

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CASE NO. _____

RESIDENCES AT 1550 SOLDIERS FIELD
ROAD LIMITED PARTNERSHIP and
RESIDENCES AT SOLDIERS FIELD PLACE
CONDOMINIUM LIMITED PARTNERSHIP,
Plaintiffs

v.

1500 SOLDIERS FIELD ROAD, LLC
(a/k/a 1500 SFR, LLC) and
CHRISTINE ARAUJO, MARK FORTUNE,
MARK ERLICH, JOSEPH RUGGIERO,
EDWARD DEVEAU, KOSTA LIGRIS, and
SHERRY DONG, as they are members
of the CITY OF BOSTON BOARD OF APPEAL,
Defendants

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6/25/2021

COMPLAINT

Introduction

Pursuant to Chapter 665 of the Acts of 1956, Section 11 (the "Enabling Act"), the Plaintiffs hereby appeal the decision rendered by the City of Boston Board of Appeal ("Board") granting multiple variances from the provisions of the Boston Zoning Code ("BZC") and other conditional use relief (the "Decision"). (A certified copy of said Decision is attached hereto as Exhibit "A".) The variances and other relief granted by the Board gave approval for the Defendant, 1500 Soldiers Field Road, LLC (upon information and belief, a/k/a 1500 SFR, LLC) ("1500 SFR"), to construct a large, six-story mixed use building, containing 102 residential apartment units and 62 on-site parking spaces, at the property

located at and described as 44-46 Soldiers Field Place (formerly known as 1500 Soldiers Field Road) in Brighton, Massachusetts (the "Property").

As set forth below, the Board committed errors of law and exceeded its authority in making such Decision, which was unreasonable, whimsical, arbitrary, capricious, or otherwise based on legally untenable grounds, as the same does not meet the legal standards required for those variances and as the Board failed to identify and/or fully describe in its Decision both the special (i.e., exceptional) conditions of the Property and/or any "substantial hardship" to the Defendant, 1500 SFR, as required by Section 7 of the BZC. In fact, the Plaintiffs submit that there exist no special or exceptional conditions which warrant the granting of any of the subject variances, and there exists no substantial hardship inasmuch as the Defendant, 1500 SFR, can make reasonable use of the Property without obtaining zoning relief, albeit not to the extent of the economic benefit which the Defendant seeks by way of the subject project.

The fact that the Defendant, Board, acted improperly, unreasonably, whimsically, arbitrarily, capriciously, or otherwise based on legally untenable grounds is further evidenced by the fact that the Board refused to consider any arguments sought to be raised by the Plaintiffs in opposing the relief sought (in fact,

refusing to allow the Plaintiffs to make such arguments) at the time of the hearing before the Board on April 27, 2021.

The Board's decision in granting the requested conditional use permits was also improper, in error, and without sufficient basis.

Pursuant to Section 11 of the Enabling Act, the Board's Decision should be annulled. The Plaintiffs stand to suffer substantial injury and harm as a result of the Board's actions as the relief approved by the Board will negatively impact the Plaintiffs' properties, will result in increased traffic, congestion and parking issues, specifically with respect to Soldiers Field Place (the only means of vehicular access to the Property and the Plaintiffs' properties), thereby creating a hazard to pedestrians and drivers, and also will result in the blockage of sunlight, air, and/or views of the Plaintiffs' properties.

Parties

1. The Plaintiff, Residences at 1550 Soldiers Field Road Limited Partnership ("1550 Soldiers LP"), it is a Massachusetts limited partnership having an office at 100 Galen Street, Suite 301, Watertown, Massachusetts.
2. The Plaintiff, Residences at Soldiers Field Place Condominium Limited Partnership ("Soldiers Condominium"), is a

Massachusetts limited partnership having an office at 100 Galen Street, Suite 301, Watertown, Massachusetts.

3. The Defendant, 1500 Soldiers Field Road LLC, upon information and belief, also known as 1500 SFR, LLC ("1500 SFR"), is a Massachusetts limited liability company having an address of 1500 Soldiers Field Road, Brighton, Massachusetts. According to the subject Boston Board of Appeal application, the Defendant, 1500 SFR, has a mailing address of c/o Joseph P. Hanley, Esq., 28 State Street, Suite 802, Boston, Massachusetts.
4. The Defendants, Christine Araujo, Mark Fortune, Mark Erlich, Joseph Ruggiero, Edward Deveau, Kosta Ligris, and Sherry Dong, are named in their capacities as members of the Board, a municipal body with the business office of 1010 Massachusetts Avenue, Boston, Massachusetts.

Jurisdiction

5. This Honorable Court has jurisdiction over this action pursuant to §11 of the Enabling Act.
6. The Plaintiffs have standing to bring this action as they are abutters adversely affected and, as such, standing is conferred upon them under §11 of the Enabling Act.

Facts

7. The Plaintiff, 1550 Soldiers LP, is the current owner of the property located at 1550 Soldiers Field Road, Brighton, Massachusetts.
8. The Plaintiff, Soldiers Condominium, is the current owner of the property located at 21 Soldiers Field Place, Brighton, Massachusetts.
9. In August 2018, the predecessor owner of the Plaintiffs' properties received relief from the Defendant, Board.
10. As of that time, the Defendant, 1500 SFR, had not sought the subject zoning relief from the Board.
11. More specifically, on July 31, 2018 (via decision filed on August 17, 2018), the prior owner of the property now owned by the Plaintiff, 1550 Soldiers LP, obtained relief to allow for the development of the property at 1550 Soldiers Field Road, including 211 market-rate apartments in a six (6) story structure, with 149 on-site parking spaces located in an underground garage.
12. In addition, the previous owner of the property now owned by the Plaintiff, Soldiers Condominium, obtained relief to allow for the development of 38 income-restricted ownership units in a four (4) story structure at 21 Soldiers Field Place, having 27 open-air garaged spaces.

13. On May 8, 2019, the Plaintiff, 1550 Soldiers LP, acquired title to the properties at 1550 Soldiers Field Road and 21 Soldiers Field Place. The Plaintiff, 1550 Soldiers LP, subsequently conveyed the 21 Soldiers Field Place property to the Plaintiff, Soldiers Condominium.
14. Following their acquisition of the properties, the Plaintiffs commenced development of the properties consistent with the zoning relief obtained.
15. The Defendant, 1500 SFR, is the owner of the Property.
16. The only vehicular access to the subject Property, as well as to the Plaintiffs' properties, is by way of Soldiers Field Place, a limited cul-de-sac leading from Soldiers Field Road.
17. The Property is located within the Greenbelt Protection Overlay District.
18. Prior to February 11, 2021, an application was filed for a building permit for the construction of a new six (6) story building at the Property, containing approximately 101,000 gross square feet, consisting of 102 residential units and a small restaurant with take-out of approximately 870 square feet, and having 62 on-site parking spaces.
19. The application for building permit was denied on February 11, 2021. (A copy of the Zoning Code Refusal notice is attached as Exhibit "B".)

