



TOWN of BROOKLINE

Massachusetts

BOARD OF APPEALS

**Town Of Brookline
Board of Appeals
71 Spooner Road**

This case involves an appeal taken to this Board by George P. Fogg, III, and other members of the Fogg family (collectively, the "Foggs") who reside at 61 and 91 Spooner Road. James Gray Wagner, attorney for the Foggs, sent a letter dated May 19, 2006 to the Town's Building Commissioner requesting that an additional 220 square feet or 385 square feet be removed from the construction of the single family residence at 71 Spooner Road. The basis for the request was the Foggs' assertion that the garage at 71 Spooner Road was a 3-car garage and not a 2-car garage, and therefore the portion of the garage devoted to 1 car must be counted as gross floor area for purposes of determining floor area ratio ("FAR"). Since the Foggs had contended in an earlier case (which is now on appeal with the Land Court) that the house at 71 Spooner Road was built in violation of the maximum FAR requirement, the addition of gross floor area for the third car would cause 71 Spooner Road to be further in violation of the FAR requirement.

By letter dated July 3, 2006, the Building Commissioner responded, in effect, that he would not rule on the Foggs' request until the existing litigation regarding 71 Spooner Road had been resolved. Not being satisfied with the Commissioner's response, Mr. Wagner filed an appeal to this Board on behalf of the Foggs.

Jeffrey Allen, attorney for Spooner Road LLC, the owner of 71 Spooner Road, and Mr. Wagner filed several letters/memoranda with the Board in support of their respective clients'

positions on the appeal. Each attorney also presented their arguments orally at the public hearing which was held on September 7, 2006, and each responded to questions from members of the Board. Members of the Board in attendance were Murray Shocket, Harry Miller and Lawrence Kaplan. At the outset, the Board rejected Mr. Allen's argument that the Board has no jurisdiction to hear the matter, because the Board disagreed with his contention that the Commissioner's July 3, 2006 letter was not a denial of Mr. Wagner's request. The Board also rejected Mr. Allen's argument that the Board had the authority to rule that the Foggs had no standing to bring the appeal.

The Board also heard testimony from Frank Hitchcock, Senior Building Inspector speaking on behalf of the Commissioner. Mr. Hitchcock also responded to several questions posed to him by members of the Board.

Having considered all of the written and oral testimony, by a vote of 3-0 the Board voted to sustain the position taken by the Building Commissioner in his July 3, 2006 letter. Since the FAR matter is in litigation, and since one of the issues being pursued by Mr. Allen in an action for declaratory relief is that the FAR provisions in the Zoning By-Law are invalid as applied to single family residences, the Board agrees that it is appropriate for the Commissioner to wait for the final result of the litigation and the final ruling on the request for declaratory relief. The Board sees no purpose being served in the Commissioner ruling definitively on the matter in issue at this time.

Therefore, the Foggs' appeal is rejected.

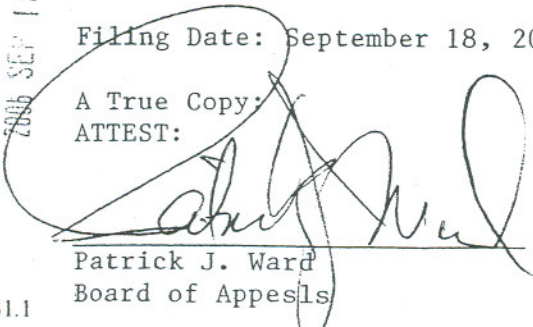
Unanimous Decision of
the Board of Appeals

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2006 SEP 18 8:51

Filing Date: September 18, 2006

A True Copy:
ATTEST:



Patrick J. Ward
Board of Appeals

Lawrence E. Kaplan
Lawrence E. Kaplan
Chairman

Date: September 14, 2006