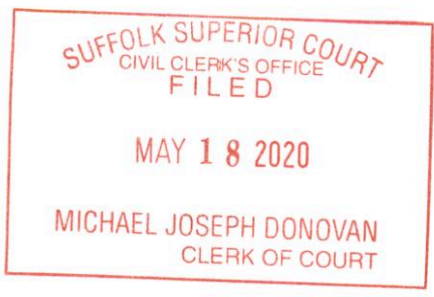


COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPT
DOCKET NO.

_____)
 3377 WASHINGTON STREET, LLC,)
) Plaintiff,)
))
 v.)
))
 CITY OF BOSTON ZONING BOARD OF)
 APPEALS, and THE COMMUNITY BUILDERS,)
 INC.,)
) Defendants.)
 _____)



COMPLAINT

INTRODUCTION

The Plaintiff, 3377 Washington, LLC (“Plaintiff”) appeals a Decision rendered by the City of Boston Zoning Board of Appeals (“Board”) pursuant to Chapter 665 of the Acts of 1956, as amended, Section 8, which Decision granted a Variance from the provisions of the Boston Zoning Code for a project located at 3368 Washington Street, Ward 11, Boston, MA (“the Project”). The Variance granted by the Board gives approval to Defendant, The Community Builders Inc. (“CBI”), to allow construction of a six-story mixed-use building which will create 225 income restricted and affordable rental apartments, in addition to approximately 18,000 square feet of PSI office space on the ground floor. The Project will also include approximately 60 vehicle parking spaces and 80 bicycle parking spaces, with a mix below-grade and at-grade. The Project is in an area currently zoned as Local Industrial (“LI”) and required several zoning variances including use, FAR (floor area ratios), height, rear setback and parking. The Project

constitutes a Large Project (more than 50,000 square feet of gross living space and more than 100 units) pursuant to Article 80 of the Boston Zoning Code; Article 80 provides clear guidelines for the development review process relating to Large Projects. Article 80 was adopted because the parameters of these projects rarely fit neatly within the existing code and a more predictable review process was needed. The Article 80 process may, but is not limited to review, a project's impact on transportation and parking, the public realm, the environment, urban design and historic resources. Additionally, Article 55 of the Boston Zoning Code established the zoning regulations for a neighborhood plan for the Jamaica Plain Neighborhood Development; Washington Street was established as a LI Sub district. (Section 55-19). The purpose of Article 55 is to protect the established residential areas, direct growth to areas that can accommodate it, provide affordable and marketable housing, protect open space and the environment, promote the public safety, health and welfare of the people of Boston.

The Plaintiff contends that the Board exceeded its authority and made a decision that was arbitrary and capricious, did not meet the legal standard for a variance, the Defendant CBI suffered no hardship, and that same was not in the interests of controlling density in this neighborhood. Specifically, the Board failed to address the increased traffic and lack of adequate parking which will create a hardship and hazard to the neighborhood and community.

Parties

1. Plaintiff, 3377 Washington Street, LLC, is a Massachusetts limited company with a business address of 302 Shawmut Street, Boston, MA 02118.
2. Defendant Board is a municipal body with a business office at 1010 Massachusetts Avenue, Boston, MA.

3. Defendant, CBI is a non-profit organization with an address at 185 Dartmouth Street, 9th Floor, Boston, MA 02116. (CBI is acting on behalf of the owner of the Project, Pine Street Inn, Inc.).
4. This Court has jurisdiction pursuant to Section 8 of the Acts of 1956, Chapter 664, as amended.
5. Plaintiff is a direct abutter and person aggrieved by the decision of the Defendant Board and has the requisite standing to bring this action.

Facts

6. Plaintiff is the owner of 3377 Washington Street, Boston, MA (“Plaintiff’s Property”).
7. The Plaintiff’s Property is leased to a business engaged as a brewery which has 21 employees as well as customers who rely on street parking, as well as an extremely small parking lot.
8. CBI filed an appeal with the Board to issue a Variance for the Project.
9. The Project is .9 acre site owned by the Pine Street Inn, Inc. which falls under the purview of the Boston Zoning Code, but is located in a LI Zoning Sub district, See Exhibit “A”.
10. Currently the Project site is a single story building operated by the Pine Street Inn, Inc. for administrative, operations and warehouse uses.
11. The current structure of the neighborhood in which the Project is located has no buildings more than 4 stories and most are 2 to 3 stories.
12. The Plaintiffs Property is located across the street from the Project.