20. According to the Zoning Code Refusal notice, the application for building permit required relief from the Board, as the proposed project violated the following sections of the Boston Zoning Code ("BZC"): Article 29 section 4, Article 51 section 16, and Article 51 section 17. (See Exhibit B.)
21. As a consequence, on February 11, 2021, an Appeal was filed with the Defendant, Board. (A copy of said Appeal is attached as Exhibit "C".)
22. The applicant on the Appeal is listed as "1500 SFR, LLC".
23. There is no record of an entity by such name ("1500 SFR, LLC") as registered with the Massachusetts Secretary of State, Division of Corporations.
24. Thereafter, notice was received by the Plaintiffs that a virtual public hearing before the Board was scheduled for April 27, 2021, at 11:00 AM. (A copy of said notice is attached as Exhibit "D".)
25. The Plaintiffs appeared at the time of the virtual public hearing, including via the undersigned counsel.
26. At the time that public comment was requested (whether in favor of or in opposition to the subject project), counsel for the Plaintiffs attempted to offer a number of arguments in opposition to the subject project.

27. However, the Plaintiffs and their counsel were prohibited by the Board from making any arguments in opposition to the zoning relief sought by the Defendant, 1500 SFR.
28. Instead, the chairperson of the Board stated that, because the Plaintiffs had received previous relief from the Board, the Board would not hear from the Plaintiffs in opposition to the appeal of the Defendant, 1500 SFR.
29. At the conclusion of the April 27, 2021, Board hearing, the Board voted to allow the multiple variances and conditional use permit requested by the Defendant, 1500 SFR.
30. Subsequently, the written Decision of the Board, dated June 4, 2021, was filed with the Inspectional Services Department for the City of Boston on June 11, 2021. (Exhibit A.)
31. Article 7 of the BZC, and specifically Section 7-3, requires that the Defendant, Board, may grant a variance "only if it 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 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..."

32. The grant of any variance is proper only where there are findings with respect to each of the requirements set forth in Section 7-3 (a)-(C) of the BZC.
33. Further, as the Property is located within the City's Greenbelt Protection Overlay District, the use of the Property is subject to Article 29 of the Code.
34. According to Article 29, Section 29-6 (Standards), in order to obtain a conditional use permit, an applicant "shall show that the Proposed Project complies with [specific] standards in addition to the standards set forth in Article 6..." including, "(a) provision for adequate vehicular access, off-street parking and loading and shall not have a significant adverse effect on traffic and parking on the Greenbelt Roadway and adjacent streets..."
35. Article 23 of the Code (Off-Street Parking) provides that if the maximum floor area ratio is 3.0, for each dwelling unit there shall be provided at least .6 off-Street parking spaces.

36. Article 6 (Conditional Uses) of the Code further provides that the Board shall grant a conditional use on appeal only if all of a number of conditions are met, including,

"(c) there will be no serious hazard to vehicles or pedestrians from the use;

(d) no nuisance will be created by the use;

(e) adequate and appropriate facilities will be provided for the proper operation of the use... [and]

(g) if such appeal relates to a Proposed Project in an area designated a Greenbelt Protection Overlay District as defined in Section 29-2, the Applicant shall have complied with the requirements set forth in Section 29-3 and Section 29-5 and the standards set forth in Section 29-6."

37. Additionally, Article 6, Section 6-4 (Other Conditions Necessary as Protection), provides that, in approving a conditional use, the Board may attach such conditions and safeguards as it deems necessary, including,

"(d) limitation of size, number of occupants, method and time of operation, and extent of facilities;

(e) regulation of number, design, and location of access drives and other traffic features; and

(f) requirement of off-street parking and other special features beyond the minimum required by this or other applicable codes or regulations."

38. Section 8 of the Enabling Act provides in part:

"...any person aggrieved... by reason or order or decision of the building commissioner... in violation of any provision of... any zoning regulation... may appeal to [the] board of appeal within forty-five days after such refusal, order or decision..."

39. If the applicant listed on the subject application for Appeal, "1550 SFR, LLC", is not the same entity as the Defendant, 1500 Soldiers Field Road, LLC, then such entity does not exist or, at a minimum, did not exist and/or was not registered to do business within the Commonwealth as of February 11, 2021.
40. No records have been found at the Suffolk County Registry of Deeds or the City of Boston assessor's office evidencing that the Property located at 44-46 Soldiers Field Place, Brighton, Massachusetts (formerly 1500 Soldiers Field Road) is owned by an entity having the name "1500 SFR, LLC".
41. As such, the Plaintiffs respectfully suggest that an entity named "1500 SFR, LLC" cannot be a person aggrieved pursuant to the Enabling Act.
42. The granting of the multiple variances and other relief by the Board in its written Decision was unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, exceeded the authority of the Board, and constituted an abuse of discretion and an error of law.
43. The Decision of the Defendant, Board, failed to adequately cite and describe the special circumstances or conditions applying to the subject land or structure, which circumstances or conditions are peculiar to the Property, but not the neighborhood, and are such that the application of

the provisions of the Code (including Article 51 Section 17 (exceeding floor area ratio, exceeding building height, and having less than the required front yard setback)) would deprive the applicant of the reasonable use of the Property.

44. Further, the Decision of the Defendant, Board, failed to adequately describe sufficient reasons of practical difficulty and demonstrable and substantial hardship that supported a finding that the granting of each one of the variances was necessary for the reasonable use of the Property and that each one of the variances, as granted, was the minimum variance that would accomplish the purpose.

45. In its Decision, the Board claims that the Property has "unique" land conditions because it is "[r]ectangular in shape, with varying changes in grade throughout the Site in different amounts, in some spaces up to or proximally five (5) feet, [and is] a through-lot with frontage on both Soldiers Field Road (State highway) and Soldiers Field Place (a dead-end City public way)." (See Exhibit A, page 3.)

46. Such description, however, does not demonstrate the Property as having "unique" or "special" (i.e., exceptional) characteristics or conditions warranting the granting of each of the subject variances.

47. Notwithstanding, in its Decision, the Board claims that, for such reasons, the Property is "unique", and that the relief

requested (which must pertain to each variance sought) "is the minimal necessary to address [the Defendant, 1500 SFR's] resulting hardship." (See Exhibit A, page 8.)

48. Similarly, in its Decision, the Board also claims that "the existing industrial-commercial building at the Site is an obsolete structure that occupies approximately 40 percent (40%) of its available land area, in addition to the surrounding unimproved surface parking lot thereat," that "the existing building is not worthy or readily adaptive for other feasible or preferred Uses under the Zoning Code...", that "the building and land is inconsistent with modern-day planning standards and prevailing land use patterns in this neighborhood...", and that "the grant of the Variances requested is necessary for the reasonable use of the land." (See Exhibit A, page 8.)

49. The Defendant, Board, then summarily claims that "these [alleged] unique characteristics and special circumstances at the Project Site present a substantial hardship and support the grant of the requested Variances and Conditional Use Permits, as the minimum relief necessary..." (See Exhibit A, page 9.)

50. However, such statements are mere conclusions, are not supported by the alleged facts set forth in the Decision, and

otherwise do not satisfy the requirements of Article 7 of the BZC.

