

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.:

22-0485G

TRACY KELLER, EMEKA )  
LINTON, )  
RENEE JACKSON, )  
MARK JACKSON and MALCOM )  
WHITMAN )  
Plaintiff )

v. )

LEE GOODMAN, WATERMARK )  
DEVELOPMENT INC, and )  
BOARD OF APPEAL OF BOSTON )  
MARK FORTUNE, CHRISTINE )  
ARAUJO, MARK ERLICH, )  
KERRY WALSH LOUGUE, )  
TYRONE KINDELL JR., EDWARD )  
DEVEAU, JOSEPH RUGGIERO, )  
KONSTANTINOS LIGRIS, )  
JEANNE PINADO, ERIC )  
ROBINSON, HANSY BETTER )  
BARRAZA, BETHANY PATTEN, )  
SHERRY DONG as they are )  
Members of the ZBA BOARD OF )  
APPEALS )  
Defendant )

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2022 MAR - 3 1 P 7:19  
MICHAEL JOSEPH DOROVY  
CLERK / MAGISTRATE

**VERIFIED COMPLAINT**

**I. INTRODUCTION**

1. This is an appeal pursuant to Section 11 of the Boston Zoning Enabling Act, Chapter 665 of the Acts of 1956 ("Section 11) of the January 18, 2022 Decision by the Defendant City of Boston Board of Appeals granting eight (8) variances (The Variance Decision") from

the Boston Zoning Code to Defendant Lee Goodman, Watermark Development LLC to erect new 4 story Multi-Family dwelling containing 9 residential units and 9 parking spaces on newly created Lot B with 10,8883 SF to 265 Amory Street, Ward 11. A copy of the Variance Decision is attached hereto as Exhibit A.

2. This appeal is additionally pursuant to Section 11 of the Boston Zoning Enabling Act, Chapter 665 of the Acts of 1956 ("Section 11) of the January 18, 2022 Decision by the Defendant City of Boston Board of Appeals granting six (6) variances (The Variance Decision") from the Boston Zoning Code to Defendant Lee Goodman, Watermark Development LLC to Erect new 16,018SF headquarters for Youth Enrichment Services a Boston Social Service group (Community Center) in a newly created vacant Lot A of 10, 288 SF. Three-story building to contain office and classrooms as well as a first floor ski shop (Retail Store). 267 Amory Street, Ward 11. A copy of the Variance Decision is attached hereto as Exhibit B.
3. Plaintiffs, live next to such vacant lot for varying range of year from 14 to 28 years. As detailed below, Plaintiffs are "aggrieved" pursuant to Section 11 by the Variance Decision as it failed to acknowledge the lack of community process and disregard for such appropriate objection as such ZBA meeting, it will allow a building over the requisite height of 35ft and allow for expansive parking in the area which will of course critical change the entire area for all its residents. The existing project which covers two separate addresses and two separate decisions does not comply with Boston Zoning Code in regards to the following; GPOD applicability, Floor Area Ratio is Excessive, Off-

Street Parking is Insufficient, Building Height is Excessive, Off Street Loading is Insufficient, Multi-Family Dwellings are forbidden, Useable Open Space is Insufficient and Rear Yard is Insufficient. Allowing these existing nonconformities at such project specifically harms the Plaintiffs and the Amory Street Community.

4. The Variance Decision is erroneous because Lee Goodman & Watermark Development INC, would not suffer any substantial hardship by the application of the zoning requirements preventing him/it's from limiting the number of parking spaces and limiting the building to the height of 35ft instead of as proposed. The Variance Decision is also erroneous because it is not based on any condition that especially affects the property and not affecting generally the zoning district in which it is located. While in the greater Jamaica Plain area some projects may have approval for this offsite parking and building height, no such project is in the immediate area. The Variance Decision will result in substantial detriment to the public good, particularly to the Plaintiffs, as well as nullify and substantially derogate from the intent and purpose of the City's Zoning regulations. The Variance Decision blatantly ignores neighborhood opposition and facts on the record. Specifically, during such community process such direct abutters were not included and ignored.

## **II. PARTIES**

1. Malcom Whitman is the owner of 276 Amory Street Jamaica Plain, Boston, MA. For his title see deeds recorded with the Suffolk County Registry of Deeds at Book 40468, Page 75, and Book 34694, Page 59 for over 15 years.

