

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO.

CYNTHIA LAVEY, JOHN FLAHERTY,  
LINDA FLAHERTY, ROBERT FLAHERTY,  
ANN FLAHERTY, and KATHLEEN  
SAWYER,

Plaintiffs,

**COMPLAINT FOR JUDICIAL  
REVIEW**

v.

CITY OF BOSTON ZONING BOARD OF  
APPEALS and CEDARWOOD  
DEVELOPMENT LLC,

Defendants.

**INTRODUCTORY STATEMENT**

This action is an appeal under the Boston Zoning Enabling Act, St. 1956, c. 665, Section 11, from a decision of the City of Boston Zoning Board of Appeal concerning property located at 363 E Street, Ward 6 dated December 20, 2022 and filed with the Inspectional Services Department on December 23, 2022. The Plaintiffs are aggrieved by the Decision of the Board.

**PARTIES AND JURISDICTION**

1. The Plaintiff Cynthia Lavey is an individual residing at 209 Bolton Street, Boston, Suffolk County Massachusetts.
2. The Plaintiff John Flaherty is an individual residing at 211 Bolton Street, Boston, Suffolk County, Massachusetts.
3. The Plaintiff Linda Flaherty is an individual residing at 211 Bolton Street, Boston, Suffolk County, Massachusetts.
4. The Plaintiff Robert Flaherty is an individual residing at 373 E Street, Boston, Suffolk County, Massachusetts.

5. The Plaintiff Ann Flaherty is an individual residing at 373 E Street, Boston, Suffolk County, Massachusetts.

6. The Plaintiff Kathleen Sawyer is an individual residing at 367 E Street, Boston, Suffolk County, Massachusetts.

7. The Defendant City of Boston Zoning Board of Appeal (the “Board”) is a board of the City of Boston organized and existing under state law pursuant to St. 1956, c.665, Section 8.

8. The Defendant Cedarwood Development LLC (the “Developer”) is a Massachusetts limited liability company having a usual place of business located at 202 West Broadway, South Boston, Suffolk County, Massachusetts.

9. This Court has jurisdiction over the subject matter of this zoning appeal pursuant to St. 1956, c.665, Section 11.

### **STATEMENT OF FACTS**

10. On or about September 8, 2022, the Developer submitted an application to the City of Boston Inspectional Services Department (“ISD”) for a permit to erect a new residential building with accessory garage parking on property located at 363 E Street, South Boston, Massachusetts (the “Locus”).

11. The Locus consists of six parcels being combined into a development parcel comprised of approximately 9,411 square foot located in an MFR multifamily residential subdistrict under Article 68, the South Boston Neighborhood Article. The Locus contains the former rectory and miscellaneous buildings associated with the former St. Vincent de Paul Church, which is located across the street from the Locus. All structures on

the Locus were deemed not significant by the Boston Landmarks Commission in July 2022 and will be razed.

12. The proposed project is a new four-story residential apartment building approximately forty-three feet in height, containing twenty-four dwelling units with a 24 vehicle at-grade parking structure, including four units to be marketed and sold as affordable units under the City of Boston's Inclusionary Development Policy (the "Project").

13. The Building Commissioner refused to grant requested permits for the Project, following which the Developer applied to the Board for zoning relief for the Project in the form of variances from the requirements of the following sections of Article 68, the South Boston Neighborhood Zoning Article: Section 7 (Basement Units Forbidden); Section 8 (Excessive Building Height, Insufficient Usable Open Space, Insufficient Rear Yard Setback, Insufficient Lot Size for Additional Dwelling Units, Excessive Floor Area Ratio); Section 29 (Roof Structure Restrictions - Height in Excess of Existing Building on Lot); Section 31 (Screen and Buffering); Section 33 (Insufficient Off-Street Parking, Design of Off-Street Parking, Insufficient Off-Street Loading); and Section 34.2 (Traffic Visibility Across Corner).

14. Following a hearing on November 15, 2022, the Board issued a decision annulling the refusal of the Building Commissioner to grant the requested permit, and granting the requested variances with stated provisos. A true copy of the Board's Decision is attached as Exhibit A.

