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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF
THE TRIALCOURT

JONATHAN CROWELL,
COLLEEN COFFEY, and
MATTHEW PATTON,

Plaintiffs,

v.

C. A. No.

KERRY WALSH LOGUE,
JEANNE PINADO,
HANSY BETTER BARRAZA,
SHERRY DONG, DAVID AIKEN,
KATIE WHEWELL,
NORM STEMBRIDGE,
GIOVANNY VALENCIA,
ALAN E. LANGHAM,
SHAVEL'LE OLIVIER,
RAHEEM SHEPARD,
DAVID COLLINS,
AND ALAA MUKAHHAL in their capacity)
As members of the Zoning Board of
Appeals, the BOSTON ZONING BOARD
OF APPEALS, PAULINE ANN KING,
ANTHONY PAUL KING, and
PAULINE ANN KING LIVING TRUST

Defendants.

COMPLAINT

I. INTRODUCTION

1. Jonathan Crowell, Colleen Coffey, and Matthew Patton, (collectively “Plaintiffs”) bring this action pursuant to Section 9 of Chapter 665 of the Acts of 1956 seeking a preliminary injunction, declaratory judgment, and annulment of a decision of the Boston Zoning Board of

Appeal against Pauline Ann King, Anthony Paul King, the Pauline Ann King Living Trust, (collectively “Developer”) members of the Zoning Board of Appeals, and the Boston Zoning Board of Appeals (“the Board”) for judicial review of the January 9, 2024 decision (BOA1480567) issued by the Board granting numerous variances for the property known as and numbered 164 Savin Hill Avenue in Dorchester (“Property”).¹

2. The Plaintiffs bring this action as both the Board and Developer failed to find a necessity for the variances issued beyond a desire for a larger profit, which is a direct violation of applicable law and zoning code. The Board’s disregard for the Boston Zoning Code is permitting the Developer to drastically alter the character of the neighborhood by utilizing the Victorian skin of a single-family dwelling and wrapping it around an apartment building.

3. In fact, the Property could be developed and utilized as of right but the Developer instead has sought and received variances which will negatively impact the Plaintiffs’ properties, respectively Mr. Crowell at 165 Savin Hill Ave and Ms. Coffey and Mr. Patton at 161 Savin Hill Ave., which are directly across the street from the Property.

4. The Plaintiffs are all abutters of the Property as they received notice of abutter and Zoning Board of Appeals meetings.

5. Plaintiffs have standing to bring this action as they are abutters to the Property that is subject of the ZBA’s decision and as aggrieved parties.

6. The variances issued will have a direct negative impact on the Plaintiffs ability to utilize their properties, including but not limited to, by decreasing the available parking, increasing traffic and congestion, decreasing pedestrian safety, and increasing density beyond what the neighborhood is zoned for.

¹ The Board has not filed a written decision with the Inspectional Services Division of the City of Boston. If and when that is filed the Plaintiffs reserve the right to amend their complaint.

7. The Plaintiffs request that this Court issue a preliminary injunction precluding any further construction activity, annul the Board's decision, enter a declaratory judgment, and enters such other and further relief as is necessary to ensure any further variances do are not in violation of the Boston Zoning Code.

II. PARTIES

8. Plaintiff Jonathan Crowell is a resident of 165 Savin Hill Ave, Boston, MA and received notice of the abutter and Zoning Board of Appeals hearings.

9. Plaintiff Colleen Coffey is a resident of 161 Savin Hill Ave, Boston, MA and received notice of the abutter and Zoning Board of Appeals hearings.

10. Plaintiff Matthew Patton is a resident of 161 Savin Hill Ave, Boston, MA and received notice of the abutter and Zoning Board of Appeals hearings.

11. Defendant Pauline Ann King upon information and belief resides at 164 Savin Hill Ave, Boston, MA and is an applicant for the Permit. Additionally, Ms. King is a trustee of the Pauline Ann King Living Trust.

12. Defendant Anthony Paul King upon information and belief is a resident of Milton, MA and is an applicant for the Permit. Mr. King is a trustee of the Pauline Ann King Living Trust.

13. Defendant Pauline Ann King Living Trust upon information and belief is a living trust which owns the Property.

14. Defendant Boston Zoning Board of Appeals and its individual members, Kerry Walsh Logue, Jeanne Pinado, Hansy Better Barraza, Sherry Dong, David Aiken, Katie Whewell, Norm Stembridge, Giovanni Valencia, Alan E. Langham, Shavel'le Olivier, Raheem Shepard, David Collins, and Alaa Mukahhal, are duly appointed members of the Board and are named in

their capacity as members of the Board and not individually. All have a mailing address c/o Zoning Board of Appeal, 1010 Mass. Ave., 4th Floor, Boston, MA 02118.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over this matter pursuant to St. 1956, c. 665, § 11, as amended (“Enabling Act”).

IV. FACTS

16. The Property is at 164 Savin Hill Avenue. It is a single-family home with a small driveway permitting two-cars to park. The proposal put forward by the Developer would build a small apartment building. The new structure would eliminate almost all open space, forcing parking to be underground.

17. On or about January 9, 2024, the ZBA held a hearing concerning the Property with the Developer seeking variances, including but not limited to, violations of Article 65 §§ 8 and 9 (Floor Area Ratio Excessive, Building Height Excessive, Side Yard Insufficient). (Video of hearing at 43:45 <https://youtu.be/7qH0wtF-yxQ>).

18. The purpose of Boston’s Zoning Code is “to promote the health, safety, convenience ...; to prevent overcrowding of land; ... to lessen congestion in the streets; to avoid undue concentration of population; to provide adequate light and air; to secure safety from fire, panic and other dangers; to facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and to preserve and increase the amenities of the City.”