2. Tracy Keller is a tenant and holder of a legal lease for Unit 1 of 276 Amory Street Jamaica Plain, Boston, MA since 2004.
3. Emeka Linton is the owner of 260 Amory Street Jamaica Plain, Boston, MA. For his title see deed recorded with Said Suffolk County Registry at Book 63200, Page 149.
4. Renee Jackson and Mark Jackson reside in a 280 Amory Street Jamaica Plain, MA. Such property is held in the Renee Marie Jackson Trust. For their title see deed recorded with Said Suffolk County Registry at Book 19873, Page 147 since 1995.
5. Lee Goodman and Watermark Development Inc. (Hereinafter "Private Defendants") is the developer seeking to develop 265-267 Amory Street Jamaica Plain, Boston, MA (Hereinafter "the Subject Property").
6. Defendants is the City of Boston Board of Appeal (hereinafter "The Board") which is established pursuant to section 8 of the Zoning Enabling Act, St. 1956, c. s. 8 as amended by St. 1966, c. 193 s. 2; St. 1972 c. 802, s. 66; 1973, c. 296 s. 4; and St. 1994, c. 461, s. 2, has its offices at 1010 Massachusetts Avenue, Boston Suffolk County Massachusetts Mark Fortune, Chrstine Araujo, Mark Erlich, Kerry Walsh Lougue, Tyrone kindell Jr, Edward Deveau, Joseph Ruggiero, Konstantinos Ligris, Jeanne Pinado, Eric Robinson, Hansy Better Barraza, Bethany Patten, Sherry Dong. As they constitute the City of Boston Zoning Board of Appeals.

### **III. JURISDICTION**

7. This Court has jurisdiction over this matter pursuant to the Boston Zoning Act. Chapter 665 of the Acts of 1956 (hereinafter the Enabling Act) section 11, as Plaintiffs are parties aggrieved by the decision of the Board of Appeal of Boston approving defendant Lee

Goodman's application for a variance to the Enabling Act in City of Boston Board of Appeal decision BOA1207621 & BOA1208609, both filed in the office of the Commissioner of the Inspectional Services Department on February 11, 2022.

#### **IV. FACTS & PROCEDURAL HISTORY**

8. Plaintiffs repeat and reallege each and every preceding paragraph as through fully restated herein.
9. The Properties that the Plaintiff's own and/or reside at are either on the same street, adjacent or directly across from the Subject Project all on Amory Street.
10. The Plaintiffs are aggrieved by the decision to allow a variance at the Subject Property for Private Defendants to develop the Subject Property by Defendant Board of Appeal of Boston.
11. Plaintiffs are in full support of the Youth Enrichment Services (YES) non-profit organization.
12. On May 4, 2021 Private Defendant's filed Application for Permit ERT 1190883 in connection to property at 265 Amory Street Jamaica Plain MA. Such application was denied for the following violations of Boston Zoning Code as follows:
  - a. Violation of Article 29 Section 4: GPOD Applicability
  - b. Violation of Article 55 Section 20: Floor Area Ratio Excessive
  - c. Violation of Article 55 Section 40: Off Street Parking & Loading Req: Off Street Parking Insufficient
  - d. Violation of Article 55 Section 20: Building Height Excessive

- e. Violation of Article 55 Section 40: Off Street Parking & Loading Req: Off Street Loading Insufficient
- f. Violation of Article 55 Section 19: Use Regs in Local Industrial: Multi-Family Dwelling Use: Forbidden
- g. Violation of Article 55 Section 20: Usable Open Space Insufficient
- h. Violation of Article 55 Section 20: Rear Yard Insufficient

13. On May 4, 2021 Private Defendant's filed Application for Permit ERT 1190876 in connection to property at 267 Amory Street Jamaica Plain MA. Such application was denied for the following violations of Boston Zoning Code as follows:

- a. Violation of Article 55 Section 20: Floor Area Ratio Excessive
- b. Violation of Article 55 Section 40: Off Street Parking & Loading Req: Off Street Parking Insufficient
- c. Violation of Article 29 Section 4: GPOD Applicability
- d. Violation of Article 55 Section 40: Off Street Parking & Loading Req: Off Street Loading Insufficient
- e. Violation of Article 55 Section 20: Building Height Excessive
- f. Violation of Article 55 Section 20: Rear Yard Insufficient

14.

15. As to 265 Amory Street, Private Defendants are seeking to develop the Subject Property to erect a new four (4) story Multi-Family dwelling containing nine (9) residential units and nine (9) parking spaces on the Subject Property.

16. As to 267 Amory Street, Private Defendants also applied to the Boston Building Commissioner for a building permit at the Subject Property to build a three-story building

to contain office and classrooms as well as a first floor ski shop (Retail Store).on the Subject Property.

17. Both Private Defendants' application(s) was denied by the Boston Building Commissioner for violations of Article 29 Section 4, and Article 55, Sections 19, 20, and 40.
18. Private Defendants filed an appeal of each decisions of the Boston Building Commissioner's denial to the Defendant Board of Appeal of Boston on or about May 4, 2021.
19. Notice of the appeal was mailed to all abutters, and published in The Boston Herald on November 16, 2021, and December 28, 2021.
20. The Board took a view of the Subject Property.
21. Private Defendants are responsible for following the community process with such application for appeal to the ZBA, which did not occur properly.
22. The Abutters as listed as Plaintiffs to this case were not invited to or presented at any specific community meetings with the Private Defendant and City Liaison until very late in the process. The direct abutters did learn that the Private Defendant's conducted meetings with community groups who would not be adversely affected in same way as abutters.
23. The Community Liaison for this area did not have any meetings with the direct abutters. There may have been community meetings to which the very persons that
24. During such process the Private Defendant additionally sought relief from the local Jamaican Plain Neighborhood Council on July 20, 2021.