13. The Project is controlled by Article 55 of the Zoning Code which establishes the regulations for the Jamaica Plain Neighborhood District and Section 55-19 establishes it as a Local Industrial Sub district (LI).
14. CBI filed with the Boston Planning and Development Agency (“BPDA”) a Letter of Intent to file notification pursuant to Article 80 for large project review. (“Letter of Intent”. A copy of the Letter of Intent is attached hereto as Exhibit “B”).
15. The Letter of Intent proposed to re-develop 3368 Washington Street, Jamaica Plain, MA as previously stated form a one-story building to a 6 story mixed use building with 225 rental apartments and 18,000 sq. feet of office space (previously defined as the “Project”).
16. The Project also proposed 60 vehicle parking spaces and 80 bicycle parking spaces, with a mix below-grade and at-grade.
17. The Project falls under the purview of Article 80 of the code and requires “large project review” if it adds more than 50,000 square feet of gross floor area and more than 100 units. The Project fits into this category.
18. The Article 80 process for large project review may include, but is not limited to, a review of transportation and parking, public realm, urban design, the environment and historic resources.
19. The review requirements in Article 80 are established to protect and enhance the public realm, to mitigate the impacts of development projects on the community and on the city resources, to ensure compliance with the intent and purpose of the code and promote efficiency in its administration, and to promote the public health, safety, convenience and welfare.

20. Pursuant to Article 80, a variance is required and may be granted to promote city planning and economic development purposes, including affordable housing, subject to the requirement that the planned project will not generate significant adverse impacts on the neighborhood and community at large.
21. The Article 80 variance requirements must also comply with the zoning regulations specific to the area (Article 55); the purpose of Article 55 is to establish the zoning regulations for a neighborhood plan for the Jamaica Plain Neighborhood District as required by the provisions of the Jamaica Plain Interim Planning Overlay District, Article 27J of the Boston Zoning Code.
22. Article 55-18 which includes Washington Street, Jamaica Plain, is currently zoned as LI; the purpose of LI is to encourage the preservation of the existing manufacturing and industrial base in a manner that is sensitive to and preserves the quality of life of the surrounding neighborhoods, and to encourage the development of new job opportunities within the Jamaica Plain Neighborhood District.
23. Article 55 establishes the zoning regulations for a neighborhood plan for the Jamaica Plain Neighborhood District including to provide adequate density controls, protect established residential growth to areas that can accommodate, provide affordable and market rent housing, protect open space and environment, to protect the public safety, health and welfare of the people of Boston.
24. Article 55 at Table C sets forth the Permitted Uses. Table C is attached as Exhibit "C".
25. Article 55 at Table H sets forth the Dimensional Requirements. Table H is attached as Exhibit "D".

26. Article 55 was developed to include the role of the community participating in determining the appropriate use and zoning of projects as critical to the success of any development plan.
27. Community meetings were held, during which abutters, including but not limited to the Plaintiff, raised concerns about the project of this size and magnitude especially as to the impact on traffic and parking.
28. The following are some of the concerns raised by interested parties at the public forum meetings:
- a. The Project is too big (including too tall and dense);
 - b. There is not enough parking – 60 parking spaces for 225 residential units plus the need to parking for the office is insufficient and will adversely impact the existing neighborhood parking (does not meet reasonable parking space ratios);
 - c. The low quality of the traffic study (11 hours total over 1 day) and concern about increased traffic that the neighborhood cannot accommodate (a comprehensive traffic study is needed and there are problems with public transit to be considered); and
 - d. The Project will be a massive burden on the community and dangerous.
29. On September 12, 2019, the Union Avenue Neighborhood Association submitted a lengthy request for supplemental information to the Boston Planning and Development Agency which included that the parking for the Project as proposed did not meet the reasonable parking space ratios compared to similar developments and that the parking ratio was 80% below the study's median and would require an

additional 80 parking spaces to meet the median. A copy of the September 12, 2019 letter is attached hereto as Exhibit "E".

