr. Kaplan stated that Section 5.09 of the Zoning By-Law relates to new structures and uses and not demolition. Mr. Kaplan stated that he did not believe the Zoning Board has the right to deny a demolition permit. The Chair asked Enid Starr if the relief granted under Section 5.09 of the By-Law was for parking and the response was yes. The Chair then concurred with his fellow board members that the demolition process is not part of the Zoning By-law and should not be denied by the Board.

Having heard all the testimony and after review of the documents submitted, the Board voted unanimously to overturn the Building Department's denial of the petitioner's request for a permit to demolish the garage.

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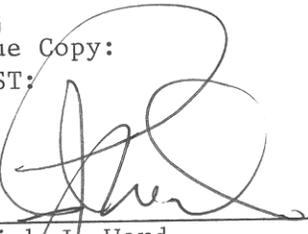
Dated: 9/19/06



Harry S. Miller, Chair

Filing Date: September 21, 2006

A True Copy:

ATTEST:


Patrick J. Ward
Board of Appeals