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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 23-0344 F

SALLY G. FUREY, GEORGE B. INGLIS,
CONNIE CHOI AND CHARLES HERRMANN,
ERWIN FOXTREE, KATHLEEN M. MOORE,
MELVYN GREEN AND ADELE STRUASS,
MARIO G. MARTINS, DEREK J. NORBERG,
DANIEL O. MEE, MARK D. ROBSON,
ELAINE NASSIF AND JENNIFER RIZK,
JAMES J. FLAHERTY AND KERRY FLAHERTY,
CRISTIN STEGEMANN AND STEVE
STEGEMANN, and CHE SOU FAN FONG,

Plaintiffs,

v.

CITY OF BOSTON BOARD OF APPEAL,
its Members: MARK ERLICH, MARK FORTUNE,
JOSEPH RUGGIERO, ERIC ROBINSON, SHERRY
DONG, JEANNE PINADO, AND KERRY WALSH
LOGUE; and KHAL TIFERES YOSEF, INC.,

Defendants.

2023 FEB -7 P 4:05
CIVIL CLERK

COMPLAINT

Introduction

1. In this zoning appeal, Plaintiffs are homeowners and abutters (collectively, "Plaintiffs") who bring this action, pursuant to Section 11 of the City of Boston Zoning Enabling Act, Ch. 665 of the Acts of 1956, as amended (the "Act") to appeal the decision of the City of Boston Board of Appeal ("Board") granting the petition of the Defendant, Khal Tiferes Yosef, Inc. ("KTY") for relief from the provisions of the Boston Zoning Code, as amended ("Zoning Code") for a project at 49 Bennett Street in the Brighton neighborhood district of Boston. The Board decision filed with the Inspectional Services Department on January 20, 2023

("Decision"), allows KTY to demolish an existing 2,762 square foot two-family residence to construct a large multipurpose structure consisting of a synagogue, private community center, ancillary rooms and four bedroom apartment totaling approximately 14,070 square feet ("Project"). The Board exceeded its authority in granting multiple variances without satisfying the Zoning Code conditions, including density restrictions, dimensional regulations, and off-street parking requirements. Furthermore, the proposed building is out of character with and injurious to the neighborhood made up of one and two-family residences. In sum, the structure would be injurious to the neighborhood due to increased density, demands for on-street-parking, traffic congestion, noise, detriments to sunlight, air and view, nighttime light pollution, and loss of privacy to the abutting properties. Accordingly, Plaintiffs respectfully ask the Court to annul the Decision. Plaintiffs allege and state as follows:

Parties

2. Plaintiff, Sally G. Furey, is the owner of and resides at 53 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

3. Plaintiff, George B. Inglis, is the owner of and resides at 58 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

4. Plaintiffs, Connie Choi and Charles Hermann, are the owners of and reside at 52 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and bring this action with legal standing as adversely affected abutters to appeal the Decision.

5. Plaintiff, Erwin Foxtree, is the owner of and resides at 50 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

6. Plaintiff, Kathleen M. Moore, is the owner of and resides at 54 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

7. Plaintiffs, Melvyn Green and Adele Strauss, are the owners of and reside at 56 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and bring this action with legal standing as adversely affected abutters to appeal the Decision.

8. Plaintiff, Derek J. Norberg, is the owner of and resides at 57 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

9. Plaintiff, Daniel O. Mee, is the owner of and resides at 52 Parsons Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

10. Plaintiff, Mark D. Robson, is the owner of and resides at 56 Parsons Street 2, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

11. Plaintiffs, Elaine Nassif and Jennifer Rizk, are the owners of and reside at 70 Arlington Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and bring this action with legal standing as adversely affected abutters to appeal the Decision.

12. Plaintiffs, James J. Flaherty and Kerry Flaherty, are the owners of and reside at 69 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and bring this action with legal standing as adversely affected abutters to appeal the Decision.