19. Boston Zoning Code 7.3 states that:

The Board of Appeal shall grant a variance **only if** it finds that all of the following conditions are met:

- (a) That there are special circumstances or 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;
- (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 the public welfare.

(emphasis added).

20. At no point during the Board hearing or throughout the variance process did the Developer provide or did the Board find, including in its written approval, any special circumstances or conditions which would deprive the Developer of reasonable use of the property.

21. This issue was raised by both Mr. Patton and another abutter during the Board hearing.

22. Even though the Developer was provided an opportunity to respond, he failed to identify any special circumstance or condition.

23. Additionally, following the Board's vote on January 9, 2024 Mr. Patton requested from the entire file relating to the Property. (Attached hereto as Exhibit A).

24. Nowhere in the Board's file prior to its vote to approve the variances is there any written description of special circumstances or conditions that necessitated a variance.

25. Nowhere in the Board's file prior to its vote to approve the variances is there any written description of hardships which require a variance for the Developer to reasonably use the Property.

26. Despite no special circumstances or conditions and significant community opposition, as demonstrated in the file, the ZBA voted to grant the variances on January 9, 2024.

27. In doing so, the Board failed to take into consideration the serious, negative impacts that would result to surrounding properties including Plaintiffs', from granting the variances.

28. The provisions of the zoning articles at issue were designed for the manifest purpose of limiting density and intensity of development to prevent the harms from the Board's granting of the variances.

29. In fact, on January 25, 2024 Mr. Patton requested from the Board its written decision and was informed that the draft decision would actually be drafted by the Developer's attorney.

30. The property is a two-family as a right—in other words the Developer could increase the size of the dwelling without the need for a variance.

31. Despite being able to enjoy the use of the Property currently and being able to further develop it without a variance the Developer has proposed and the Board approved increasing the height of the building to 3 stories, increasing the occupancy to 3 families, eliminating almost all open space on the property, drastically increasing the size of the parking lot—all in the name of building three luxury units which the Developer plans to sell for at least \$1.2 million each.

32. What the Board has approved will increase traffic and congestion on Savin Hill Avenue, where the Plaintiffs reside, including Mr. Patton and Ms. Coffey's three children under the age of 5. This increased congestion will only add to what is already a dangerous stretch of road—as evidenced by the damage sustained by property which abuts the Property.

33. Additionally, the increase in occupancy beyond what the Property is zoned for will have a severe negative impact on parking.

34. Unlike those that support the Property's variances the Plaintiffs all lack driveways. As such they all rely on parking on Savin Hill Avenue which only permits parking on the Property side of the street.

35. The parking on Savin Hill Avenue and surrounding streets is already a scarce commodity.

36. The additional occupancy which the Board has approved will make this situation worse.

37. Unlike other neighborhoods in Boston—the neighborhood which the Property resides in is boxed in by Route 93, Morrissey Boulevard, and the ocean. Meaning additional parking cannot be created as there is a lack of land to do so.

38. Additionally, increasing the amount of vehicles utilizing the property will increase the danger to pedestrians—including Ms. Coffey and Mr. Patton's three children, 5, 3, and two months. The only access to Mr. Patton and Ms. Coffey's property is a set of stairs which is directly opposite the Property's driveway. Increasing the amount of traffic utilizing this driveway and stretch of road will have a direct negative impact on pedestrian safety especially those utilizing Mr. Patton and Ms. Coffey's steps.

COUNT I

ANNULMENT OF THE DECISION

39. The Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth herein.

40. Section 9 of the Enabling Act and Article 7, Section 7-3 of the Boston Zoning Code set forth the legal standard for granting variances.

41. The Property does not have any unique soil conditions, shape, or topography that do not exist generally throughout the neighborhood and zoning district.

42. The fact that the Property has, *inter alia*, insufficient frontage, width, lot area, and occupancy rights does not warrant the granting of a variance.

43. The Property does not have any unique characteristics such that enforcement of the Boston Zoning Code would involve a substantial hardship to the Developer.

44. The Property does not contain any unique characteristics that affect its zoning that do not affect generally the entire zoning district.

45. The variances granted nullifies and/or substantially derogates from the intent and purpose of the zoning by-laws, and is not in harmony with the general purpose and intent of the Boston Zoning Code.

46. As a result thereof, the Board's decision should be annulled

COUNT II **DECLARATORY JUDGMENT**

47. The Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth herein.

48. An actual controversy exists between the Plaintiffs on the one hand, and the Defendants on the other hand, regarding whether a variance should have been issued to the Property.

49. The Plaintiffs are entitled to a binding declaration under M.G.L. c. 231A declaring and adjudging their rights, duties, and liabilities regarding whether the variance should have issued.

50. The Plaintiffs seek a declaration that the granting of a variance was improper and that the Board's decision should be annulled.

WHEREFORE, the Plaintiffs request that the Court:

1. Enter judgment for the Plaintiffs;
2. Annul the Board's decision of January 9, 2024 and direct ISD not to issue a permit to the Developer or any other owner at the Property;
3. Issue a declaratory judgment pursuant to M.G.L. c. 231A declaring and adjudging the Plaintiffs' rights, duties, and obligations under the Enabling Act and Boston Zoning Code, and annulling the Board's decision;
4. Award to the Plaintiffs damages, costs, and fees in an amount to be determined; and
5. Award such other relief that the Court deems just.

Respectfully submitted,

JONATHAN CROWELL, COLLEEN
COFFEY, and
MATTHEW PATTON,
By their attorney,

s/ Matthew Patton

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Dated: January 29, 2024