15. The Board's decision was not supported by evidence sufficient to sustain findings necessary to grant the requested variances as set forth in Section 7-3 of the Boston Zoning Code, specifically 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.”

16. The Board’s decision was in excess of its authority and should be annulled.

17. Each of the Plaintiffs is aggrieved by the Board’s decision.

**PRAYERS FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that the Court, pursuant to St.1956, c.665, Section 11, hear all pertinent evidence and determine the facts, and upon the facts as so determined, find that the Decision exceeds the authority of the Board, and annul such decision, or make such other decree as justice and equity may require.

PLAINTIFFS

By Their Attorneys,

DATED: January 11, 2023

/s/Mark W. Corner  
Mark W. Corner, BBO No. 550156  
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# EXHIBIT A



City of Boston  
Board of Appeal

NOTICE OF DECISION  
CASE NO. BOA 1390195  
PERMIT # ERT1348967  
APPEAL SUSTAINED  
WITH PROVISOS

In reference to the appeal of

George Morancy

Concerning the premises located at

363 E Street, Ward 06

for relief from the provisions of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

The Board's decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, Fourth Floor, Boston, MA 02118, and is open for public inspection. A copy of the decision is available on the Board's website at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal-decisions>. The decisions are organized by filing date.

Date of filing of this decision with the Inspectional Services Department was December 23, 2022.

Please be advised, this decision of the Board has been reviewed and signed electronically by the signing Board Members. The addition of the certification of the Executive Secretary to the signature page attests that each Board Member who has signed this decision electronically has had an opportunity to review the written decision and has given his or her express written permission to the Executive Secretary to sign this decision electronically.

FOR THE BOARD OF APPEAL

/s/ Thomas J. Broom  
Thomas J. Broom  
Executive Secretary



City of Boston  
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

November 15, 2022  
DATE

George Morancy

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,

at premises: 363 E Street, Ward 06

For the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: **Variance, Conditional Use Permit, and/or other relief as appropriate**

<u>Violation</u>	<u>Violation</u>	<u>Violation Comments</u>
Art 68 Sec 29	Roof Structure Restrictions	Max allowed height on parcel exceeded- 30' max
Art 68 Sec 8	Dim reg app in res sub dist	Max allowed height in the sub-district exceeded- 40' max.
Art 68 Sec 8	Dim reg app in res sub dist	Insufficient open space- 200sf/unit req.
Art 68 Sec 8	Dim reg app in res sub dist	Insufficient rear yard setback -20' req.
Art 68 Sec 8	Dim reg app in res sub dist	Insufficient lot size for additional dwelling units -1000sf/unit req.
Art. 68 Sec. 33	Off Street parking Req.	Insufficient parking
Art.68 Sec. 33	Off Street Loading Req.	None proposed
Art. 68 Sec.31	Screening and Buffering	
Article 68, Section 34.2 Traffic Visibility Across Corner		
Art. 68 Sec.08	Dimensional Req.	Excessive f.a.r. -2.0 max.
Art. 68 Sec. 07	Use Regs. Basement units-	Forbidden
Art. 68 Sec. 33	Off Street parking Req. Design, Space size, access and clear maneuvering areas for each space-	Conditional

Purpose: Erect a new four-story building to contain 24 dwelling units with accessory garage parking for 24 vehicles (2 accessible, 5 standard and a multi-car conveyor/stacker elevator system). Six parcels of land to be combined into new 9,411 square foot lot under ALT1348494. ALL Existing structures to be razed on separate demo permit.  
Added 9.6.2022 (ALT1379756, AND ALT1379757)

In his formal appeal, the Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-1390195 and made a part of this record.

In conformity with the law, the Board mailed reasonable notice of the public hearing to the petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

THE BOSTON HERALD on Tuesday, October 25, 2022

The Board took a view of the petitioner's land, examined its location, layout and other characteristics.

The Boston Planning & Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, November 15, 2022 in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned section of the Boston Zoning Code, all as per Application for Permit# ERT-1348967 and June 20, 2022 plans submitted to the Board at its hearing and now on file in the Building Department.



