

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO.

23-0931A

WILLIAM J. VERDI as Trustee of
THE WILLIAM J. VERDI 2015 TRUST;
EIM, LLC; and MARY C. MCGEE and
THOMSA F. SCHIAVONI,
Plaintiffs,

vs.

HANSY BETTER BARRAZA, SHERRY DONG,
KATIE WHEWELL, NORM STEMBRIDGE,
GIOVANNY VALENCIA, RAHEEM SHEPARD,
and DAVID COLLINS, as they are Members of
The City of Boston Board of Appeals, and
RYAN MEADOWS,
Defendants.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2023 APR 19 A 11:44
JOHN E. POWERS III
ACTING CLERK MAGISTRATE

COMPLAINT

INTRODUCTION

The Plaintiffs bring this action, pursuant to Section 11 of Chapter 665 of the Acts of 1956 ("the Enabling Act"), to appeal a decision of the City of Boston Board of Appeal (the "Board") granting variances to the Defendant, Ryan Meadows ("Meadows"). The variances authorize the Meadows to construct a one-story vertical addition and roof deck and renovate the second and third floors (the "proposed renovations") on an existing three-story building located at 47-48 Snow Hill Street, Boston, Massachusetts (the "Locus"), and grants relief from the Boston Zoning Code (the "Code") Article 54, Section 10 (Rear-Yard Insufficient); Article 54, Section 10 (floor Area Ratio Excessive) and; Article 54, Section 18 (Roof Structure Restrictions). A true and

accurate copy of the Board's Decision BOA1283294 (the "Decision") is attached hereto as Exhibit A. The basis for this appeal is that the variances granted by the Board exceeded the Board's authority.

PARTIES

1. The Plaintiff, William J. Verdi as Trustee of the William J. Verdi 2015 Trust ("Verdi"), resides at and owns the land and building thereon at 53 Hull Street, Boston, Massachusetts. Verdi is a direct abutter to the land and buildings located at 47-48 Snow Hill Street, Boston, Massachusetts (the "Locus") and an aggrieved person in this matter.

2. The Plaintiff, EIM, LLC ("EIM"), a Massachusetts limited liability company owns the land and building thereon at 59 Hull Street, Boston, Massachusetts. EIM is a direct abutter to the Locus and an aggrieved person in this matter.

3. The Plaintiffs, Mary C. McGee and Thomas F. Schiavoni ("McGee and Schaivonui"), husband and wife, reside at and own the land and building thereon at 46 Snow Hill Street, Boston, Massachusetts. McGee and Schiavoni are direct abutters to the Locus and aggrieved persons in this matter.

4. The Defendants, Hansy Better Barraza, Sherry Dong, Katie Whewell, Norm Stembridge, Giovanni Valencia, Raheem Shepard, and David Collis, as they are members of the Board, have an address of 1010 Massachusetts Avenue, Boston, Massachusetts.

5. The Defendants, Ryan Meadows (collectively "Meadows"), is the owner of the Locus.

JURISDICTION

6. This Court has jurisdiction of this action, pursuant to Section 11 of the Enabling Act.

7. The Plaintiffs have standing to bring this action as they are abutters to the Property and are persons aggrieved by a Decision of the Board within the meaning of Section 11 of the Enabling Act.

FACTS

8. Prior to September 2022, Meadows applied to the Board for variances relative to the proposed renovations.

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

- (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; and
- (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.

10. Pursuant to Section 9 of the Enabling Act, the Board may grant variances from the city of Boston Zoning Code only as follows:

Upon an appeal from the refusal of the building commissioner or other administrative official to issue a permit under this act or under a zoning regulation as adopted and amended under this act, said board of appeal may authorize with respect to a particular parcel of land or to an existing building thereon a variance from the terms of such zoning regulation where, owing to conditions especially affecting such parcel or such building, but not affecting

generally the zoning district in which it is located, a literal enforcement of the provisions of such zoning regulation would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public 'good and without nullifying or substantially derogating from the intent and purpose of such zoning regulation, but not otherwise. In authorizing such variance, said board may impose limitations both of time and of user, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.

11. On September 27, 2022, the Board held a public hearing on Meadows' application for variances relative to his proposed renovations of the Locus. The hearing was continued to November 15, 2022, and thereafter continued again to February 7, 2023.

12. During the public hearing, no credible evidence was presented to the Board by Meadows to indicate that the Property satisfied the requirements set forth in Article 7, Section 7-3 of the Code or Section 9 of the Enabling Act. There is no basis to support a conclusion that if the variances were not granted that Meadows would be deprived of the reasonable use of the Locus; that Meadows would endure "substantial hardship" within the meaning of Section 9 of the Zoning Enabling Act; or that Meadows endure "practical difficulty" or suffer "demonstrable and substantial hardship" such that the granting of the variances would be "necessary for the reasonable use of the land" within the meaning of Article 7, Section 3 of the Code.

13. The Plaintiffs, through their attorney, submitted written memoranda to the Board in opposition to the proposed renovations, as Meadows had not presented the evidence required for the Board to make supported findings for a grant of the requested variances.

14. Furthermore, the Plaintiffs and their attorney appeared and attempted to testify at the hearing. The Board, however, failed to recognize Counsel all but one of the Plaintiffs (William Verdi), and did not recognize/call upon Plaintiff's counsel to be heard at the hearing.