51. The Decision does not contain proper and adequate findings as required by Section 7 of the BZC for the issuance of each one of the variances granted.
52. The Decision does not contain findings demonstrating special circumstances or conditions applying to the subject Property (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 BZC would deprive the Defendant, 1500 SFR, of the reasonable use of such land or structure. (See, Section 7-3(a).)
53. Additionally, the Decision does not contain findings demonstrating that, for reasons of practical difficulty and demonstrable and substantial hardship, fully described in the findings, the granting of each one of the subject variances was necessary for the reasonable use of the land or structure at the Property and that each of the variances, as granted by the Defendant, Board, was the minimum variance necessary. (See, Section 7-3(b).)

54. The Decision fails to properly determine that the granting of each one of the variances requested was in harmony with the general purpose and intent of the Code and would not be injurious to the neighborhood or otherwise detrimental to the public welfare. (See, Section 7-3(c).)
55. To the extent that the Decision contains facts pertaining to the alleged special circumstances and/or conditions at the Property, such alleged circumstances or conditions are insufficiently, if not wholly unrelated to the relief sought by way of the variances requested by the Defendant, 1500 SFR, including for excess Floor Area Ratio, excess Building Height, and insufficient Front Yard (Through-Lot). (Exhibit A.)
56. Upon information and belief, the motivation of the Defendant, 1500 SFR, in seeking some or all of the subject variances is pecuniary - to realize greater income from the proposed development of the Property.
57. In addition, the Decision does not properly or correctly determine compliance of the subject project with Article 29 and Article 6 of the BZC, inasmuch as the Defendant's intended project will not provide for adequate vehicular access, off-street parking, and loading. The Plaintiffs respectfully submit that the proposed development will have a significant adverse effect on traffic on the Greenbelt Roadway (Soldiers

Field Road) and, more particularly, on the adjacent Soldiers Field Place (the only vehicular access to the Defendant's proposed project).

58. The Plaintiffs submit that the Defendant's proposed project will result in an excess of vehicles and vehicular traffic which, in light of the proposed number of parking spaces (62) at the project, will result in additional vehicles having to park along the sides of Soldiers Field Place, thereby creating a serious hazard to vehicular traffic and pedestrians.
59. The Defendant, Board, acted in error in not requiring additional on-site parking in accordance with Article 6 and Article 29 of the BZC.
60. Further, the Decision of the Defendant, Board, in granting each of the subject variances (and the conditional use relief requested) was unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, inasmuch as the Board refused to consider any arguments which the Plaintiffs sought to raise in opposition to the proposed project (or to allow the Plaintiffs to even express their positions in opposition), all as described above.
61. Based upon all of the above, the Decision of the Defendant, Board, to allow the variances and conditional use relief requested by the Defendant, 1500 SFR, was unreasonable, whimsical, arbitrary, capricious, and/or based on legally

untenable grounds, exceeded the authority of the Board, constituted an abuse of discretion, and was otherwise in error.

COUNT I
DECISION BEYOND THE SCOPE OF AUTHORITY

62. The Plaintiffs hereby repeat and reallege paragraphs 1 through 61, above, as if fully set forth herein.
63. The June 4, 2021, Decision (filed June 11, 2021) of the Board, granting each one of the variances and the conditional use relief requested to the Defendant, 1500 SFR, was unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, exceeded the Board's authority, constituted an abuse of discretion, or otherwise was in error.
64. The Plaintiffs, 1550 Soldiers LP and Soldiers Condominium, are persons aggrieved by the decision of the Defendant, Board.
65. There exists no "special" (i.e., exceptional) conditions of the subject Property which result in a "substantial and demonstrable hardship" to the Defendant, 1500 SFR, as is required for the granting of each variance under Section 7-3 of the BZC.
66. The subject Decision fails to identify and "fully describe" any "special" (i.e., exceptional) conditions of the subject Property which result in a "substantial and demonstrable

hardship" to the Defendant, 1500 SFR, as is required for the granting of any variance per Section 7-3 of the BZC.

67. To the extent that the subject Decision does identify and "fully describe" any alleged "special" (i.e., exceptional) conditions of the subject Property which allegedly result in a "substantial and demonstrable hardship" to the Defendant, 1500 SFR, as required by Section 7-3 of the BZC, no sufficient nexus between each such alleged "special" condition and the alleged "substantial and demonstrable hardship" to the Defendant, 1500 SFR, has been shown to exist.
68. The subject Decision fails to properly find and fully describe the existence of any alleged "reasons of practical difficulty and demonstrable and substantial hardship" as required by Section 7-3 of the BZC.
69. The subject Decision fails to properly and adequately explain how each variance granted was the minimum variance necessary in light of such alleged "reasons of practical difficulty and demonstrable and substantial hardship."
70. The subject Decision of the Board was improper, unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, inasmuch as the Board refused to consider any arguments sought to be raised by the Plaintiffs' opposition to the proposed project, or to allow the Plaintiffs

to even present any opposition, at the time of the April 27, 2021, Board of Appeal hearing.

71. The Defendant, Board's granting of the subject variances was in error and without adequate authority because the Defendant, 1500 SFR, can make reasonable use of the Property without the granting of each one of the subject variances.
72. The Plaintiffs submit that the Decision of the Defendant, Board in granting the subject variances and conditional use permit relief to the Defendant, 1500 SFR, was improper, in error, unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, and exceeded the authority of the Board for all of the reasons stated above.

COUNT II
DECLARATORY JUDGMENT

73. The Plaintiffs hereby repeat and reallege paragraphs 1 through 72, above, as if fully set forth herein.
74. The June 4, 2021, Decision (filed June 11, 2021) of the Board, granting each one of the variances and the conditional use relief requested to the Defendant, 1500 SFR, was unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, exceeded the Board's authority, constituted an abuse of discretion, or otherwise was in error.
75. The Plaintiffs, 1550 Soldiers LP and Soldiers Condominium, are persons aggrieved by the decision of the Defendant, Board.

76. There exists no "special" (i.e., exceptional) conditions of the subject Property which result in a "substantial and demonstrable hardship" to the Defendant, 1500 SFR, as is required for the granting of each variance under Section 7-3 of the BZC.
77. The subject Decision fails to identify and "fully describe" any "special" (i.e., exceptional) conditions of the subject Property which result in a "substantial and demonstrable hardship" to the Defendant, 1500 SFR, as is required for the granting of any variance per Section 7-3 of the BZC.
78. To the extent that the subject Decision does identify and "fully describe" any alleged "special" (i.e., exceptional) conditions of the subject Property which allegedly result in a "substantial and demonstrable hardship" to the Defendant, 1500 SFR, as required by Section 7-3 of the BZC, no sufficient nexus between each such alleged "special" condition and the alleged "substantial and demonstrable hardship" to the Defendant, 1500 SFR, has been shown to exist.
79. The subject Decision fails to properly find and fully describe the existence of any alleged "reasons of practical difficulty and demonstrable and substantial hardship" as required by Section 7-3 of the BZC.
80. The subject Decision fails to properly and adequately explain how each variance granted was the minimum variance necessary

in light of such alleged "reasons of practical difficulty and demonstrable and substantial hardship."

