

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

VON HILLEREN DONOVAN, LLC  
and THE FIRST ELECTRONICS,  
CORP.,

Plaintiffs,

v.

CHRISTINE ARAUJO, MARK FORTUNE,  
MARK ERLICH, TYRONE KINDELL JR.,  
JOSEPH RUGGIERO, KONSTANTINOS  
LIGRIS, JEANNE PINADO,  
SHERRY DONG, and ERIC ROBINSON,  
as they are Members of the CITY OF  
BOSTON ZONING BOARD OF APPEALS;  
DENNIS KULESZA, and  
CNA STORES, INC.

Defendants.

C.A. No.: 22-1843 B

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2022 AUG 11 P 1:42  
MICHAEL JOSEPH DOHOVAN  
CLERK / MAGISTRATE

**COMPLAINT**

**PRELIMINARY STATEMENT**

This is an appeal made by Von Hilleren Donovan, LLC ("VHD"), which is the owner of several combined parcels known and numbered as 0, 50 and 66 Von Hilleren Street and an unnumbered parcel on Locust Street, all in, Boston, MA, and First Electronics, Corp. ("FEC") operates a business at the property known and numbered as 71 Von Hilleren Street, pursuant to § 11 of the Zoning Act, Chapter 665 of the Acts of 1956 (the "Boston Zoning Act"), in which VHD and FEC seek to annul a Decision of the Boston Zoning Board of Appeals (the "Zoning Board of Appeals"), dated June 7, 2022, executed on July 19, 2022 and filed in the office of the Commission of the Inspectional Services Department, located 1010 Massachusetts Avenue, 5<sup>th</sup>

Floor, Boston, Massachusetts 02118, on July 22, 2022 (the "Decision"), which Decision granted Dennis Kulesza and CNA Stores, Inc. a conditional use permit to operate a recreational marijuana dispensary at 70 Von Hilleren Street.

While, VHD and FEC have automatic standing as direct abutters to challenge this Project, VHD and FEC will suffer concrete and particularized injuries if this recreational marijuana dispensary is constructed next to the VHD and FEC. The proximity of the two parcels is evident from the photograph depicting the two parcels attached hereto as **EXHIBIT "A"**.

Pursuant to Article 6, Section 3 of the Boston Zoning Code, the Zoning Board of Appeals may only grant a conditional use permit if it finds that all of the following conditions are met:

- (a) the specific site is an appropriate location for such use;
- (b) the use will not adversely affect the neighborhood;
- (c) there will be no serious hazard to vehicles or pedestrians from the use;
- (d) no nuisance will be created by the use; and
- (e) adequate and appropriate facilities will be provided for the proper operation of the use.

Here, the 70 Von Hilleren Street Project fails to meet any of the required standards for the issuance of a conditional use permit. Therefore, the Decision of the City of Boston Zoning Board of Appeals to approve the Conditional Use Permit exceeds the authority of the Zoning Board of Appeals and is arbitrary and capricious in violation of the Boston Zoning Act and Article 6, Section 3 of the Boston Zoning Code.

### **JURISDICTION**

Jurisdiction is appropriate in this Court pursuant to § 11 of the Zoning Act, Chapter 665 of the Acts of 1956.

## PARTIES

1. The Plaintiff, Von Hilleren Donovan, LLC (“VHD”) is a Massachusetts Limited Liability Company with a principal place of business located at 339 Dorchester Street, South Boston, MA 02127.
2. The Plaintiff, First Electronics Corporation (“FEC”) is a Massachusetts Corporation with a principal place of business at 71 Von Hilleren Street, Boston, MA. FEC is the occupant of 71 Von Hilleren Street. FEC’s principals have an ownership interest in 71 Von Hilleren Street.
3. The Defendants, Christine Araujo, Mark Fortune, Mark Erlich, Konstantinos Ligris, Jeanne Pinado, Eric Robinson and Sherry Dong are each members of the Boston Zoning Board of Appeals, which has municipal offices located 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, Massachusetts 02118. The above-named Defendants are the members of the Zoning Board of Appeals that comprised the panel and voted to approve Kulesza’s Conditional Use Permit.
4. The Defendant and one of the two applicants Dennis Kulesza is an individual residing at 29 Mar Crest Drive, Milton, MA. Mr. Kulesza is the principal of Metropolitan Restoration and Waterproofing Corp. and several other businesses that he runs out of the property located at 70 Von Hilleren Street, Boston, MA.
5. CNA Stores, Inc. is a Massachusetts Corporation located at 57 South Hunt Road, Amesbury, MA 01913 in the business of cannabis production and sales.