13. Plaintiffs, Cristin Stegemann and Steve Stegemann, reside at 69 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and bring this action with legal standing as adversely affected abutters to appeal the Decision.

14. Plaintiff, Che Sou Fan Fong, is the owner of and resides at 59 61 Bennett Street, Brighton, Suffolk County, Commonwealth of Massachusetts, which abuts the Project site, and brings this action with legal standing as an adversely affected abutter to appeal the Decision.

15. Defendant, City of Boston Board of Appeal (the "Board"), which is established pursuant to Section 8 of the Act, has its office located at 1010 Massachusetts Avenue, Boston, Suffolk County, Commonwealth of Massachusetts. The Board's members include: Mark Elrich, Mark Fortune, Joseph Ruggiero, Eric Robinson, Sherry Dong, Jeanne Pinado, and Kerry Walsh Logue.

16. Defendant, Khal Tiferes Yosef, Inc., ("KTY") is a non-profit Orthodox Jewish congregation of the same name and the owner of the Project site. KTY maintains a principal office in the neighborhood at 53 Parsons Street, Brighton, Suffolk County, Commonwealth of Massachusetts.

Jurisdiction

17. This Court has jurisdiction of this action, pursuant to St. 1956, c. 665, § 11, as most recently amended by St. 1974, c. 669, § 1 and St. 1994, c. 461, § 2.

Facts

18. Plaintiffs have standing to bring this action being composed of legal abutters adversely affected by the Board's Decision to approve the proposed Project with standing under section 11 of the Act.

19. KTY is the Applicant for the proposed Project, and also referenced as the Appellant in the Decision, and as the Proponent in this Complaint.

20. On or about April 19, 2022, KTY applied to the City of Boston Inspectional Services Department ("ISD") for a permit for construction of a multi-purpose synagogue, consisting of one four bedroom apartment, a sanctuary for worship, a social hall, ritual bath hall, and ancillary spaces for childcare, dining, and related activities, as well as an outdoor deck.

21. Thereafter, the Building Commissioner of ISD issued a written denial of KTY's application, and KTY appealed the denial to the Board.

22. On December 6, 2022, the Board held a public hearing on KTY's appeal of the ISD denial.

23. At the hearing, KTY failed to present adequate justification for the requested variances as required under Section 9 of the Act and Article 7, Section 7-3 of the Zoning Code.

24. Despite KTY's failure to present adequate evidence to the Board at the hearing, the Board voted to approve the request for relief and granted the variances and conditional use permit KTY had requested.

25. Subsequently, on January 17, 2023, the members of the Board signed the Decision to memorialize their vote granting the requested variances. A copy of the Decision is attached as **Exhibit 1**.

26. The Board's Decision was filed with ISD on January 20, 2023.

27. Zoning Code Article 7, § 7-3 subparts (a, b, and c) relevant here, entitled “Variances” requires that: “The Board of Appeal shall grant a variance only if it finds all of the following conditions are met:

- (a) That there are special circumstances of conditions fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;
- (b) That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; and
- (c) That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to public welfare.”

28. This is an appeal, pursuant to §11 of the Act, of the Decision in BOA#1382419, related to Permit No. ERT#1323008.

29. The evidence before the Board at the hearing did not include evidence sufficient to support all of the specific findings of fact required for the variances and conditional use permit and the Board failed to seek appropriate information required in order to make all such findings.

30. In granting the variances and conditional use permit, the Board, within the meaning of Section 11 of the Act, exceeded its authority.

I. The Neighborhood Setting of Primarily Single-Family Residential Buildings

31. The proposed Project site is located in a Single-Family Residential Subdistrict ("1F-5000 Subdistrict") of the Allston Brighton Neighborhood District.

32. Bennett Street is a narrow, two-way, single file (two vehicles cannot pass without one pulling over) street with parking on both sides. The street is an important pass through for Brighton and the street's small size belies how much traffic regularly uses this east-west passage that parallels the much larger, traffic signal controlled Washington and Arlington Streets.