30. The MAPC Affordable Housing Parking Study demonstrated the concerns with the assumptions being made as to the Project. (Exhibit "F").
31. On September 24, 2019, the Boston Planning and Redevelopment Agency submitted a request for supplemental information which included requesting the applicant provide traffic count data collected and an updated number of proposed accessible parking spaces. A copy of the September 24, 2019 request is attached hereto as Exhibit "G".
32. On or about September 29, 2019, CBI applied to the City of Boston Inspectional Services Department ("ISD") seeking a building permit to construct the Project. The application was noted by ISD as Permit Number ERT1004384.
33. The Building Inspector issued a Zoning Code Refusal letter dated October 17, 2019, which denied CBI's application citing the application required relief from the Board of Appeals as same would be in violation of the Boston Zoning Code. The October 17, 2019 Refusal is attached hereto as Exhibit "H".
34. The October 17, 2019 Refusal advised the applicant that it could be appealed within forty-five (45) days; it does not appear that CBI filed an appeal with reference to Exhibit "H".
35. The Building Inspector issued a second Zoning Code Refusal letter dated January 10, 2020 citing four (4) violations of the Boston Zoning Code, including but not limited to, multi-family residential use is a forbidden use; floor area ratio is excessive; height requirement is excessive; and minimum rear yard setback requirement is insufficient.

In addition, the Notes stated that off street parking spaces and loading spaces to be calculated thru the LPR process. Exhibit "I".

36. CBI filed an Appeal with the ZBA on January 16, 2020 stated that, "The public benefit of the new affordable and supportive housing at the property will be achieved without substantial detriment to the public good and without nullifying the intent and purpose of the zoning code. See appeal for more detail." A copy of the screen shot provide by the ZBA is attached hereto as Exhibit "J".
37. Counsel for Plaintiff requested the referred appeal information from the ZBA by e-mail dated May 12, 2020; Antonella Delgrosso of the City of Boston replied by e-mail the same date that, "There is no additional appeal information". A copy of the May 12, 2020 e-mail exchange is attached hereto as Exhibit "K".
38. By letter dated March 5, 2020, counsel for Plaintiff submitted a letter to the Members of the Zoning Board of Appeals expressing his objection to the Project stating that there is no basis under the Boston Zoning Code for issuance of the variance and that the Project would have severe adverse effects to Plaintiff's Property and others in the neighborhood especially due to parking concerns. A copy of the March 5, 2020 letter is attached hereto as Exhibit "L".
39. The Zoning Board of Appeal held a hearing on the issuance of the variance on March 10, 2020 and counsel for Plaintiff appeared and stated an objection on the record.
40. The ZBA issued a Notice of Decision and Decision dated March 10, 2020 which was entered in the Inspectional Services Department on April 29, 2020. A copy of the Notice of Decision and Decision are jointly attached hereto as Exhibit "M".

41. The Decision granted the requested variance stating that all conditions had been met and that the requested relief is appropriate and will have no adverse or negative effects on the neighborhood.
42. The Decision found the following conditions were met with respect to:
- a. That there are special circumstances or conditions that are such that provisions of the zoning code would deprive the appellant of the reasonable use of the land or structure;
 - b. That for reasons of practical difficulty and substantial hardship the granting of a variance is necessary for the reasonable use of the land or structure and that the variance issued is the minimum variance that will accomplish the purpose; and
 - c. That the granting of the variance will be in harmony with the general purpose and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
43. The Decision cites to the standards for giving a zoning variance, but such references are merely boilerplate and in no way specifically relate to the Project.
44. The Decision filed The ZBA failed to cite to any specific hardship that CBI would endure without the granting of the requested variances.
45. The ZBA Decision failed to cite to any special circumstances or conditions especially affecting the Project which were unique to it and not the zoning district, which would cause the CBI to be deprived of reasonable use of the land.
46. The granting of the variance by the Board exceeded the authority of the Board and was an abuse of discretion.

