

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 21-1372C

Platt Development Group LLC)
)
Plaintiff)
V.)
)
Mark Fortune, Mark Erlich, Kerry Walsh Logue,)
Tyrone Kindell Jr., Joseph Ruggiero, Eric Robinson)
and Sherry Dong, as they are members of the Boston)
Zoning Board of Appeals the City of Boston, and)
The Board of Appeal of Boston)
)
Defendants)

SUFFOLK SUPERIOR COURT
 CIVIL CLERK'S OFFICE
 2021 JUN 16 A 10:33
 MICHAEL JOSEPH PETERSON
 CLERK / MAGISTRATE

COMPLAINT

1. The Plaintiff, Platt Development Group LLC (hereinafter "Platt), is a Massachusetts limited liability company with a usual place of business at 732 East Broadway, South Boston, Massachusetts.
2. Platt is the Agent for the owner of 1778 Columbia Road, South Boston, Massachusetts pursuant to a certain Purchase & Sale Agreement dated October 29, 2020 for the land known as and numbered as "Lot C" South Boston, Massachusetts 02127, being the same property described on a Deed recorded at the Suffolk County Registry of Deeds in book 42366, page 45.
3. The Defendants, Mark Fortune, Mark Erlich, Kerry Walsh Logue, Tyrone Kindell Jr., Joseph Ruggiero, Eric Robinson, and Sherry Dong (hereinafter "Members") are the Members of the Board of Appeals of the City of Boston. Upon information and belief

each of these Defendants/Members resides in the City of Boston, County of Suffolk, Commonwealth of Massachusetts.

4. The Defendant the City of Boston (hereinafter “City”) is a City of the Commonwealth of Massachusetts. The Clerk of the City of Boston has a place of business at Boston City Hall, Room 601, Boston, County of Suffolk, Commonwealth of Massachusetts.
5. The Defendant Board of Appeal of Boston (hereinafter “BOA”) has a usual place of business at Boston City Hall, Room 204, Boston, County of Suffolk, Commonwealth of Massachusetts.
6. The Plaintiff is an “aggrieved” person pursuant to §11 of the Boston Zoning Enabling Act (hereinafter “Section 11”).
7. This is an appeal pursuant to Section 11 from a Decision of the BOA denying Platt a Conditional Use Permit pursuant to Article 6 and Article 29 of the Boston Zoning Code (hereinafter the “Code”) to erect a new three family dwelling with roof deck and parking garage at 1778 Columbia Road in Ward 7 of the South Boston area of the City of Boston, County of Suffolk, Commonwealth of Massachusetts (hereinafter the “Project”).
8. On or about January 7, 2021, the Plaintiff (through its authorized representative) submitted an Application to the Inspectional Services Department (hereinafter “ISD”) for the City of Boston for a Building Permit to commence the Project.
9. On February 12, 2021, Lisa Hoang, acting for the Commissioner of Boston Inspectional Services Department of Planning and Zoning Division, issued a Zoning Code Refusal pursuant to Chapter 665 of the Acts of 1956, as amended, finding the Greenbelt Protection Overlay District (hereinafter “GPOD”) applied to the property in question (See Exhibit 1 hereto).

10. Pursuant to Chapter 665 of the Acts of 1956, as amended, the Decision of ISD may be appealed to the BOA within forty-five days.
11. The Plaintiff, by its authorized agent, filed a timely Appeal pursuant to the Boston Zoning Code to the BOA, Appeal number BOA1164448 (See Exhibit 2 hereto).
12. In the Appeal the Plaintiff appealed the Decision of the ISD refusing Plaintiff's Application for a Building Permit to commence the Project.
13. ISD, in refusing Plaintiff's Application for a Building Permit, required the issuance of a Conditional Use Permit pursuant to Articles 6 and 29 of the Boston Zoning Code.
14. Plaintiff's Application met all of the requirements of Article 6 and Article 29 of the Boston Zoning Code and therefore the BOA should have voted to sustain the Plaintiff's Appeal and should have granted Plaintiff's Application for a Conditional Use Permit to commence the Project.
15. On May 18, 2021 the BOA held a Hearing regarding Plaintiff's Appeal and voted to Deny Plaintiff's Appeal and Deny Plaintiff's Application or Conditional Use Permit to commence the Project.
16. Subsequent to the May 18, 2021 hearing the BOA signed a written Decision confirming the Denial of the issuance of the requested Permit and denying Plaintiff's Application for a Conditional Use Permit to commence the Project. On June 11, 2021 the Decision was entered in the office of the Commissioner of the Inspectional Services Department, a copy of the Notice of Decision was provided to the Plaintiff and/or its authorized agent (See Exhibit 3 hereto).
17. The Plaintiff timely filed this appeal pursuant to Section 11.