25. Private Defendant sits and is an active member of that board and did not properly abstain from the active discussion regarding this vote.
26. While Private Defendant did abstain from the actual vote another board member suggested a vote as to whether such Private Defendant be required to leave the room for the discussion prior to the vote.
27. The Chair of the board thought the idea was ridiculous and did not agree with a vote. Therefore, Private Defendant was present and was a part of the actual discussion prior to the remaining board members voting on the project.
28. Approval was granted by the Jamaican Plain Neighborhood Council, prior to this issue being brought before the Boston Zoning Board of Appeals.
29. At this meeting the board did request that an issue of concern to be address was that the Private Defendant did need to speak to the direct abutters. Only then did the Private Defendant engage in meetings with the persons that would be most adversely affected by this project by their direct proximately to such project. See Exhibit C Letter from Jamaican Plain Neighborhood Council
30. The hearing before Boston Board of Appeals on the Private Defendants' appeal was scheduled for December 7, 2021, and rescheduled to January 18, 2022 due to technical difficulties
31. A hearing was held on both of Private Defendants' appeal on January 18, 2022.
32. After the hearing the Board approved the Private Defendants' appeal on February 8, 2022.
33. The Board found that the design of all structures is compatible with the surrounding neighborhood.



34. The proposed structure is to be forty-five (45) feet high.
35. All other structures in the neighborhood are at most thirty (30) feet high.
36. The extra fifteen (15) feet is not compatible with the surrounding neighborhood and specifically not on the street or nearby street.
37. As shown in visual aid Exhibit D.... This building as proposed will completely change the outlay of the street and block the park view for all residents on Amory Street.
38. Much research and effort went into the drafting of the JP/Rox Plan. This plan does allow for a density allowance above 35ft when a new building has affordable units for residents.
39. Here Private Defendant has gone around that requirement and made a donation offer and stating the connection to the Non-Profit organization coming into the building justifies the need for such density allowance. As mentioned in Exhibit C letter from the Jamaica Plan Board simply finding other community benefits does not allow the Private Defendants from taking advantage of such density allowance.
40. Plaintiffs are in favor of the non-profit finally getting much needed space, but such can be done without the approval of such Height variance.
41. Plaintiffs will be specifically aggrieved as such building of such height will completely change the look, view and feel of the area.
42. Plaintiffs will also be specifically aggrieved with all new off street parking and buses coming back and forth on their otherwise quiet street.
43. The Board's engagement with the community surrounding the proposed development was inconsistent with the reasonable interaction of the Board with the community where a development project.

44. The Board is required to host meetings with the community and did not hold a meeting with direct abutters.

45. The Board has received many letters and petitions from the community around the Proposed Development, many in opposition to the Proposed Development, but has approved the variance in spite of the community involvement and desire.

46. The Board's approval of the Private Defendants' appeal was filed in the office of the Commissioner of the Inspectional Services Department on February 11, 2022

### **CAUSE OF ACTION**

#### **V. COUNT 1-**

#### **SECTION 11 REVIEW: THE DECISION OF THE BOARD WAS ARBITRARY AND CAPRICIOUS AND EXCEEDED THE AUTHORITY OF THE BOARD**

47. Plaintiffs restate and reincorporate each and every prior paragraph as if fully set forth herein.

48. Plaintiffs are aggrieved by the Variance Decision allowing the Proposed new building to the requested height and off street parking as proposed.

49. The Decision of the Board to grant Private Defendant's a variance was arbitrary and capricious.

50. The Decision of the Board to approve Private Defendant's appeal was not reasonable and not based on a reasonable interpretation of the Boston Zoning By-Laws.

51. Plaintiffs are entitled to a Judgment that the Variance Decision exceeds the authority of the Board of Appeals and, therefore must be annulled.

### **CONCLUSION: RELIEF REQUESTED**

WHEREFORE Plaintiffs respectfully requests that this Honorable Court as authorized and directed by Section 11 pf the Zoning Enabling Act, St. 1956, c. 665, as most recently amended by St. 1974, 669; Section 1 ND St. 1994, c. 461, Section 2, “hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul” the decision at issue “if founded to exceed the authority of such board or make such other decree as justice and equity may require.” Plaintiffs further request that this Court order the payment of her attorney’s fees and costs.

- a) Declare the Variance Decision of the Defendant Members of the Board of Appeals void and annulled;
- b) Enter judgment in favor of the Plaintiffs;
- c) Award Plaintiff their costs and expenses, including reasonable attorneys' fees and expenses; and
- d) Such other and relief as justice so requires.

### **DEMAND FOR JURY TRIAL**

Pursuant to Mass. R. Civ. P. 38(b), Plaintiffs demand a jury trial of all claims so triable.

Respectfully Submitted  
Malcolm Whitman, Tracy Keller,  
and Emeka Linton  
By their attorney

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Sheryl R. Furnari Esq.

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