33. The site is near the intersection of Bennett Street and Parsons Street. Due to its driveway, curb cut and mid-block position the site has only three on street parking spaces available. The Proponent regularly operates a 20 foot long passenger van that would not fit in the Project's driveway and would occupy two of the three street parking spaces.

34. The residential buildings in this neighborhood typically have front porches, walkways, and foliage in the front yard. These buildings represent a consistency of residential design, scale, and contribute to the strong single family residential neighborhood character of the street.

35. The neighboring homes have large rear yards typically 40-60 feet deep.

II. The Proposed Project and Request for Numerous Variances

36. The current structure at 49 Bennett Street, is a 150 year old Victorian farmhouse style two-family residence of approximately 2,762 gross square feet. The Project would include demolishing the current residence on the site.

37. According to the Decision, KTY states that it participated in community meetings and the Project “has been carefully designed and developed to mitigate potential impacts on its abutting properties and the immediate area.” See **Exhibit 1** (p. 4).

38. In fact, the community meetings were conducted virtually in a limited manner. Two meetings were limited to 100 participants in which the Proponent and its supporters (almost all of whom are not abutters) with early notice, over-filled the call allotment and many abutters could not participate. The two initial proposals included massive institutional structures designed in stone and glass similar to research and development commercial buildings. See **Exhibit 2**.

39. The Proponent has attempted to give the impression that many concessions have been provided to get to the current Project. In fact, in every meeting the neighbors 1) noted the current challenges in living with the existing 53 Parsons Street temple and its busy schedule of events and accompanying traffic and parking needs despite its corner lot with 7 on street parking spaces; 2) stated that any structure with occupancy larger than the current operation would be highly disruptive at the 49 Bennett Street mid-block location unless significant off street parking was incorporated; and 3) noted that the sheer size and mass of the proposed structures, initially at over 19,000 square feet (just below the 20,000 square feet Boston Planning & Development Agency Article 80 Review threshold) and 8 times the typical Bennett Street home is out of character with the neighborhood, creates shadows and darkness, and inhibits light and air.

40. With each successive plan the Proponent failed to meaningfully address the two primary concerns that were constantly repeated: 1) excessive physical size and 2) occupancy over 500% larger than the current operation.

41. At the Brighton Allston Improvement Association neighborhood association meeting, when the neighbors again repeated their primary concerns about the development the Proponent accused the neighbors of coming up with new and false criticisms of the Project because of their anti-Semitic disposition. This accusation was especially hurtful to the neighbors given their seven year history of welcoming KTY as well as to the several Jewish homeowner-abutters who also opposed the Project.

42. Over 600 Brighton Allston residents joined with the neighbors in opposing this large institutional expansion. This list includes numerous abutters and elected officials voicing their concerns about the negative burden the Project will have on the immediate and greater neighborhood.

43. The lot for the Project site consists of two (2) contiguous parcels, totaling approximately 12,833 square feet of land.

44. This lot is oversized for the neighborhood and can easily accommodate a structure substantially larger than the current two family home while staying within current zoning requirements. Therefore, the Applicants citation of hardship is without merit.

45. The current 2,762 square foot structure at the Project site together with its driveway occupies approximately 12% of the total footprint of the lot with the balance green space.

46. The Project design plans a building that is 14,070 gross square feet. The Project together with its parking drive and area would occupy approximately 80% of the lot.

47. The Project consists of: 1,126 square foot four bedroom apartment, sanctuary with 110 person occupancy on first level plus 49 person occupancy on mezzanine level, social hall with occupancy of 130, ritual bath hall, 18 ft x 10 ft commercial kitchen, office, library and

ancillary spaces for related activities, as well as an 800 square foot outdoor deck. In aggregate, the Project will have total occupancy over 300 persons.