47. The Board exceeded its authority and acted arbitrary and capriciously because it approved a multitude of residential units in a zoning district, which is limited to LI , thereby making it unduly dense and in violation of the spirit and intent of the applicable section of the code, i.e. Article 55.
48. The Plaintiff is a person aggrieved, within the meaning of M.G.L. c. 40A, § 17, by the decision of the Board of Appeals to approve the application numbered
49. The Board exceeded its authority and acted arbitrary and capriciously because the approval of the variance will cause substantial harm to the Plaintiff and the surrounding neighborhood by causing congestion.
50. The Board exceeded its authority by not thoroughly vetting issues related to traffic and parking which will necessarily flow as a result of the large size of the project.
51. The Decision of the Board to approve CBI's Appeal exceeded the authority of the Board, as set out in Chapter 665 of the Acts of 1956, and failed to set forth the particular reasons for its Decisions, as those reasons related specifically to several zoning violations.

COUNT I – ABUSE OF DISCRETION

52. The Plaintiff hereby repeats and re-alleges paragraphs 1-51 above as if fully set forth herein.
53. The Board abused its discretion as a result of the granting of the variance to CBI.
54. The Board acted arbitrary and capricious and exceeded its authority in its granting of the variance to the CBI without due regard or consideration for the standards to be considered and applied in the granting of a variance.
55. The Board used an incorrect interpretation of the Zoning Code.

56. The Board failed to set forth any rational view of the facts to support the Board's conclusion.
57. The Board failed to set forth the alleged hardship to CBI.
58. The Board failed to set forth the inability to use the property for another purpose.
59. The Board failed to adequately address the traffic and parking concerns.
60. The Board failed to properly balance the harm to the neighborhood and community.
61. The Plaintiff is a person aggrieved as a result.

COUNT II – ARBITRARY AND CAPRICIOUS

62. The Plaintiff hereby repeats and re-alleges paragraphs 1-61 above as if fully set forth herein.
63. The Board's Decision is unreasonable, whimsical, arbitrary and capricious.
64. The Board's Decision does not rest upon legally tenable grounds and fails to designate specific findings or citations to specific provisions of the Boston Zoning Code.
65. The reasons given by the Board were not related to the purposes of the Zoning Code or were merely pretext for an arbitrary action.
66. The Board's Decision must be reserved based upon the foregoing.

COUNT III – FAILURE TO COMPLY WITH THE BOSTON ZONING CODE

67. The Plaintiff hereby repeats and re-alleges paragraphs 1-66 above as if fully set forth herein.
68. The Appeal and Decision fails to comply with the City of Boston Zoning Code because it does not refer to the specific provisions of the Code involved or set forth the interpretation that is claimed.

69. The Appeal and Decision is defective and must fail on account of the foregoing.

**COUNT IV – FAILURE TO COMPLY WITH CHAPTER 666
OF THE ACTS OF 1956**

70. The Plaintiff hereby repeats and re-alleges paragraphs 1-69 above as if fully set forth herein.

71. The Board failed to include in its Notice of Decision a detailed record of the proceedings, setting forth the reasons for its decision.

72. The Board exceeded its authority granted by Chapter 666 of the Acts of 1956, Section 8 and its Notice of Decision must be annulled.

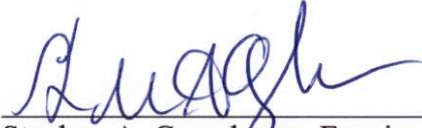
WHEREFORE, the Plaintiff respectfully requests this honorable Court:

1. Hear all pertinent evidence and determine the facts;
 2. Determine and adjudge that the Board's Decision granting the variance at issue was an abuse of discretion;
 3. Determine and adjudge that the Board's Decision granting the variance at issue was made in error as matter of law and fact and that the Board acted arbitrary and capriciously;
 4. Determine and adjudge that the Board's Decision failed to comply with the Boston Zoning Code;
 5. Determine and adjudge that the Board's Decision failed to comply with Chapter 666 of the Acts of 1956;
 6. Annul the decisions of the Board of Appeals;
 7. Award the Plaintiff its costs in this action, including but not limited to attorney's fees;
- and

8. Grant such further relief as justice and relief as this Court deems just and proper.

Date: _____

Respectfully submitted,
3377 Washington, LLC
By its attorneys,



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