81. The subject Decision of the Board was improper, unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, inasmuch as the Board refused to consider any the arguments sought to be raised by the Plaintiffs' opposition to the proposed project, or to allow the Plaintiffs to even present any opposition, at the time of the April 27, 2021, Board of Appeal hearing.
82. The Defendant, Board's granting of the subject variances was in error and without adequate authority because the Defendant, 1500 SFR, can make reasonable use of the Property without the granting of each one of the subject variances.
83. The Plaintiffs submit that the Decision of the Defendant, Board in granting the subject variances and conditional use permit relief to the Defendant, 1500 SFR, was improper, in error, unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, and exceeded the authority of the Board for all of the reasons stated above.
84. Upon information and belief, the Defendants disagree with the Plaintiffs.
85. Based on the above, an actual controversy has arisen between the parties as to whether the Decision of the Defendant, Board, in granting the subject variances and conditional use

permit relief to the Defendant, 1500 SFR, was improper, in error, and/or exceeded the authority of the Board for all of the reasons stated above.

86. As such, the Plaintiffs seek an Order in the form of Declaratory Judgment from this Honorable Court that the Decision of the Defendant, Board, in granting the subject variances and conditional use permit relief to the Defendant, 1500 SFR, was improper, unreasonable, whimsical, arbitrary, capricious, and/or based on legally untenable grounds, in error, and exceeded the authority of the Board, for all of the reasons stated above, and should, therefore, be annulled by this Honorable Court in accordance with Section 11 of the Enabling Act.

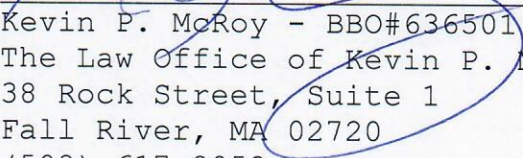
WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

- A. Annul the Defendant, Boston Board of Appeal's June 4, 2021, Decision (filed on June 11, 2021) granting the variances and conditional use permit relief requested by the Defendant, 1500 Soldiers Field Road, LLC, a/k/a 1500 SFR, LLC;
- B. Declare that the Board exceeded its authority in granting one or more of the subject variances and/or the subject conditional use permit relief, and/or that said Decision was otherwise made in error;

- C. Award the Plaintiffs their reasonable attorney's fees and costs incurred in this action, to the extent allowed by law; and
- D. Grant such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted,
RESIDENCES AT 1550 SOLDIERS FIELD ROAD
LIMITED PARTNERSHIP and RESIDENCES AT
SOLDIERS FIELD PLACE CONDOMINIUM LIMITED
PARTNERSHIP,

By their attorney,



Kevin P. McRoy - BBO#636501
The Law Office of Kevin P. McRoy, PLLC
38 Rock Street, Suite 1
Fall River, MA 02720
(508) 617-8052
kevinmcroylaw@outlook.com



City of Boston
Board of Appeal



NOTICE OF DECISION
CASE NO. BOA1163038
PERMIT #ERT1152012
APPEAL SUSTAINED
WITH PROVISO

In reference to appeal of

1500 SFR, LLC

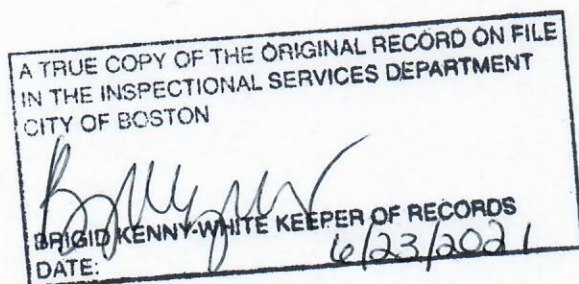
Concerning premises

44-46 Soldiers Field Place, Ward 22

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 granted.

Decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, fifth floor, Boston, MA 02118, and is open for public inspection. Date of entry of this decision in the Inspectional Services Department was June 11, 2021.

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

April 27, 2021
DATE

1500 SFR, LLC

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,
at premises: 44 - 46 Soldiers Field Place, Ward - 22

For the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: **Variance + GPOD**

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 51 Section 16	Use Regulations	Multifamily (102 units) - Conditional
Article 51 Section 17	Dimensional Regulations	Floor Area Ratio - 3.9 > 1.0max
Article 51, Section 17	Dimensional Regulations	Building Height - 69.2' > 35'max
Article 51 Section 17	Dimensional Regulations	Front Yard (Through-Lot) - 6.6'/0.3' < 7'min
Article 29 Section 4	GPOD Applicability	

Purpose: Construct a new six (6) story building of approximately 101,000 gross square feet consisting of 102 residential units and a small restaurant with takeout of approximately 870 square feet with 62 on-site parking spaces.

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-1163038 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:

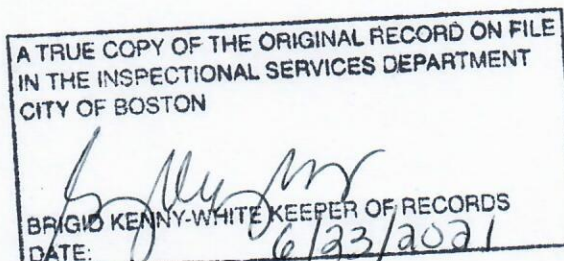
THE BOSTON HERALD on Tuesday, April 06, 2021

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, April 27, 2021 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#ERT-1152012 and January 05, 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

44-46 Soldiers Field Place, Ward 22
BOA#1163038
Date of Hearing: April 27, 2021
Permit#ERT1152012
Page: # 2

This appeal seeks permission to construct a new six (6) story building consisting of 102 residential units, ground floor restaurant and takeout uses, 62 on-site parking spaces, balcony and roof decked open space and related site improvements, as per plans (the "Proposed Project").

The reason for this appeal is to allow the appellant, 1500 SFR LLC ("Appellant"), to replace an obsolete industrial commercial building and revitalize this underutilized property site at 44-46 Soldiers Field Place (f/k/a 1500 Soldiers Field Road) in Brighton (the "Project Site" or "Site"), with a new mixed-use residential development that responds to its unique land constraints and better conforms with the emerging growth of the immediate area. The Project Site is located in the Allston/Brighton Neighborhood Zoning District's Community Commercial ("CC-1") Subdistrict, and within its Greenbelt Protection Overlay Protection District ("GPOD"), which regulates the Project by Article 51 of the Zoning Code. With a building scale in excess of 50,000 square-feet at this location, the Proposed Project is also subject to Large Project Review by the Boston Planning and Development Agency ("BPDA"), pursuant to Article 80 of the City of Boston Zoning Code ("Zoning Code").

The appeal is necessary, as the requested relief requires Conditional Use Permits and Variances under the terms of the Zoning Code as follows: Article 29, Section 4, Greenbelt Protection Overlay District ("GPOD") Applicability; Article 51, Section 16: Multifamily Dwelling is a Conditional Use; Article 51, Section 17: Floor Area Ratio Excessive; Article 51, Section 17: Building Height Excessive; and Article 51, Section 17: Front Yard Insufficient. In this regard, the Appellant specifically seeks, and by this decision is hereby granted, relief from the Zoning Code violations identified in the Building Commissioner's denial letter of February 11, 2021, and appealed by the Appellant on February 12, 2021. At the public hearing before the Board, the Appellant was joined and represented by its legal counsel, Joseph P. Hanley, Esq.