48. The Project violates Article 51, Section 9 – Excessive Floor Area Ratio. The maximum floor area ratio (“FAR”) under the Zoning Code is 0.5. The Project’s FAR is 1.08, 116% the allowed FAR.

49. The Project violates Article 51, Section 9 – Front Yard Insufficient. The minimum requirement for the front yard is 20 feet. The proposed project only provides for 14 feet of front yard to the porch. This aspect is especially disruptive due to the narrow sidewalks of Bennett Street since the Project is about two times the width of the present homes and out of sync with the character of the neighborhood.

50. The Project violates Article 51, Section 9 – Rear Yard Insufficient. The minimum requirement for the rear yard setback is 40 feet. The current two family home has a setback of about 60 feet. The Project provides a rear-yard setback of approximately six feet to a massive retaining wall approximately ten feet high; a rear-yard setback of approximately 12 feet to a large outdoor deck approximately 50 feet wide by 20 feet deep; and a rear-yard setback of approximately 21 feet to the rear façade of the building

51. The Project includes an institutional style flat membrane covered roof for about 60% of the structure. Such a commercial roof is wholly inconsistent with the design and character of the neighborhood which is dominated by 100+ year old well-kept homes. It will present an eyesore for the abutters, not in harmony with the purpose of the Code and injurious to the neighborhood and detrimental to the public welfare.

52. The location of HVAC on the flat roof, as well as the identified elevator mechanical room will create further disruption to abutters with unwelcome mechanical devices

feet from abutter's bedroom windows together with their lack of harmony with current neighborhood and the obvious noise pollution inherent with such machines.

53. Given the conceded topographical challenges with the site and the Project's consumption of most green space, the abutters have voiced repeated concerns about snow removal and water runoff.

54. The Board failed to inquire let alone properly investigate snow removal for the Project. Narrow Bennett Street has been challenged during most winters with snow removal and storage. The Project driveway allows for no space to store snow and narrow Bennett Street does not lend itself to accommodate large scale snow removal to an off-site location. Such remediation would require large equipment and trucks that would tie up Bennett Street and inhibit abutters' efforts to access their homes and clear snow from their own properties; it would also inhibit the City of Boston from its effort to clear the snow from the public way. The absence of any snow removal plan represents a serious public health and safety concern.

55. The Board failed to investigate water runoff. Currently the site's large green buffer provides a watershed that contains most of the runoff despite the topography. The Project consumes 80% of the green space. The Board accepted, without any approvals or plans, KTY's claim that it will pump runoff 20 feet from the site low point and tie into City of Boston storm drains on Bennett Street. The Arlington Street abutters are especially concerned that Boston Water and Sewer will deny any private party tie into its already overwhelmed storm water removal system.

56. The Board erred when it failed to vet water runoff and snow removal for the Project where the Project's excessive FAR exacerbates these issues and creates a situation that is injurious to the neighborhood and detrimental to public welfare.

57. In addition to the significant dimensional issues, the number and type of parking spaces fails to comply with the Zoning Code. KTY's proposal violates Article 51, Section 9 – Off-street Parking Requirement. The Zoning Code provides that for religious community use, at least 14 spaces must be provided. In addition, the Code also requires 1.75 spaces for residential use. Collectively, the Project should provide at least 16 off-street parking spaces.

58. Two parking spaces are required for the large four bedroom apartment.

59. The Project only provides for five off-street parking spaces, less than a third of what the Code requires.

60. The plans do not indicate where the handicap parking space(s) will be located. When this need is implemented the designed area for off street parking will not accommodate the five proposed spaces.

61. The Project violates Article 51, Section 57.2 – Existing Building Alignment Conformity. The proposed structure violates the Zoning Code mandate that the front yard depth conform with the Existing Buildings Alignment of the Block.

62. The Board's Decision annuls the refusal of the Building Commissioner and orders ISD to grant KTY a building permit for the Project in accordance with the Decision.

63. The Decision, however, does not comply with applicable law governing variances, including the conditions in Article 7, § 7-3 of the Zoning Code.