**FACTUAL ALLEGATIONS**

6. On March 8, 2002, the City of Boston Inspectional Services Department denied Kulesza and CNA Stores, Inc. an application for a building permit to construct a Cannabis dispensary at 70 Von Hilleren Street, Boston, MA.
7. Thereafter, Kulesza and CNA Stores, Inc. sought a conditional use permit with the City of Boston Zoning Board of Appeals for the operation of a Cannabis Dispensary.
8. Public hearings were held on April 26, 2022 and June 7, 2022.
9. VHD and FEC appeared at the public hearings and voiced its opposition to the Project, due primarily to its proximity to the Project and concerns from impact from the proposed cannabis dispensary.
10. By Decision dated June 7, 2022 and executed and filed in the office of the Commission of the Inspectional Services Department, located 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, Massachusetts 02118, on July 19, 2022, the Boston Zoning Board of Appeals (the "Zoning Board of Appeals") granted Dennis Kulesza and CNA Stores, Inc. a conditional use permit to operate a recreational marijuana dispensary at 70 Von Hilleren Street. The Decision was filed with inspectional services on July 22, 2022. A copy of the Decision is attached hereto as **EXHIBIT "B"**.
11. As can be seen from the photograph attached hereto as **EXHIBIT "A"**, the VHD property, the FEC Property and the proposed Cannabis Dispensary are the only properties located on Von Hilleren Street and they are in very close proximity to one another.

12. VHD's property consists of approximately 75,000 square feet of land with five buildings, a number of loading docks and 79 parking spaces serving a number of industrial use, as shown on the Plan attached hereto as **EXHIBIT "C"**.
13. FEC is a manufacturer of high strength cable, cable assemblies and related products.
14. Many of FEC's products are manufactured for use in the United States military branches. FEC is a United States approved government defense contractor, which makes FEC subject to strict United States Government safety and security requirements for compliance.
15. Other than FEC and VHD, Kulesza Property, which is a small parcel containing about 7,500 square feet, is the only other property having frontage on Von Hilleren Street.
16. The Kulesza Property directly abuts and shares a property line with the VHD Property and is across the street from the FEC Property.
17. Pursuant to Article 6, Section 3 of the Boston Zoning Code, the Zoning Board of Appeals may only grant a conditional use permit if it finds that all of the following conditions are met:
  - (a) the specific site is an appropriate location for such use;
  - (b) the use will not adversely affect the neighborhood;
  - (c) there will be no serious hazard to vehicles or pedestrians from the use;
  - (d) no nuisance will be created by the use; and
  - (e) adequate and appropriate facilities will be provided for the proper operation of the use.
18. FEC and VHD submit that the proposed recreational marijuana use on the Kulesza Property does not satisfy **any** of the above standards for the grant of a conditional use permit.

19. FEC and VHD submit that the end of a street consisting almost entirely of a manufacturing is not appropriate location for any retail establishment, let alone a marijuana dispensary.
20. There is significant industrial activity in the neighborhood, including use of industrial equipment, machinery and heavy vehicles that travel and make use of Von Hilleren and Locust Street.
21. Opening up Von Hilleren Street to traffic for a retail establishment, such as a Recreational Marijuana Dispensary will disturb traffic flows and patterns and schedules on Von Hilleren Street that are associated with manufacturing/industrial uses.
22. A recreational marijuana dispensary will conservatively generate 250 additional vehicle trips a day (each way) on Von Hilleren Street.
23. That additional traffic will impair FEC's and VHD's tenants workflow and impair their ability to make shipments, receive deliveries and deliver product and ultimately to address and serve their customers.
24. Von Hilleren Street in its current condition is not capable of handling traffic at such levels, the street is narrow.
25. There is significant on street parking on Von Hilleren Street and Locust Street (both of which are dead end streets).
26. A google earth photograph of Von Hilleren Street, a copy of which is attached hereto as **EXHIBIT "D"** shows just how tight and congested Von Hilleren Street. It also demonstrates the lack of sidewalks, small width of the street and proximity of the proposed recreational marijuana dispensary to the VHD and FEC properties.