City of Boston  
Board of Appeal

## DECISION OF THE BOARD ON THE APPEAL OF

363 E Street, Ward 6  
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This appeal seeks zoning relief in the form of variances from the requirements of the following sections of Article 68, the South Boston Neighborhood Zoning Article: Section 7 (Basement Units Forbidden); Section 8 (Excessive Building Height, Insufficient Usable Open Space, Insufficient Rear Yard Setback, Insufficient Lot Size for Additional Dwelling Units, Excessive Floor Area Ratio); Section 29 (Roof Structure Restrictions - Height in Excess of Existing Building on Lot); Section 31 (Screen and Buffering); Section 33 (Insufficient Off-Street Parking, Design of Off-Street Parking, Insufficient Off-Street Loading); and Section 34.2 (Traffic Visibility Across Corner); in order to allow for the issuance of the building permit in the matter of the petitioner's application to combine six parcels of land and erect a new four-story building to contain 24 dwelling units with accessory garage parking for 24 vehicles.

At the hearing, the petitioner was represented by its legal counsel, who testified that the proposed project is an Article 80 Small Project which was approved by the BRA/BPDA Board of Directors on June 16, 2022, after a 17-month review period which included two BPDA-sponsored public meetings. The site is 363 E Street and is bounded to the north by Bolton Street, to the South by West Third Street, to the West by E Street, and to the East by 211 Bolton Street and 238 West Third Street. It consists of six parcels being combined into an approximately 9,411 square foot development parcel located in an MFR multifamily residential subdistrict under Article 68, the South Boston Neighborhood Article. The site contains the former rectory and miscellaneous buildings associated with the former St. Vincent de Paul Church, which is located across the street from the site. All structures on the site were deemed not significant by the Boston Landmarks Commission in July of this year and will be razed.

The proposed project is a new four-story residential apartment building approximately forty-three feet in height to contain twenty-four dwelling units, including four units to be marketed and sold as affordable units under the City of Boston's Inclusionary Development Policy, one more than required by the policy.

The petitioner presented that the building contains an at-grade parking garage which will accommodate up to twenty-four vehicles, served by a single standard-width curb cut on Bolton Street, where an existing 24-foot-wide cut will be reduced in size. An additional approximately fourteen feet of existing curb cut on E Street in front of the site will be closed, thus restoring at least one on-site public parking space. The site will be activated at ground level by dwelling units facing both E Street and West Third Street. In response to concerns expressed during community





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process, the petitioner represented that it decided not to include roof decks or substantial building balconies, with just a few units having modest inset balconies.

Additional testimony was presented that, with respect to zoning, a height variance is required. The maximum zoning height is forty feet under the general tenets of MFR zoning in Article 68, while the proposed building would be approximately forty-foot feet. Section 68-29 of the Code further directs that the maximum building height on a lot with an existing building is limited to the height of that building. The height of the previously existing building was below forty feet. Nonetheless, the petitioner presented to the Board that the prevailing building height in the area of the project site is three to five stories.

The petitioner represented that complying with the wishes of the community concerning roof decks and balconies created the open space violation. The Code requires a 2,000 square foot minimum lot size, with 1,000 square feet for each additional dwelling unit, whereas the lot size here is 9,411 square feet, requiring a variance. The combination of lot size and gross floor area of the proposed building produces a floor area ratio of 2.76, which exceeds the maximum under zoning of 2.0, but which the petitioner demonstrated is not significantly inconsistent with surrounding densities. There is a citation on the zoning refusal letter for basement units, but the petitioner presented at the hearing that the ground floor units, while partially below grade in certain areas, are materially above grade and have full windows that open to the ground level.