64. All of those conditions must be met with supporting evidence for each variance requested before the Board may grant a variance. The Board also must provide findings, based on evidence before it, that supply a basis for the required conditions for each of the variances requested.

65. The Decision erroneously states that “the size and scale of its new building is consistent with that of its surrounding structures, and the Project will not adversely impact the neighborhood.” See **Exhibit 1** (p. 4).

66. The Project site drops off steeply by approximately twenty (20’) feet from its southern lot line on Bennett Street to the neighboring houses on Arlington Court on the northern lot line.

67. The proposed structure will have approximately 4,720 square feet of its floor area at or beneath the Bennett Street grade. Although KTY’s architectural plans show the structure as only 29.4 feet above the Bennett Street grade, when measured from the lowest point at the rear (north) of the lot, the proposed structure will tower approximately fifty (50’) feet high. It is this 50 foot height, 19 feet from the lot line that the Arlington Street and Arlington Court homes would face to the south. See **Exhibit 3** (Project plans).

68. Combined with the proposed reduced setbacks noted above from approximately six feet to approximately 21 feet, the proposed structure would greatly impose upon all of the abutting residences on Bennett Street to the south, east, and west, and on Arlington Court to the north.

69. Moreover, the proposed height of the Project, which is actually three and one-half (3.5) stories tall, exacerbated by the significant slope of the site, when placed in comparison to the abutting properties, would greatly diminish the sunlight received by each home over the course of a day at various times of the year and will cast shadows onto the abutting properties, thereby directly harming the neighbors’ quality of life.

70. Additionally, the Project includes an 800 square foot back deck at the property, which will be constructed approximately ten (10’) feet above the rear grade of the site and used

for the purposes of large outdoor social gatherings and religious events. This deck will be eye level with the second floor bedroom windows on Arlington Court. This imposing structure will loom over Plaintiffs' abutting properties to the substantial detriment of their reasonable use of their property and the quality of their lives.

71. The occupancy capacity of the Project is over 300 people. With the large and semi-public nature of the proposed use of the building, the residents of abutting properties will lose a significant level of privacy which they currently enjoy in the neighborhood.

72. The extraordinary foot traffic on the narrow sidewalks of Bennett Street created by the 300 person occupancy of the Project would create burdensome disruption to this single family zoned street.

73. The Decision states that the Board's granting of the variance for insufficient off-street parking is "specifically justified by the special circumstances" and notes that most of the KTY congregation are Allston Brighton residents who walk to Temple as a religious practice on the sabbath (Saturday). The Decision disregarded evidence presented by the neighbors illustrating the significant driving and parking habits of KTY. Further, the Decision says nothing about the other six days of the week when large scale gatherings for weddings, funerals and other events can occur uninhibited by the sabbath rules or the obvious fact that guests of the congregation may not observe similar sabbath driving and parking restrictions.

74. KTY has experienced extraordinary growth in the past seven years to its current size of 50 +/- families. The operation is very busy with two and three services per day. Members regularly drive and park for these services despite the representation to the Board that claimed otherwise. Parking has been a constant issue for neighbors as members take spaces from residents and regularly park illegally creating safety issues.

75. The neighbors explained to KTY and the Board that while they were happy for the community's success and growth, the 49 Bennett Street site is simply too tight a location for a temple 6 times the size of the existing 49 person occupancy.

76. The Decision accepts KTY's claims of "limited facilities for larger functions with on-site parking demands." The Decision disregards current conditions. Further, the Decision incorporates the faulty logic KTY offered that since it already meets at another location in the neighborhood (53 Parsons Street), there will not be a new burden placed on on-street parking. This logic ignores the fact that the current location is at the corner of two larger streets with seven on street parking spaces. Bennet Street east of Parsons Street and aside 53 Parsons Street is approximately ten feet wider than Bennett Street in front of 49 Bennett Street.