18. In the Decision of the Board of Appeal, the Board acknowledged that the only claimed violation was that the Property is subject to the GPOD pursuant to Article 29 Section 4.

The Board's Decision also stated:

The Board is of the opinion that the Appellant did not advance sufficient reasons to satisfy the Board, that all conditions under which the Board may grant a Conditional Use Permit as specified in Article 29, section 29-5 and Article 6, section 6-3 of the Zoning Code have been met, nor to cause the Board to come to a conclusion that this is a specific case where a literal enforcement of the Act involves a substantial hardship upon the Appellant as well as upon the premises, nor where the described relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the Zoning Act.

19. In reviewing GPOD applications paragraphs (a) through (f) of Article 6 Section 3 are inapplicable. The Board's sole consideration is the requirement set forth in the GPOD Article itself. Accordingly, the Board did not have authority to deny the Appellant/Plaintiff's Application/Appeal.

20. The Board was improperly swayed by the opposition expressed at the hearing primarily by Luanne O'Connor, who with zero architectural or design credentials, made criticisms subjectively based on the modern design of the proposed building.

21. The area within which the Project is to be built is not a Historic District thereby subject to keener and/or codified design scrutiny nor is it in a Neighborhood Design Overlay District where the BPDA has enhanced an at least minimally detailed design authority under the Code. In fact, the only Member of the Board voting on the proposal who has architectural training, Eric Robinson, had no objections to the Plaintiff's plan and voted in favor of the Plaintiff's plan after stating that the proposed development was appropriate from an architectural standpoint- that as architects, they design for today, not for 100 years ago. The Board, contrary to its legal requirements and contrary to its own

architect Member's comments, voted to deny GPOD approval, thus denying the Applicant the right to proceed with the zoning-compliant Project.

22. The BOA Hearing is recorded and available at

https://www.cityofboston.gov/cable/video_library.asp?id=35793, with the hearing in question commencing at the 1:01:52 mark. Through information imparted on the BOA by Platt's Attorney, George Morancy, during the hearing in question, and at numerous and various previous Hearings the BOA Members have been made aware of numerous court Decisions which set forth plainly and unequivocally that the BOA cannot legally DENY an Application for a Conditional Use Permit on the basis of GPOD applicability where the Project otherwise is zoning compliant (like Platt's Application) but can in such circumstance only set "reasonable conditions" as set forth in Article 29 and particularly Section 29-6.

23. Notwithstanding the clear law on this issue and notwithstanding the BOA repeatedly

having been told by the Superior Court, the Appeals Court and Platt's counsel that it cannot Deny a Conditional Use Permit for a zoning compliant Application on the basis of GPOD applicably, the BOA on Platt's Application ignored the law, succumbed to political pressure, and Denied Platt's Appeal.

24. For the relevant South Boston Neighborhood (zoning) District, Table A of Article 68 of the Code (Regulation of Uses) sets forth, among other things the uses that are permitted in each zoning subdistrict.

