

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 22-1482 H

MEDIA PARTNERS MRV, LLC and
POLISH AMERICAN CITIZENS CLUB OF
SOUTH BOSTON, INC.

Plaintiffs,

v.

CHRISTINE ARAUJO, MARK FORTUNE,
MARK ERLICH, JOSEPH RUGGIERO,
ERIC ROBINSON, SHEERY DONG, EDWARD
DEVEAU, TYRONE KINDELL, JEANNE
PINADO and KERRY LOGUE, as they are
MEMBERS of the CITY OF BOSTON BOARD
OF APPEAL

Defendants.

COMPLAINT

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 JUN 30 A 11:35
MICHAEL JOSEPH DONOHY
CLERK / MAGISTRATE

INTRODUCTION

The Plaintiffs, Media Partners MRV, LLC (the "LLC") and the Polish American Citizens Club of South Boston, Inc. ("PACC") (collectively, the "Plaintiffs"), appeal pursuant to Section 11 of Chapter 665 of the Acts of 1965, as amended (the "Enabling Act"), from the decision of the Defendant, City of Boston Board of Appeal (the "Board"), dated June 7, 2022, and filed with the City of Boston Inspectional Services Department on June 10, 2022 (the "Decision"). The Decision denied the Plaintiffs' the requested zoning relief necessary to construct a 14-foot tall by 48-foot long, single-faced digital billboard free standing pilon sign (the "Project") at the rear of the property known as and located at 82-84 Boston Street, Dorchester, MA (the "Property").

The Plaintiffs bring this action because the Board's Decision was arbitrary, capricious, issued in excess of authority, and upon a legally untenable ground because (a) the Board's Decision was based on an incomplete appeal application, through no fault of the Plaintiffs, thereby violating the Plaintiffs' procedural due process rights; and (b) the Board denied the Project the necessary zoning relief despite substantial evidence that the Project meets the general purpose and zoning requirements under the City of Boston Zoning Code (the "Code"). Accordingly, the Decision of the Board must be annulled.

JURISDICTION

1. Pursuant to Section 11 of Chapter 665 of the Act of 1965, as amended, "[a]ny person aggrieved by a decision of [the Board] . . . may appeal to the superior court department of the trial court sitting in equity for the county of Suffolk . . ."
2. This appeal of the Decision is brought by persons aggrieved thereby, Media Partners MRV, LLC and the Polish American Citizens Club of South Boston, Inc., the applicant and property owner, respectively, and is thus within the jurisdiction of the Suffolk Superior Court.

PARTIES

3. The LLC is a domestic limited liability company within the Commonwealth of Massachusetts, with a principal place of business located at 80-L Washington Square, Norwell, MA.
4. The PACC is a nonprofit corporation within the Commonwealth of Massachusetts, with a principal place of business located at 82 Boston Street, Dorchester, MA.
5. The Defendant, Christine Araujo, is an individual and Chair of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.

6. The Defendant, Mark Fortune, is an individual and Secretary of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
7. Defendant, Mark Erlich, is an individual and Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
8. Defendant, Joseph Ruggiero, is an individual and Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
9. Defendant, Eric Robinson, is an individual and Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
10. Defendant, Sherry Dong, is an individual and Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
11. Defendant, Edward Deveau, is an individual and Alternate Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
12. Defendant, Tyrone Kindell, is an individual and Alternate Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
13. Defendant, Jeanne Pinado, is an individual and Alternate Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.
14. Defendant, Kerry Logue, is an individual and Alternate Member of the Board, principally located at 1010 Massachusetts Avenue, 4th floor, Boston, MA 02118.

FACTS

The Property

15. PACC owns the Property by virtue of the deed dated October 8, 1937, recorded with the Suffolk County Registry of Deeds (the "Registry") at Book 5691, Page 335 ("Parcel 1

Deed”); and deed dated March 13, 1967, recorded with the Registry at Book 8104, Page 681 (“Parcel 2 Deed”).

16. The Property consists of two parcels, with Parcel 1 containing $\pm 4,721$ s.f. and Parcel 2 being a triangular lot containing $\pm 1,165$ s.f. and being located to the rear of Parcel 1.
17. The Property is located in the Dorchester Neighborhood zoning district and the 3F-D-2000 zoning subdistrict, pursuant to the Code and the Boston Zoning Map, 5A/5B Dorchester Neighborhood District.
18. In 1924, the PACC began operating as a social club.
19. In 1937, the PACC constructed the building that presently houses the social club.
20. In 1939, the PACC began operation of its social club at the Property.
21. The rear of the Property abuts Interstate 93.