77. As noted and to the contrary of the KTY claim of no new neighborhood burden, the neighborhood experience with the smaller synagogue at 53 Parsons Street with their current congregation of approximately forty nine (49) people has been far from optimal as KTY members regularly take parking away from residents. The Project, at 512% larger occupancy than the 53 Parsons Street operation, will result in exponentially more people, congestion, noise, traffic, shadows, loss of light, air, and loss of privacy valued in a residential neighborhood, all resulting in a reduction in the value of the abutting properties.

78. Additionally, the 512% increase in the size of the occupancy allows for more event space. This increase in size will lead to more events and meetings on days other than the sabbath when members are permitted to use their car. In inclement and cold weather months, more members currently drive to events not held on the sabbath. This pattern will continue with the much larger Project, and will lead to more traffic congestion and demand for on-street parking. The inevitable growth of the congregation and the increase in event space will lead to

increased traffic in the neighborhood, and an undue burden on the abutting properties for on-street parking.

79. Article 7, § 7-4 allows the Board to impose conditions to “assure harmony.” The Board should have denied all of the requested variances, since the proposed Project does not meet the standard of minimizing the impact of the numerous variances, including increased burden of available on-street parking spaces; encroaching into required setbacks for the front and rear yards with the resultant loss of light, air, and privacy; and expanding density with an FAR that increases more than five-fold the number of occupants allowed under the Code.

80. For these reasons among others, the Board exceeded in its authority in granting the variances.

III. Summary of Impact on and Injury to Abutting Properties

81. As a result of the Decision, if the Project is constructed, the neighborhood and the abutting properties will suffer. Consequently, Plaintiffs as abutters are aggrieved persons who will experience the unreasonable burden of: (1) decreased sunlight and increased shadows, decreased air flow, loss of vistas, and nighttime light pollution as a result of the Project’s FAR and increased massing and height; (2) a loss of privacy from the encroachments of the structures unreasonably into the setbacks and the resulting crowds of congregants who will gather outdoors on the deck for large events, (3) disruption due to Project’s challenging snow removal requirements, (4) increased risk of catastrophic water damage to property owners down gradient from the site due to loss of watershed; (5) loss of the quiet residential nature of the neighborhood due to the Project’s 300 person occupancy and very active daily schedule; (6) increased vehicular traffic in the neighborhood; (7) a loss of on-street parking and increased congestion of parked cars on the neighborhood’s streets; (8) increased noise from the large occupancy, commercial

HVAC, elevator equipment and from the foreseeable increase in the use of vehicles to and from the property; and (9) a significant and detrimental impact on neighborhood character and aesthetics.

82. In addition, the design of the proposed Project will not benefit the neighborhood and will be injurious to it for many reasons including those stated above.

WHEREFORE, for all of these reasons, the Plaintiffs request the Court hear all pertinent evidence and determine the facts, and based on those facts, find that the Decision exceeds the authority of the Board and should be annulled.

JURY CLAIM

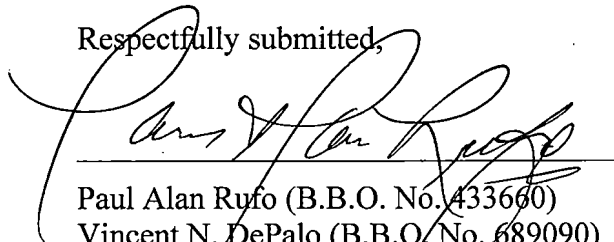
The Plaintiffs request a trial by jury as to all issues properly triable to a jury.

PRAYERS FOR RELIEF

The Plaintiffs respectfully pray that this Honorable Court:

1. Hear all the facts and determine the facts;
2. Determine and adjudge that the Decision of the Zoning Board of Appeals was erroneous in law and fact, and exceeded its authority;
3. Annul the Decision of the Zoning Board of Appeals; and
4. Enter and issue such other relief that the Court deems just and appropriate.

Respectfully submitted,



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