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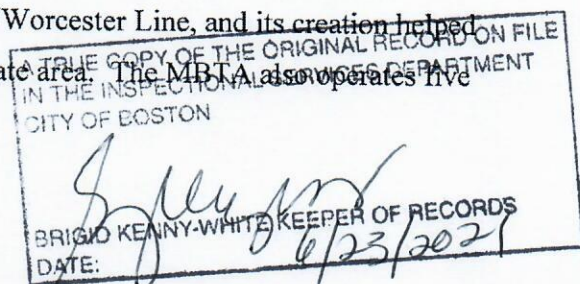
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and Nicholas J. Zozula, Esq. of McDermott, Quilty & Miller, LLP of Boston, who presented the case for the relief requested along with the architect for the Proposed Project.

I. Property Site, Existing Conditions and Context of Area

As outlined in its presentation, testimony and materials provided at the Board's public hearing and further detailed herein, the Appellant submits that the land and existing conditions at the Site are *unique* and necessitate the grant of relief requested for the Proposed Project. The Appellant also contends that the immediate area for the Proposed Project includes certain abutting and nearby structures and significant development growth to support its scale, uses, revitalization and conversion of the Site with much-needed residential housing at this new transit-oriented section of the Brighton neighborhood.

By way of background, the Project Site includes approximately 26,047 square feet of land, with an existing single and two (2) story industrial office building of no architectural historic significance and an unimproved surface parking lot. Built in 1964, the existing structure occupies approximately 40 percent (40%) of lot area at the Project Site. Rectangular in shape, with varying changes in grade throughout the Site in differing amounts, in some spaces up to approximately five (5) feet, the Project Site is also a through-lot with frontage on both Soldiers Field Road (State highway) and Soldiers Field Place (a dead-end City public way). In addition to these unique land conditions, the Project Site is also situated in close proximity to the recreational outlets of the Charles River, the Dr. Paul Dudley White Bicycle Path and the MBTA's Boston Landing Commuter Rail Station ("Boston Landing Station"). Opened to the public in the Spring 2017, Boston Landing Station offers routine public transportation to downtown Boston and points west via its Framingham/Worcester Line, and its creation helped spur economic growth and development in the immediate area. The MBTA also operates five





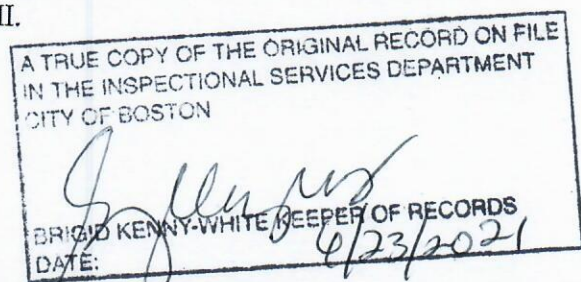
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(5) bus routes within a short walk which also provide access to both Harvard Square and Central Square, where the MBTA Red Line can be accessed to travel to points in Cambridge and downtown Boston. In specific response to this new transit node and related development growth in the immediate area, the Proposed Project has been carefully designed and planned to enhance future connectivity and walkability for the neighborhood, as processed and included in the BPDA's Article 80 Large Project Review process ("Article 80 LPR"). Furthermore, the Appellant notes that the context of the immediate area is also well-suited for the scale and scope of the Proposed Project, which has been carefully formed with design-forward architecture, building set-back and massing measures, new landscape and public realm improvements to better activate the Project Site at this emerging residential location.

II. Project Summary

The Appellant proposes to demolish the existing building at the Site and construct a new six (6) story, 100,844 gross square foot mixed-use building of approximately 69 feet and two (2) inches in height (69'-2"), with a ground floor sit-down and take-out restaurant of approximately 885 gross square feet, 102 residential apartment units, 62 on-site garaged parking spaces, unit terraces, roof decks and ground level open space. Its residential units will be made available for both market rate and income-restricted housing, with a greater percentage of on-site affordability for a wider range of earners than required by the City's Inclusionary Development Policy ("IDP"). Specifically, instead of the IDP's required thirteen percent (13%) of on-site units restricted to income levels at seventy percent (70%) of Average Median Income ("AMI"), the Proposed Project will dedicate seventeen percent (17%) of its total units for a broader range of earners making between 50 and 90 percent (%) of AMI.



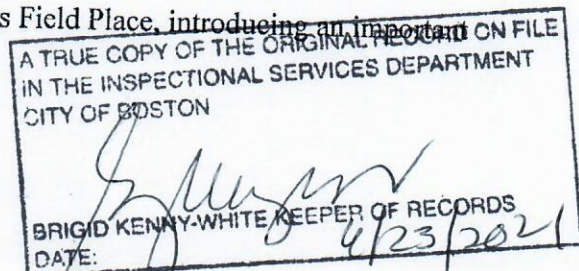


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In addition to its robust on-site affordable housing program (again, in excess of the City's IDP), the Appellant also submits that the Proposed Project will transform and revitalize this underutilized Project Site with much-needed upgrades in pedestrian connectivity and public open space at this emerging location in north Brighton. Specifically, and as part of the BPDA's Article 80 Large Project review process, the Proposed Project will create a new pedestrian pathway through the Site, from improved sidewalk conditions at Soldiers Field Road to the interior of Soldiers Field Place. Complemented by new open space at the ground level and responsive building set-back along the edge of this pathway, the resulting development will enhance future mobility to this emerging section of the community, with a vibrant mixed-use development program.

In response to the context of the immediate area and the unique aspects of the Project Site, the Proposed Project also includes a building and site design which is appropriate for the grant of relief requested under the circumstances. Its new structure at this through-lot presents with two "fronts" -- one on Soldiers Field Road (to the north) and the other off Soldiers Field Place (to the south). The main entrance is located off Soldiers Field Place, at the end of a cul-de-sac and with direct access to dedicated bike storage and vehicular parking garage. The building steps back from the east and west lot lines, creating a saw-tooth plan that affords views over the Charles River for over 75% of the units. This saw-tooth massing results in a narrower building profile along Soldiers Fields Road -- reducing its lot coverage and frontage at this prominent and more public section of the Project Site. The tapered massing creates two triangular green spaces along the east and west sides of the Site, with a total open space allotment that exceeds the underlying Zoning Code requirement for the Proposed Project. On the west side of the Site, a new pedestrian path links Soldiers Field Road to Soldiers Field Place, introducing an important





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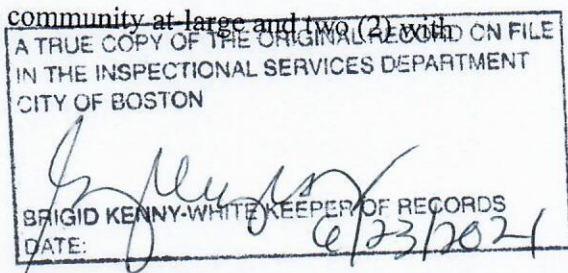
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mid-block connector. Outdoor amenity spaces are introduced at the north end of the Site along the Soldiers Field Road shared-use path, along with a roof deck on the new building (overlooking the Charles River as well as back towards the Boston skyline).

