

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT

C.A. No. 23-1371 B

PERRY GANZ as Trustee of THE BAILE FAMILY TRUST,
Plaintiff,

v.

STUART MULLALLY, 836 EAST 4TH STREET LLC, and
HANSY BETTER BARRAZA, SHERRY DONG, KATIE
WHEWELL, NORM STEMBRIDGE, GIOVANNY
VALENCIA, RAHEEM SHEPARD, AND ALAN
LANGHAM, as they are Members of THE CITY OF BOSTON
ZONING BOARD OF APPEALS,
Defendants.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2023 JUN 15 P 2:24
JOHN E. POTTOS III
ACTING CLERK MAGISTRATE

COMPLAINT

Plaintiff Perry Ganz, as Trustee of the Baile Family Trust, brings this action, pursuant to Section 11 of Chapter 665 of the Acts of 1956, to appeal two companion decisions issued by the City of Boston Board of Appeal granting variances and a conditional use permit to the Defendant, Stuart Mullally, on behalf of the property owner, 836 East 4th Street LLC. The variances and conditional use permit, if upheld, would allow for a new three story, two family residential dwelling to be squeezed into a thin strip of land in South Boston which currently has trees, off-street parking, and a rear accessway. The variances also allow an existing structure to be expanded into the existing rear yard. The combined results of this unjustified expansion of density include reduced light and air flow, increased shadow cover, overcrowding, increased noise, reduced privacy, loss of views, reduced sight lines, increased traffic, and reduced parking. The Board's decisions are unsupported by factual evidence. The Board simply recited the factors, which renders the decisions facially invalid. Ganz is aggrieved and asks the Court to annul the decisions.

PARTIES AND JURISDICTION

1. The Plaintiff, Perry Ganz, as Trustee of the Baile Family Trust u/d/t November 14th, 2018 and recorded with the Suffolk County Registry of Deeds on March 20, 2019 in Book 60863, Page 250 (“**Plaintiff**”), owns the land and building thereon at 853 East Broadway, Boston, Massachusetts.

2. Plaintiff is an abutter to the land and buildings located at 834 East Fourth Street, Boston, Massachusetts (“**834 East 4th**”) and 836 East Fourth Street, Boston, Massachusetts (“**836 East 4th**”) (both properties together, the “**Locus**”).

3. Plaintiff is an abutter to the Locus.

4. Plaintiff is a direct abutter to the Locus.

5. Plaintiff is an aggrieved person in this matter.

6. The Defendant, 836 East 4th Street LLC (“**836 LLC**”), is a Massachusetts limited liability company. 836 LLC is the owner of the Locus.

7. The Defendant, Stuart Mullally (“**Mullally**”), is the applicant who submitted appeals to the Board for the Locus which resulted in the Decisions at issue. Mullally is the person to whom relief was granted in the Decisions. Mullally is the manager of 836 LLC.

8. The Defendants, Hansy Better Barraza, Sherry Dong, Katie Whewell, Norm Stembridge, Giovanni Valencia, Raheem Shepard, and Alan Langham, as they are Members of the City of Boston Zoning Board of Appeals (the “**Board**”) have an address of 1010 Massachusetts Avenue, Boston, Massachusetts.

9. The decisions in Case No. BOA 1405496 (834 East Fourth Street) and Case No. BOA 1405494 (836 East Fourth Street) were filed with the Inspectional Services Department of

the City of Boston on May 26, 2023 (the “**Decisions**”). True and accurate copies of the Decisions are attached as Exhibit A and Exhibit B, respectively.

10. This Court has jurisdiction over this matter pursuant to Section 11 of Chapter 665 of the Acts of 1956 (the “**Enabling Act**”).

11. Plaintiff has standing to bring this action as he is an abutter to the Locus and is a person aggrieved by Decisions of the Board within the meaning of Section 11 of the Enabling Act.

FACTS

12. On or around October 18, 2022, Mullally applied to the Board for variances in two matters, one concerning proposed renovations at 834 East 4th and one concerning proposed renovations at 836 East 4th. Mullally also sought a Conditional Use Permit for 836 East 4th.

13. Pursuant to Section 9 of the Enabling Act, the Board may grant variances from the City of Boston Zoning Code (“**Code**”) only under specified conditions.

14. The Board is authorized to grant variances under Article 7 of the Code, provided that the Board shall grant a variance only if it finds that all of the requirements set forth in Article 7, Section 7-3 are met.

15. Pursuant to Section 10 of the Enabling Act, the Board may grant permits for conditional uses only under specified conditions.