The Project

22. On February 10, 2021, the LLC submitted a long form building permit application (the “Application”) to ISD for the construction of the Project.
23. The Project is to be located in the rear of the Property, directly behind the PACC’s building.
24. The proposed location of the Project is depicted on a plan of land entitled “Proposed Billboard Plan, Existing Conditions Plan, 42-84 Boston Street, Dorchester, Massachusetts” dated January 5, 2021, surveyed by McKenzie Engineering Group, of Norwell, MA (the “Project Plan”). See Exhibit 1.
25. The proposed free-standing sign will have a square, center mount made of steel and concrete, and the digital face of the sign will be mounted thereto.
26. The display screen of the proposed free-standing sign will be directed at Interstate 93.

27. The proposed free-standing sign would be equipped with light blocking technology.
28. The light block technology would make the proposed sign visible from Interstate I-93, but would be invisible to abutting properties and the surrounding neighborhood.
29. The LLC commissioned Formetco to create a light study for the proposed Project (the "Light Study"), which was submitted to ISD with the Application materials.
30. The Light Study showed that the abutting properties and surrounding neighborhood, as well as the portion of Interstate 93 to the north of the proposed free-standing sign, would have no view of the sign; the sign would be substantially invisible from these locations.
31. The Light Study also showed that optical viewing of the proposed free-standing sign would be from directly in front of the same, on Interstate 93. Otherwise, the areas outside of the optimal viewing window would only have minimum visual access of the lights from the proposed sign.
32. In connection with the Project, the LLC proposes removing three (3) existing billboards in the relevant Dorchester Neighborhood Subdistrict.
33. In exchange for allowing the Project to be constructed at the Property, PACC would also be guaranteed a base rent of \$75,000 per year with 3% annual growth.
34. The proposed lease term with PACC is a 30-year lease.
35. PACC would also be given 30% of annual collected advertising revenue less the base rent.
36. The money PACC would earn from the Project would be invested back into the social club and the surrounding community.

The Zoning Refusal Letter and the May Hearing

37. On March 25, 2021, ISD issued a zoning code refusal letter for the Project (the "Refusal Letter").

38. The Refusal Letter listed the following violations of the City of Boston Zoning Code (the “Code”): Article 9, Section 01 (Extension of Nonconforming Uses and Reconstruction and Extension of Nonconforming Buildings); Article 11, Section 06 (Signs Subject to Other Regulations); Article 11, Section 7 (Electronic Signs); Article 33, Section 16 (Air-Right Open Space Subdistricts); Article 65, Section 9 (Dimensional Regulations Applicable in Residential Subdistricts); and Article 65, Section 40 (Sign Regulations).
39. On April 5, 2021, the LLC took an administrative appeal of the Refusal Letter to the Board, requesting the necessary zoning relief for construction of the Project.
40. A public hearing on the Project was conducted on May 10, 2022, via Zoom Video Conference (the “May Hearing”).
41. At the public hearing, the LLC offered that, if the Board were to grant the necessary zoning relief for the Project, then the decision granting such relief include a proviso that a permit for the Project could not be issued until three (3) billboards in the relevant Dorchester Neighborhood Subdistrict were removed.
42. During the May Hearing, it became apparent to the LLC that the Board did not have the complete appeal application.
43. The LLC had previously provided the visual renderings/elevation drawings to the City of Boston and various City stakeholders including through the community review and comment process.
44. However, likely through an inadvertent failure to transmit all pertinent documents to the Board, the Board did not have the visual renderings/elevation drawings at the May Hearing.
45. At the May Hearing, the LLC informed the Board that the visual renderings could be made available to the Board directly after the hearing. Owing to the hearing being virtual

conducted through the Zoom platform, the LLC was not able physically to approach the Board and provide the Board with these materials, in real time, at the hearing.