25. Pursuant to said Table A, a particular use is: allowed, conditional or forbidden, in any particular district.

26. The Project in question is located in the South Boston section of the City of Boston and is designated as in the MFR (Multifamily Residential) zoning subdistrict under Article 68, the South Boston Neighborhood District.
27. The proposed erection of a new three family dwelling with roof deck and parking garage is an allowed use within the MFR Zoning Subdistrict and the Plaintiff's Application met every dimensional requirement of the Zoning Code and is therefore a "zoning compliant" Project.
28. The Plaintiff's Project falls within the GPOD established pursuant to Article 29 which such applicability generated the compliance requirement of Article 29 §4 resulting in the zoning refusal letter as issued by ISD.
29. Pursuant to Article 29 §29-4, any Applicant seeking a Building Permit for exterior construction or alteration of a proposed project within a GPOD is subject to Article 29 where "the application seeks to erect one or more buildings or structures having a total gross floor area in excess of 5,000 feet."
30. Plaintiff is seeking in the Project to erect a building with a total gross floor area in excess of 5,000 square feet, and therefore the project is subject to the provisions of the GPOD.
31. Article 29, Sections 29-5 and 29-6, requires any Applicant seeking a Building Permit as described in the preceding paragraph to "obtain a Conditional Use Permit."
32. Pursuant to Article 29, Section 29-6, an Applicant for a Conditional Use Permit must only comply with the following three standards in addition to the "standards set forth in Article 6". The standards are: 1) provision for adequate vehicular access, off street parking and loading and shall not have a significant adverse effect on traffic and parking in the Greenbelt roadway and adjacent streets; 2) provision for landscaping treatment that

ensures that the natural and aesthetic quality of the Greenbelt roadway area will be maintained; and 3) provision for the design of all structures that is compatible with surrounding neighborhood.

33. The Massachusetts Court of Appeals, in KCI Management Inc v. Board of Appeals of Boston, 54 Mass. App. Court 254, ordered plainly and unequivocally that “where the proposed use is one permitted by right, the ‘Board... may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use’ (emphasis added)”.
34. The standard set forth in Section 6 of the GPOD Article (29) and the well-established and well settled principals of land use and zoning law “do not permit denial of a GPOD application based on secondary impacts to the character of the Greenbelt.”
35. The Massachusetts Appeals Court, in Stafford v. Conservation Commission of Reading, 451 Mass. App. Ct. 556, held that a permit granting authority lacked authority to deny a permit because of potential or secondary impact.
36. The Plaintiff seeks a Declaration by way of declaratory judgement or alternatively pursuant to Section 11 of the Boston Zoning Enabling Act, that: A) the proposed Project is zoning compliant; B) the plans and other documents submitted to the BOA demonstrated that the Project and the architectural design of the building is compatible with the neighborhood; C) the Project meets each requirement necessary for the granting of a GPOD permit; and D) that this court declare the Application be approved in accordance with the standards set forth in Article 29 and order the issuance of the permit(s) required for the Project to proceed and be completed.

37. The BOA for the City has been well aware of the Decision of the Appeal Court in KCI Management Inc.
38. During the Hearing before the BOA, the representative of the Plaintiff/Applicant cited the KCI Decision to the BOA.
39. The BOA has repeatedly been made aware of the applicability of KCI and has had many decisions of the Board appealed to the Superior Court resulting in remands to the Board so that the Board would comply with the KCI decision.
40. The BOA has contemptuously failed and/or refused to recognize the legal authority provided to it repeatedly and has knowingly violated the law as it relates to KCI and the issuance of Conditional Use Permits pursuant to the GPOD Article.
41. The court should order the issuance of Plaintiff's permit(s) without the requirement of remand to the BOA. The BOA has repeatedly been told by this Court and the Appeals Court that they do not have the legal authority to deny, in this circumstance, a Conditional Use Permit and can only set "reasonable conditions" (based upon the three (3) factors set forth in Section 29-6 of Article 29). Such Decision and Declarations have been ignored by the BOA in complete disregard and in complete contempt of this Court's and the Appeals Court's decisions. Thus, this Court should order the issuance of Plaintiff's permit(s) forthwith with no remand and with no conditions or restrictions.

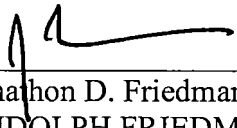
Wherefore, the Plaintiff respectfully requests this Honorable Court to:

1. Declare the Decision of the Defendant Board of Appeal of Boston denying the Application of Plaintiff void and annulled;

2. Enter judgment in favor of the Plaintiff ordering the Defendant to grant the permit(s) required to complete the Project forthwith with no conditions or restrictions;
3. Award the Plaintiff its costs, expenses and attorney's fees for bringing this Appeal based upon the contemptuous disregard the BOA has shown to this Court and the Appeals Court by ignoring repeatedly the Decision in KCI Management, Inc. and other similar cases; and
4. Such further and additional relief as the Court deems appropriate and just in light of the circumstances.

Dated: 6/16/21

Respectfully submitted,
The Plaintiff,
Platt Development Group, LLC,
By their attorneys,



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