The zoning refusal letter contains a citation for screening and buffering and other parking and loading violations, but the BPDA has reviewed the proposal and certified that it believes that the parking proposal is sufficient to meet the needs of the residents and minimizes the impact on the surrounding community when it approved the project. In any event, the petitioner presented that the parking is fully contained within the building, so it is not visible from the street. While there is a citation for cross corner visibility, the petitioner's representative explained that the new building will actually constitute an improvement in this regard over current conditions because the project will result in the widening of all sidewalks adjacent to the site, with minimum nine-foot sidewalks on E Street and East Third Street, and a minimum six and one-half foot sidewalk on Bolton Street, where the present sidewalk is just over three feet and does not meet accessibility standards.

With respect to the violations for insufficient off-street parking and loading, as well as design of off-street parking. The project achieves a 1:1 off-street parking ratio, which the BPDA



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and city transportation planners judged, during the Article 80 Small Project Review process, as being adequate and the maximum allowable for the site. The parking garage incorporates a mechanical lift system which, by its nature, is cited as being violative of parking design requirements of the Code requiring minimum space size and independent access, which requirements have not been updated since the advent of automated, stacker-type parking systems.

The petitioner also presented that, as part of the proposed project's careful review by the BPDA, that the proposed project will offer many public benefits to the neighborhood and to the City of Boston, including the following:

- The creation of over forty construction industry jobs.
- A financial contribution by the petitioner in the amount of \$60,000 to the Boston Parks and Recreation Department for the maintenance and upkeep of the Rev. Fr. Buckley Playground.
- A financial contribution by the petitioner in the amount of \$20,000 to the Boston Parks and Recreation Department for the maintenance and upkeep of the John J. Flaherty, Jr., Park.
- A financial contribution by the petitioner in the amount of \$10,000 to the Friends of Buckley Park and Playground.
- The making of much-needed sidewalk improvements to E Street, West Third Street, and Bolton Street. West Third Street will have a minimum of nine-foot sidewalk, while the sidewalk on Bolton Street will be a minimum dimension of six feet and six inches. The sidewalk on E Street will have a minimum dimension of nine feet, and all sidewalks surrounding the site will maintain five-foot clear paths of travel made of concrete monolithic sidewalk space.
- A bikeshare contribution to the Boston Transportation Department in the amount of \$6,600, in accordance with the City of Boston's Bike Parking Guidelines.



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- The building will be designed to meet LEED Gold performance standards, and will provide 25% of EV charging space onsite, with another 75% of parking spaces to be EV-ready, all in support of the City's Green building and carbon neutral goals.

The Board of Appeal therefore 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 variances are 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 the Code would deprive the appellant of the reasonable use of such land or structure; and
- (b) that for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variances is necessary for the reasonable use of the land or structure and that the variances as granted by the Board are the minimum variances that will accomplish this purpose; and
- (c) that the granting of the variances will be in harmony with the general purposes and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In determining its findings, the Board of Appeal has taken into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions in the neighborhood.

The Board is therefore of the opinion that all conditions required for the granting of the variances under Article 7, Section 7-3, of the Zoning Code, have been met, and that the varying of the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code.



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Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) voted to grant the requested variances as described above, annuls the refusal of the Building Commissioner, and orders him to grant a permit in accordance with this decision, with the following proviso, which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:

Assistant Corporation Counsel

PROVISO(S):

1. BPDA design review.
2. BTB review for garage entry/exit.

Signed: December 20, 2022

With my affixed signature I, the Executive Secretary of the Board of Appeal, hereby certify that the signatories of this decision have given their express permission for electronic signature:

Thomas J. Broom, Esq.  
Executive Secretary  
Board of Appeal

- /s/ Mark Erlich  
Mark Erlich – Chair (Voted In Favor)
- /s/ Mark Fortune  
Mark Fortune – Secretary (Voted In Favor)
- /s/ Hansy Better Barraza  
Hansy Better Barraza (Alternate) (Voted In Favor)
- /s/ Joseph Ruggiero  
Joseph Ruggiero (Voted In Favor)
- /s/ Jeanne Pinado  
Jeanne Pinado (Alternate)(Voted In Favor)
- /s/ Sherry Dong  
Sherry Dong (Voted In Favor)
- /s/ Kerry Logue  
Kerry Logue (Alternate) (Voted In Favor)