46. Board Member Mark Erlich stated, on the record, that it would be helpful to have the visual renderings available when making a decision on the Project.
47. When the May Hearing came to a close, the Board nonetheless took a voice vote of its members regarding the Project, without identifying each member while the vote was taken.
48. That voice vote, while it reflected an affirmative majority of the Board, did not equate with the required supermajority for the motion to approve the Project to prevail.
49. Eric Robinson, ostensibly one of the no-voting members of the Board, tried thereafter to make a motion to continue the hearing so that the visual renderings could be provided.
50. The Chair of the Board, however, did not allow that motion to be heard.
51. The Chair of the Board also prohibited members of the public from voicing support of the Project during the public comment section of the May Hearing.

The Board's Decision

52. The Board issued the Decision on June 7, 2022, and the same was filed with City of ISD on June 10, 2022, file number BOA1177912. See Exhibit 2 (true and accurate copy of the Decision).
53. The Decision fails properly to assess, consider and honor the reality that the Project will substantially improve the Dorchester Neighborhood and is in harmony with the general purpose of the Code.
54. The Decision merely parrots portions of the Code to deny the requested zoning relief, without making any specific findings as to why the Project did not comply with Article 9, Section 9-1; Article 6, Section 6-3; and Article 7, Section 7-3 of the Code.

55. As the Board did not have all the pertinent schematics and information for the Project, the Decision fails to acknowledge that the proposed free-standing sign will not, in fact, face the adjoining residential zoning district, the content displayed on the sign will be appropriate, and that the images on the same will not have a negative impact on pedestrian or vehicular traffic flow and safety on Interstate 93.
56. The Decision is completely devoid of any factual findings to support its denial of the LLC's requested zoning relief.

COUNT 1

Appeal of the Decision Pursuant to Section 11 of Chapter 665 of the Act of 1965

57. The Plaintiffs repeat and restate the allegations set forth in paragraphs 1-56 and incorporate the same by reference herein.
58. The LLC was denied the zoning relief necessary for construction of the Project at the Property, and the PACC is the owner of the Property.
59. The Plaintiffs are "person[s] aggrieved" within the meaning of Section 11 of the Enabling Act.
60. Pursuant to Article 1, Section 1-2 of the Zoning Code, particular purposes of the Code are to encourage the most appropriate use of land throughout the City and conserve the value of land and buildings.
61. The Plaintiffs will be injured if they are not granted the necessary zoning relief to construct the Project.
62. The PACC presently operates a social club on the Property, and the Project will help to ensure that PACC generates sufficient income to allow the social club to remain in operation at the Property, thereby providing vital resources to the surrounding community.

63. Also, the Project at the Property poses a benefit to the surrounding neighborhood because as part of the Project three (3) billboards in the area will be removed.
64. The Decision is arbitrary and capricious because the Board's Decision is based on an incomplete appeal application, through no fault of the Plaintiffs.
65. The Board did not have all the necessary information to make an informed decision about the zoning relief needed for the Project, and the Board prohibited the Plaintiffs from providing the necessary information to the Board prior to the Decision being rendered.
66. The Board did not have the visual/elevation renderings when drafting the Decision, which would have provided evidence that the Project is proposed in an appropriate location and will not have an adverse effect on the surrounding neighborhood, or pedestrians and vehicles traveling along Interstate 93.
67. The Decision was rendered in excess of the Board's authority, and a legally-untenable ground, because it contains a mere repetition of the Code and statutory language, without any findings specific to why the requested zoning relief for the Project was denied, as required under Article 7 of the Code and Section 9 of the Enabling Act.
68. Construction of the Project at the Property would be in harmony with the general purpose and intent of the Code, and the same will not be injurious to the surrounding neighborhood.
69. For these reasons, the Decision is arbitrary and capricious, issued in excess of the Board's lawful authority, and founded upon a legally-untenable ground; and the Plaintiffs are entitled to a decree annulling the Decision.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiffs prays that this Honorable Court enter judgment in this matter, as follows:

1. Annulling the Decision as unlawful and issued in excess of the Board's authority; and/or
2. Granting such other relief as the Court may deem just and proper.

Plaintiffs,
MEDIA PARTNERS MRV, LLC and
POLISH AMERICAN CITIZENS CLUB
OF SOUTH BOSTON, INC.

By their attorneys,

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EXHIBIT "1"

EXHIBIT "2"



City of Boston
Board of Appeal

NOTICE OF DECISION
CASE NO. BOA1177912
PERMIT #ALT1161822
APPEAL DISMISSED

In reference to appeal of

Media Partners MRV, LLC

Concerning premises

82-84 Boston Street, Ward 07

to vary the application of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been denied.