15. In its Decision, the Board acknowledged that it received several letters in support

of the proposed renovations from abutters as well as from three abutters who voiced their support at the hearing. The Board further recognized the Boston Planning and Development Agency's ("BPDA") "recommendation of approval with provisos of BPDA design review with special attention to roof deck and balconies," which was read into the record.

15. In its Decision, the Board acknowledged that one abutter testified in opposition; and that prior to the hearing, that Plaintiff's counsel had submitted memoranda in opposition of the appeal from the above Plaintiffs as well as other abutters. The Board further acknowledged opposition for the proposed renovations from representatives from the City Councilor Michael Flaherty's, Erin Murphy's, Gabriela Coletta's, Rutghzee Louijenne's, Representative Aarron Michelwitz's, and Senator Edward's offices. The Board failed to consider the significant and multiple letters of opposition, and opposition from several City Counselor's, Representative Michaelwits and Senator Edwards in acting upon Meadow's application for the variances.

16. Despite the failure of Meadows to present the necessary evidence to the Board at the hearing that all of the conditions concerning the Locus required for the variances by Section 9 of the Zoning Enabling Act and by Article 7, Section 3, of the Zoning Code, the Board, without making any of the required findings, and despite widespread opposition of abutters, voted at the February 7, 2023 hearing to approve the grant of the variances.

17. The Board signed its written Decision on April 6, 2023, purporting to memorialize their vote to grant the requested variances.

18. The Board's Decision was filed with the City of Boston Inspectional Services Division ("ISD") on April 7, 2023.

19. The Board's Decision contains no factual evidence to support the required findings that the requirements for the variances had been met, but merely recites the

requirements of Article 7, Section 7-3 with none of the necessary findings of fact. Therefore, the Board's Decision is invalid on its face.

20. The Board's findings that the proposed renovations were similar to other buildings in the neighborhood is not a legally sufficient reason to support a finding that the conditions are peculiar to such land but not the neighborhood or that such conditions deprive Meadows of reasonable use of the Locus. The Locus is not unique or peculiar, and already has an adequate dwelling on it.

21. No specific facts were presented to the Board or recited in the Decision as to the existence of a substantial hardship to Meadows "owing to the conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located," as required by Section 9 of the Enabling Act.

22. No relevant facts were presented to the Board or recited in its decision to establish as required by Article 7 of the Zoning Code that were "special circumstances or conditions ... applying to the land or structure ... 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 Zoning Code] would deprive the appellant of the reasonable use of such land or structure." On the contrary, prior to the extraordinary relief sought by Meadows, the existing building already exceeded the allowable floor area ratio. Meadows therefore already had the full benefit of more than the maximum buildout of the land or structure allowed by the Zoning Code. Except for the recitation of plainly irrelevant information (for the purpose of applying the deprivation of reasonable use standard to an already overbuilt lot) that "the overall objective of this project is to allow (Meadows) to have a reasonable use of the property, allowing a young and growing family to stay in their unit through renovations and additional square footage," no

evidence whatsoever was presented by Meadows at the hearing or articulated by the Board in the Decision to explain why any conditions peculiar to the land or structure but not to the neighborhood at large could justify yet a grosser violation of the floor area ratio than already existed at the premises.

23. The Plaintiffs' properties abut the Locus by as little as six (6) feet (the Verdi Property). All of the Plaintiffs' properties would be seriously harmed by the excessive density represented by the addition of the enclosed structure that Meadows was authorized to build, inasmuch as it would severely reduce light and air flow that is currently provided by a light well at the top floor of the Plaintiffs' buildings, increase noise, reduce privacy, and would sharply curtail views from the top floor of the Plaintiff's building. All of such changes would cause significant, particular harm to the Plaintiffs' use and enjoyment of their residences, distinct from the effect of such changes on the community at large.

24. In permitting Meadows to increase the density at the Locus significantly above its already excessive limits, the Board violated Article 7 of the Zoning Code by disregarding evidence presented to it by the Plaintiffs that established that the increase would significantly restrict light and air flow, would gravely impact privacy, and would sharply reduce the views from the upper floor of their properties.

25. For the reasons stated above, the Board exceeded its authority under Section 11 of the Enabling Act.

26. The Board, in making its Decision, acted with gross negligence, bad faith, or malice.

27. As this complaint is filed in this court within 20 days of the filing of the Board's Decision at ISD, this complaint is filed timely in accordance with Section 11 of the Enabling

Act.

RELIEF REQUESTED

WEREFORE, Plaintiffs requests that the Court:

- 1 As authorized and directed by Section 11 of the Enabling Act, hear all pertinent evidence and determine the facts and upon the facts as so determined, annul the Decision.
2. Grant such other relief or decree as justice and equity may require.
3. Plaintiffs further request that this Court order the payment of their attorney's fees and costs.

WILLIAM J. VERDI as Trustee of
THE WILLIAM J. VERDI 2015 TRUST;
EIM, LLC; and MARY C. MCGEE and
THOMSA F. SCHIAVONI,
Plaintiffs
By their attorneys
LEVIN AND LEVIN, LLP

by 
Allan E. Levin, BBO #555016
a.levin@levinandlevin.com

875 Southern Artery
Quincy, MA 02169
T: (617) 471-5700
F: (617) 770-9031