16. The Board is authorized to grant a Conditional Use Permit under Section 6 of the Code, provided that the Board shall grant such a permit only if it finds that all of the requirements set forth in Article 6, Section 6-3 are met.

17. On April 11, 2023, the Board held a public hearing on Mullally’s applications for variances and a conditional use permit relative to proposed renovations of the Locus.

18. The Board signed its written Decisions for 834 East 4th and 836 East 4th on May 23, 2023.

19. The Decisions were filed with the City of Boston Inspectional Services Department on May 26, 2023.

20. The Decisions state that the proposed development will allow Mullally “to have reasonable use of the premises by changing the occupancy from a one-family to a two-family by including building [sic] a rear addition and adding a new dormer to increase the living space.”

21. The Decisions do not state that Mullally or 836 LLC currently lack reasonable use of the Locus.

22. The Decisions contain no explanation or factual basis for the Board’s conclusory statement that the proposed development “will not adversely affect the community or create any detriment for abutting residents.”

23. The Decisions contain no explanation or factual basis for the Board’s conclusory statement that the proposed development “will not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

24. The Decisions contain no stated reasoning for any findings therein.

25. The Decision concerning 834 East 4th states that “the applicant noted that this project is on a significant slope and grade making the lot unusual,” but the Board does not state whether it credited or confirmed the applicant’s assertion.

26. The Decision concerning 836 East 4th states noting about the slope or grade of the Locus.

27. The Decisions do not state any reasoning for how “a significant slope and grade” relates to the variances granted.

28. The Decisions do not cite to any special circumstances or conditions especially affecting the Locus which were unique to the Locus and not the zoning district which would deprive Mullally or 836 LLC of reasonable use of the land without variances.

29. The Decisions contain no factual evidence to support the required findings for a variance.

30. The Decisions do not set forth valid, particular reasons with respect to each variance sought concerning each violation of the Code.

31. The Decisions merely recite the requirements for a variance.

32. The Decision concerning 836 East 4th contains no factual evidence to support the required findings for a Conditional Use Permit.

33. The Decision concerning 836 East 4th merely recites the requirements for a Conditional Use Permit.

34. The Decisions are facially invalid.

35. The Board exceeded its authority by granting variances and a Conditional Use Permit to Mullally.

36. The Board acted arbitrarily and capriciously by granting variances and a Conditional Use Permit to Mullally.

37. As a result of the Decisions, Plaintiff is aggrieved and injured.

38. In connection with the increased density allowed by the variances and Conditional Use Permit, and otherwise, Plaintiff's injuries include reduced light and air flow, increased shadow cover, overcrowding, increased noise, reduced privacy, loss of views, reduced sight lines, increased traffic, reduced parking, and loss of property value.

39. Plaintiff's injuries are distinct from the effects on the community at large.

COUNT I
ABUSE OF DISCRETION

40. Plaintiff hereby repeats and re-alleges the above paragraphs as if fully set forth herein.

41. The Board abused its discretion by granting of the variances and Conditional Use Permit to Mullally.

42. The Board acted arbitrarily and capriciously and exceeded its authority in its granting of multiple variances to Mullally without due regard or consideration for the standards to be considered and applied in the granting of a variance.

43. The Board acted arbitrarily and capriciously and exceeded its authority in its granting of a Conditional Use Permit to Mullally without due regard or consideration for the standards to be considered and applied in the granting of a Conditional Use Permit.

44. The Decisions exceeded the Board's authority under the Enabling Act, were not in compliance with the Code, and were based on legally improper grounds.

45. The Decisions are facially invalid.

46. Plaintiff is a person aggrieved and suffers harm as set forth herein.

47. The Decisions should be reversed and annulled.

REQUESTED RELIEF

WHEREFORE, Plaintiff Perry Ganz, as Trustee of the Baile Family Trust, respectfully requests that this Honorable Court:

- 1) Determine and adjudge that the Decisions are facially invalid;
- 2) Determine and adjudge that the Decisions, in granting the variances and Conditional Use Permit at issue, were made in error as a matter of law and fact and that the Board acted arbitrarily and capriciously;

- 3) Permanently restrain, enjoin, and annul the Decisions;
- 4) Award Plaintiff reasonable costs in accordance with Section 11 of the Enabling Act and reasonable attorney's fees to the extent permitted by law; and
- 5) Grant such further relief to Plaintiff as justice requires.

Respectfully submitted,
Plaintiff,
Perry Ganz, as Trustee of the Baile Family Trust,
By his Attorneys,

/s/ Thomas P. Campbell

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