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.

Date of entry of this decision in the Inspectional Services Department was June 10, 2022.

Please be advised, due to the ongoing COVID-19 public health emergency, 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

Principal Administrative Assistant



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

May 10, 2022
DATE

Media Partners MRV LLC

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,
at premises: 82-84 Boston Street, Ward - 07

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 Description</u>	<u>Violation Comments</u>
Art. 09 Sec. 01	Extension of Non Conforming Use	Conditional
Art. 11 Sec. 06	Signs Subject to Other Reg.	b) no new billboards shall be allowed within six hundred sixty (660) feet of a federally-funded highway subject to the Federal Highway Beautification Act unless approved by the Board of Appeal in accordance with <u>Article 6</u> after receipt by the Board of Appeal of a planning recommendation from the Boston Redevelopment Authority
Art. 65 Sec. 9	Residential Dimensional Reg.s	side yard
Article 65, Section 40	Sign Regulations	(3) Free standing signs (USE Forbidden)
Article 11, Section 7	Electronic Signs	Conditional
Art. 33 Sec. 16	Air-Right OS Applicability	Pylon Sign Forbidden

Purpose: Construct a single faced digital billboard free standing pylon sign to the rear of 82 Boston street per attached plans.

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-1177912 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 April 19, 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, May 10, 2022 in accordance with notice and advertisement forementioned, 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#ALT-1161822 and Febraury 10, 2021 plans submitted to the Board at its hearing and how on file in the Building Department.



DECISION OF THE BOARD ON THE APPEAL OF

82-84 Boston Street, Ward 07
BOA1177912
Date of Hearing: May 10, 2022
Permit: #ALT1161822
Page: # 2

The premises in question are located in the Dorchester Neighborhood zoning district of the City of Boston. Appellant's appeal concerned a decision to refuse to issue permit ALT1161822 by the Building Commissioner for violations of Statute 1956, Chapter 665:

Article 65 Section 40	Freestanding Signs Forbidden
Article 9 Section 01	Extension of Non-Conforming Use
Article 11 Section 06	Signs Subject to Other Regulations
Article 33 Section 16	Air-Right OS Applicability
Article 65 Section 09	Residential Dimensional Regulations
Article 11 Section 7	Electronic Signs Conditional

The Board is of the opinion that the Appellant did not advance sufficient reasons to satisfy the Board that all the conditions under which the Board may grant an Extension of a Non-Conforming Use Pursuant to Article 9, Section 9-1 and Conditional Use Article 6, Section 6-3 and Variances 7, Section 7-3 of the Zoning Code have been met, nor to cause the Board to come to a conclusion that this is a specific case where a literal enforcement of the Act involves a substantial hardship upon the Appellant as well as upon the premises, nor where the described relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the Zoning Act, nor to cause the Board to come to a conclusion that this is a case where the specific site is an appropriate location for such use, nor that the use will not adversely affect the neighborhood, nor that the use will not cause serious hazard to vehicles or pedestrians, nor that no nuisance will be created by the use nor that adequate and appropriate facilities will be provided for the proper operation or extension of the use have been met.

The Board failed to reach a quorum on a motion to approve the requested relief; 4 votes in favor and 3 votes in opposition.



City of Boston
Board of Appeal


DECISION OF THE BOARD ON THE APPEAL OF

82-84 Boston Street, Ward 07
BOA1177912
Date of Hearing: May 10, 2022
Permit: #ALT1161822
Page: # 3

Therefore, the Board (the members and substitute member/members sitting on this appeal) is of the opinion that the Building Commissioner was justified in his refusal, and affirms same.

APPEAL DISMISSED

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

Signed: June 7, 2022

/s/ Christine Araujo
Christine Araujo – Chair (Voted in Opposition)

/s/ Mark Fortune
Mark Fortune – Secretary (Voted In Favor)

/s/ Mark Erlich
Mark Erlich (Voted In Favor)

/s/ Joseph Ruggiero
Joseph Ruggiero (Voted In Favor)

/s/ Eric Robinson
Eric Robinson (Voted In Opposition)

/s/ Sherry Dong
Sherry Dong (Voted In Favor)

/s/ Jeanne Pinado
Jeanne Pinado (Voted In Opposition)