27. In fact that photograph in and of itself demonstrates that the site is not appropriate for any type of retail use whatsoever on the Kulesza Property, let alone a recreational marijuana dispensary which is subject to heavy use and traffic.
28. FEC is concerned that the proximity of the medical marijuana dispensary (right outside its front door) could significantly impair its ability to secure government and defense contracts, as marijuana is still an illegal narcotic under Federal Law.
29. This is not an area that the public typically frequents, which will change if the recreational marijuana dispensary is built, which will require VHD and FEC to enact more stringent security measures to address a different population that will be attracted to Von Hilleren Street.
30. Opening up Von Hilleren Street to customers of a recreational marijuana dispensary will present a serious hazard to vehicles and pedestrians, including not just the employees working in the industrial and manufacturing establishments but also to the customers and employees of the proposed dispensary.
31. Some of the employees and invitees at the various manufacturing/industrial uses located on the VHD Property and FEC take public transportation and then walk from there to work. There is a redline stop in very close proximity to Von Hilleren Street.
32. Von Hilleren Street is already dangerous for pedestrians as it lacks any sidewalks or walkways. That danger will increase significantly if the Kulesza Property is transformed into a recreational marijuana dispensary. That danger or hazard will also be present to customers and employees of the recreational marijuana dispensary using public transportation.

33. This is not an industrial park with calculated design flows and distinct and separate pad sites, this is (in the scheme of things) a small industrial area and even a visit to the Property or examination of photographs of the area would demonstrate that this is not an appropriate site for a recreational marijuana dispensary and that is it not in keeping with the character of the surrounding community.
34. There is not sufficient parking for the recreational marijuana dispensary.
35. The project site barely has any parking as it is.
36. The project site is so small and dense that it will be impossible to ensure that there will be adequate facilities for its use.
37. The VHD and FEC buildings are in extreme proximity to the proposed recreational marijuana dispensary.
38. Odors from the production and storage of marijuana will create a nuisance to the VHD and FEC properties.
39. The harm that VHD and FEC will suffer in the recreational marijuana dispensary is built is greater and more particularized than would be suffered by the community at large.

### COUNT I

#### (APPEAL PURSUANT TO § 11 of the ZONING ACT CHAPTER 665 of the ACTS of 1956)

40. VHD and FEC repeat and reallege the allegations contained in the preceding paragraphs of this Complaint, as if fully set forth herein.
41. The Zoning Board of Appeals' Decision to issue a conditional use permit to Kulesza and CNA for a recreational marijuana dispensary on the Kulesza Property is ultra vires, unreasonable, arbitrary, capricious, without substantial basis in fact or law, and exceeds the authority of the Zoning Board of Appeals in that it, without limitation, is in violation



of both the requirements and intent of the Section 6-3 of the Boston Zoning Code as well as § 11 of the Zoning Act, Chapter 665 of the Acts of 1956, because the Project fails to meet the standards required for the issuance of a conditional use permit.

**PRAYER FOR RELIEF**

WHEREFORE, VHD and FEC prays that this Court:

1. Enter Judgment for VHD and FEC and declare that the Boston Zoning Board of Appeals' Decision dated June 7, 2022, executed on July 19, 2022 and filed in the office of the Commission of the Inspectional Services Department, located 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, Massachusetts 02118, on July 22, 2022 granting Kulesza and CNA Stores, Inc. a conditional use permit for a recreational marijuana facility as 70 Von Hilleren Street was arbitrary and capricious and exceeded the authority of the Boston Zoning Board of Appeals in violation of § 11 of the Zoning Act, Chapter 665 of the Acts of 1956, as well as the Boston Zoning Code and Order that the Boston Zoning Board of Appeals Decision be annulled and declared invalid, void, and of no force or effect.
2. Enter a finding that the Boston Zoning Board of Appeals' conduct and actions were committed with gross negligence, in bad faith, and/or malice entitling VHD and FEC to an award of its attorney's fees and costs;
3. Issue an Order enforcing the provisions of the § 11 of the Zoning Act, Chapter 665 of the Acts of 1956, as well as the Boston Zoning Code; and

4. For such other and further relief as the Court deems just.

Respectfully submitted,

VON HILLEREN DONOVAN, LLC  
and THE FIRST ELECTRONICS, CORP

By their attorneys,

*Edmund A. Allcock /s/*

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