Finally, as included in the BPDA Board Vote to recommend approval of the Proposed Project under Article 80 of the Zoning Code, the Appellant also notes that the BPDA's Article LPR of the Proposed Project will create certain additional benefits to the City and the Brighton neighborhood. In addition to the measures detailed above, the construction and occupancy of the Proposed Project would also include certain in-kind improvements to the public sidewalk infrastructure and bicycle lane striping in the immediate area, along with funding for a new bicycle share station off-site.

III. Extensive Public Review/Support and Resulting Project Modifications

As part of the BPDA's Article 80 LPR process, and as also presented at the public hearing before the Board, the Appellant submits that the Proposed Project underwent extensive City agency review and scoping, public engagement, and detailed input as to its proposed uses, building massing, scale, density, heights, open space, on-site parking, loading and overall site plan component. This process included extensive community outreach with abutting property owners, nearby residents, local businesses, District City Councilor Braeden, community organizations and the two (2) neighborhood interest groups for the area, resulting in significant public support for the Proposed Project. In particular, the Appellant presented and discussed its proposal at numerous community meetings with the Brighton Allston Improvement Association ("BAIA") and the Allston Civic Association ("ACA"), and the BPDA hosted three (3) public meetings on the Proposed Project, including one (1) for the community at large and two (2) with the Proposed Project's IAG.





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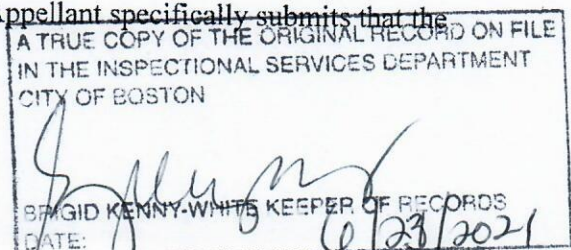
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The Appellant also notes that its extensive public outreach process resulted in certain project modifications and responsive mitigation measures to address public input and mitigate potential impacts of the Proposed Project. Specifically, the Appellant integrated community feedback into its final development program by: (1) reducing its original unit density, with larger accommodations and improved bedroom counts; (2) adjusting its on-site parking and bicycle storage program; (3) exceeding the City's IDP program for on-site housing; (4) including a rooftop PV Solar facility in its new building program; (5) introducing a ground floor café use to help fill in a need at a "food desert" section of the neighborhood; (6) creating a new pedestrian pathway mid-block connector with robust ground level open space; and, (7) making in-kind improvements and monetary investments in public sidewalk infrastructure, bicycle accommodations and enhanced mobility in the immediate area (the "Project Modifications").

As a result of the Appellant's community outreach and responsive actions (above), the Proposed Project was favorably received by a majority of the IAG members and supported by both the BAIA and ACA. Based on this strong showing of public support, the BPDA Board then voted to recommend approval of the relief requested for the Proposed Project under Article 80 LPR, at its January 14, 2021, hearing date. Thus, the Appellant submits that the BPDA's Article 80 LPR recommendation of approval, coupled with this strong public support, is evidence that the requested relief may be granted without adversely affecting the neighborhood, without substantial detriment to the public good, without nullifying or substantially derogating from the intent and purpose of the Zoning Code, and that the Site is an appropriate location for such use.

IV. Consistency of Variance and Conditional Use Findings

As also outlined in the Appellant's presentation, testimony and materials offered at the Board's public hearing, and further detailed herein, the Appellant specifically submits that the



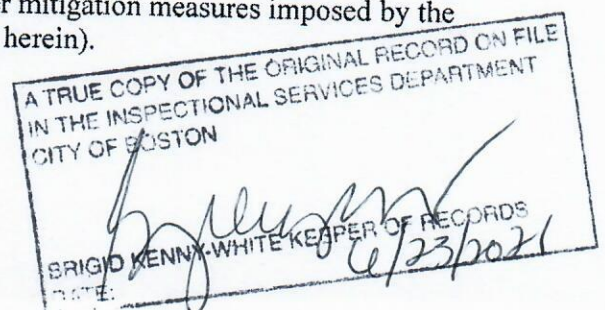


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Site consists of certain *unique* characteristics and conditions which support the grant of the requested Variances and Conditional Use Permits herein, as the minimal necessary for the Proposed Project. Due to these unique characteristics and conditions, the Appellant submits that it is constrained and deprived from its reasonable use of the land; and the strict application of the Zoning Code unnecessarily prohibits the much-needed upgrade and conversion of the Site into a preferred residential development program with a small commercial space, which appropriately provides a transformative residential redevelopment uniquely situated at a gateway location in a newly emerging residential district, for the following articulated reasons:

- i. *First*, the Site includes certain unique dimensional, geometric and topographical constraints which support the grant of relief requested under the circumstances. Specifically, the Site is a through-lot with frontage on both Soldiers Field Road (State highway) and Soldiers Field Place (City public way) and it is burdened with varying changes in grade throughout the Site in differing amounts, in some spaces up to approximately five (5) feet; as a result, the siting of the new building is limited by the same, and the relief requested is the minimal necessary to address its resulting hardship.
- ii. *Second*, the existing industrial-commercial building at the Site is an obsolete structure that occupies approximately 40 percent (40%) of its available land area, in addition to the surrounding unimproved surfaced parking lot thereat. In its present state, the existing building is not worthy or readily adaptive for other feasible or preferred Uses under the Zoning Code. The building and lot configuration on this unique Site is inconsistent with modern-day planning standards and prevailing land use patterns in this neighborhood. Therefore, the grant of the Variances requested is necessary for the reasonable use of the land.
- iii. *Third*, the Proposed Project includes certain extraordinary measures, obligations and expenses resulting in an additional hardship to the Appellant, including its privately financed and voluntary increase of on-site income restricted housing, new pedestrian pathway connection and other mitigation measures imposed by the BPDA's Article 80 LPR process (as detailed herein).





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Taken together, these unique characteristics and special circumstances at the Project Site present a substantial hardship and support the grant of the requested Variances and Conditional Use Permits, as the minimum relief necessary for the much-needed revitalization and reuse of the Site as a preferred mixed-use residential development, with much-needed affordable homeownership (in excess of the City's IDP), new pedestrian pathway connection (on the Appellant's private property) and other in-kind and monetary obligations mandated for the Proposed Project. The Proposed Project was thoroughly scoped and processed through the BPDA's Article 80 LPR, including extensive administrative planning review, community input and resulting project modifications to lessen any potential impacts and enhance future conditions in the immediate area. Therefore, the grant of the relief requested is consistent with the purpose and intent of the Zoning Code, as it would not be injurious to the neighborhood or detrimental to public welfare, the Site is an appropriate location for such use, the use will not adversely affect the neighborhood due to the extensive Article 80 LPR process and related community process/review and no nuisance will be created by the use, as a result.

In response to the unique circumstances and special conditions at the Site, the Proposed Project has also been carefully designed and developed with an appropriate scope and responsive building design and overall scale for the grant of the subject dimensional Variances. Specifically, the new building incorporates a creative aesthetic, appropriate in scale, massing and dimensions for the unique land conditions of the Project Site and its location in Brighton. In planning the new building, great care has been given to address the limitations and constraints of the Site, while respecting the area's as-built conditions at this emerging location between the Massachusetts Turnpike, Soldiers Field Road and Leo M. Birmingham Parkway. Special attention was also considered as to potential impacts (and improvements) on pedestrian and

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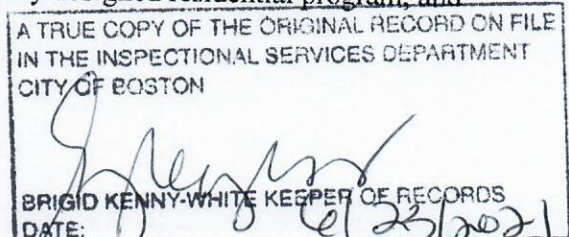
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bicycle connectivity, on-site open space, sustainable building practices, energy efficiency and on-site vehicular parking. The building massing and design was derived from a creative response to neighboring context and urban conditions, appropriate for the Project Site and contributing to the future conditions and growth of the immediate area, as such, adequate and appropriate facilities will be provided for the proper operation of the proposed residential use and the use will not adversely affect the neighborhood.

For the reasons detailed herein and further developed by the Appellant at the public hearing before the Board, the Appellant submits that the subject Project Site is especially affected by the circumstances described herein, and the relief requested will not substantially derogate from the intent or purpose of the Zoning Code. Rather, the grant of relief will allow for the reasonable use of the Site for a purpose substantially more in keeping with the nature of the surrounding community, existing and emerging, than to continue as an outdated and non-conforming commercial structure and a vacant lot in a transitional mixed-use neighborhood.

Furthermore, the Appellant also submits that the Proposed Project's multifamily residential use is consistent with and complementary to the City of Boston's planning and public policy goals for the expansion of housing production, as detailed by the Mayor's 2030 Housing Plan ("2030 Plan"). Specifically, as a result of increased population numbers, income diversity and changing demographics throughout the City, the 2030 Plan has specifically identified a drastic need for the creation of 69,000 more units of housing by the year 2030. In this regard, the Appellant's housing program at the Project Site will help to meet this demand by providing a variety of housing options at the Project Site and for the overall development where currently there are none at an outdated low rise commercial office building. Thus, the Appellant submits that the Project Site is an appropriate location for its carefully designed residential program, and





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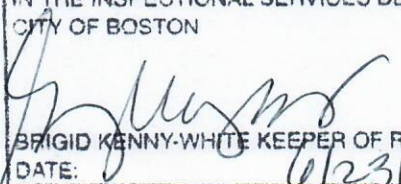
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it will not adversely affect or cause nuisance to the neighborhood, but rather improve the Site and its immediate area with important pedestrian upgrades and vehicular mitigation measures for the new residential uses at this emerging residential section of the Brighton neighborhood.

Taken together, these unique characteristics and special circumstances at the Project Site support the grant of the requested Conditional Use Permit, as the minimum relief necessary for the much-needed upgrade and remediation of the Project Site as a modern multifamily residential development, with a variety of housing options and a strong affordability component. Granting the relief requested is also consistent with the purpose and intent of the Zoning Code and not injurious to the neighborhood or detrimental to public welfare nor causing any nuisance, as the Proposed Project has been carefully reviewed and approved by the BPDA's Article 80 LPR process, with administrative planning review, community input and subsequent support which will enhance future conditions of the surrounding neighborhood.

V. The GPOD Conditional Use Permit

As part of the BPDA Article 80 LPR process, and further subject to required design review by the City of Boston's Parks and Recreation Commission, the Proposed Project has been specifically designed to address and comply with the applicable GPOD standards of the Zoning Code. In this regard, the Appellant submits that it has paid particular attention to vehicular and pedestrian access, on-site parking and potential traffic impacts at the Site; has committed to appropriate landscape and Site improvements and buffers, mitigation measures and community benefit provisions; and, as detailed above, the overall scope and design of the Proposed Project is compatible with that of the surrounding neighborhood for which the GPOD is applicable, as well as recently approved development projects in the immediate vicinity. The Proposed Project will also improve the existing streetscape by providing an active new use along the highly visible

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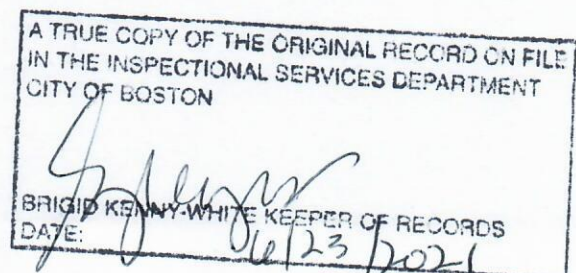


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Soldiers Field Road and replacing an underutilized and non-descript commercial building that is situated at the front lot line with no front yard landscaping or buffering with a new and architecturally pleasing building, which is further setback from the street thereby improving the safety and visual appearance of the area and the existing environmental conditions on the Site.

In further support of the required GPOD Conditional Use permit, the Appellant also notes that the Proposed Project was subject to initial design review and recommended approval by the BPDA, as part of its Article 80 LPR process, resulting in detailed open space, landscape, site and building design measures and modifications to comport with the policy objective and findings of the GPOD. As part of this process, and in accordance with the BPDA Board Approval dated January 14, 2021, the Appellant also agreed to implement the following project mitigation and community benefits, consistent with the vision and recent findings of the BPDA's Allston-Brighton Mobility Plan, and to help mitigate potential impacts and improve pedestrian connectivity and transit access at this section of North Brighton: provide a pedestrian and bicycle pathway linking Soldiers Field Road with Soldiers Field Place along the edge of the Site as part of the Proposed Project and allow certain controlled public access to this pedestrian pathway in coordination with the BPDA and its Article 80 LPR in order to enhance connectivity between the two as a mid-block connector; construct a new segment of sidewalk on the west side of Leo Birmingham Parkway, from the missing sidewalk end near the Soldiers Field Road ramp to the intersection of Lincoln Street, Market Street, and Leo Birmingham Parkway ("L/M and LBP"); stripe a bike lane to replace the existing shoulder and right turn lane on LBP southbound between the Soldiers Field Road exit ramp and Market Street; and, provide a voluntary monetary contribution to assist in the maintenance and upkeep of the City's parks within 0.5 miles of the Site. Finally, the Appellant notes that the Proposed Project is also subject to the BPDA's further





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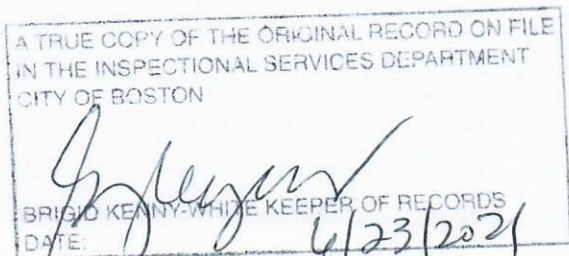
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and final design review approval prior to its ultimate permitting and construction. Thus, the Appellant submits that the Proposed Project is reasonable and appropriate for the issuance of a GPOD Conditional Use Permit.

VI. Resulting Community Support and Zoning Compliance

As part of the BPDA's Article 80 LPR process, the Appellant again notes that its Proposed Project is the result of extensive community outreach, input and public review with abutting and nearby residents, property owners, businesses, local elected and appointed officials, and both of applicable neighborhood interest groups. The outreach process spanned over the course of a year, including several meetings with the BAIA and ACA, two (2) public meetings with the IAG and a BPDA-sponsored public meeting.

As a result of its extensive community outreach and responsive Project modifications, the Appellant received a vote of support from both the BAIA and the ACA, representing the specific applicable neighborhoods where the Proposed Project is located, as well as written comments of support provided to the BPDA and copied to the Board as part of Article 80 LPR process. At the public hearing before the Board, representatives from the Mayor's Office of Neighborhood Services, District City Councilor Breadon and At Large City Councilor Essaibi George were recorded in favor of the relief requested, as was the ACA, the BAIA and the New England Regional Council of Carpenters. An attorney for a development under construction at this section of Soldiers Field Road appeared in opposition to the relief requested, but the Chair noted that its client was taking advantage of similar Zoning Code approvals in the same area. As a result of the strong public support detailed herein, the Appellant submits that the requested relief may be granted without substantial detriment to the public good, no without nullifying or





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substantially derogating from the intent and purpose of the Zoning Code, and the Board's grant of the necessary Variances and Conditional Use Permits are in the public interest.

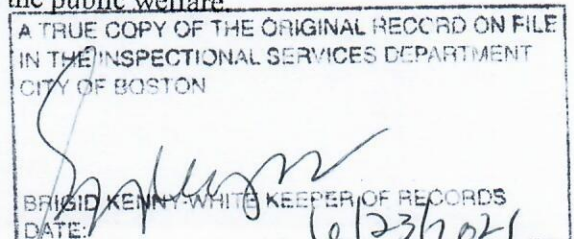
VII. Findings

The Board finds that the Proposed Project's public benefits to the community outweigh the burdens imposed, and is in substantial accord with the following standards under the GPOD:

- 1) Provision has been made for adequate vehicular access, off-street parking and loading and the project shall not have a significant adverse effect on traffic and parking on the Greenbelt Roadway and adjacent streets.
- 2) Provision has been made for landscaping treatment that ensures the natural and aesthetic quality of the Greenbelt Roadway will be maintained.
- 3) Provision has been made for the design of all structures that is compatible with the surrounding neighborhood.

The Board of Appeal also finds that all of the following conditions are met:

- 1) 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 this Code would deprive the appellant of the reasonable use of such land or structure; and
- 2) 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 variance as granted by the Board is the minimum variance that will accomplish this purpose; and
- 3) That the granting of the Variances will be in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.





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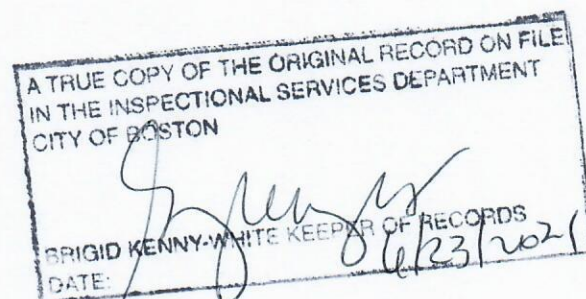
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In determining its findings, the Board of Appeal has taken into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions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

In addition, the Board of Appeal additionally makes the following findings:

- (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.

The Board is of the opinion that all conditions required for the granting of the Conditional Use Permits under Article 29, Section 4 and Article 6, Section 6-3 of the Zoning Code and 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.



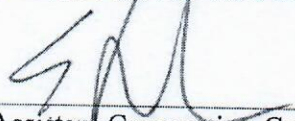


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Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) unanimously voted to grant the requested Conditional Use Permits and Variances as described above, annuls the refusal of the Building 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.

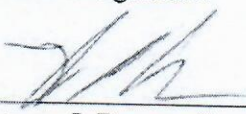
APPROVED AS TO FORM:


Assistant Corporation Counsel

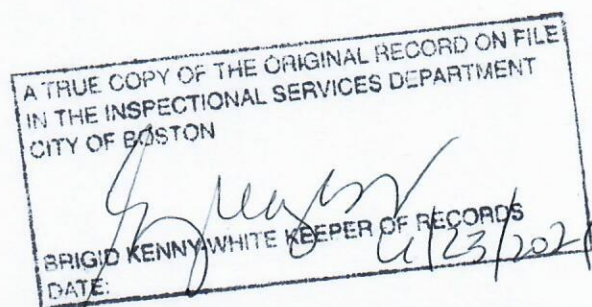
PROVISOS: BPDA design review.

Signed, June 04, 2021

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/ Christine Araujo
Christine Araujo – Chair (Voted In Favor)
/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/ Edward Deveau
Edward Deveau (Alternate) (Voted in Favor)
/s/ Kosta Ligris
Kosta Ligris (Voted In Favor)
/s/ Sherry Dong
Sherry Dong (Voted In Favor)





Martin J. Walsh
Mayor

Boston Inspectional Services Department Planning and Zoning Division

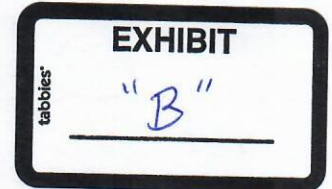
1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

ZONING CODE REFUSAL

Sean Lydon
Inspector of Buildings

February 11, 2021

KYLE COBURN
150 LINCOLN STREET
3A
BOSTON, MA 02111



Location: 44-46 SOLDIERS FIELD PL BRIGHTON MA 02135
Ward: 22
Zoning District: Allston/Brighton Neighborhood
Zoning Subdistrict: CC-1
Appl. #: ERT1152012
Date Filed: January 05, 2021
Purpose: Construct a new six (6) story building of approximately 101,000 gross square feet consisting of 102 residential units and a small restaurant with takeout of approximately 870 square feet with 62 on-site parking spaces. [ePlan]

YOUR APPLICATION REQUIRES RELIEF FROM THE BOARD OF APPEAL AS SAME WOULD BE IN VIOLATION OF THE BOSTON ZONING CODE TO WIT: CHAPTER 665, ACTS OF 1956 AS AMENDED:

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 29 Section 4	GPOD Applicability	
Article 51 Section 16	Use Regulations	Multifamily (102 units) - Conditional
Article 51 Section 17	Dimensional Regulations	Floor Area Ratio - $3.9 > 1.0\text{max}$
Article 51 Section 17	Dimensional Regulations	Front Yard (Through-Lot) - $6.6/0.3' < 7'\text{min}$
Article 51, Section 17	Dimensional Regulations	Building Height - $62.1' > 35'\text{max}$
Notes		1.-Pending building code review per 2015IBC & 780CMR, upon submission of complete construction documents. 2.-LPR per Article 80

THIS DECISION MAY BE APPEALED TO THE BOARD OF APPEAL WITHIN FORTY-FIVE (45) DAYS PURSUANT TO CHAPTER 665 OF THE ACTS OF 1956, AS AMENDED. APPLICATIONS NOT APPEALED WITHIN THAT TIME PERIOD WILL BE DEEMED ABANDONED. IF YOU HAVE INQUIRIES REGARDING THE NEIGHBORHOOD PROCESS AND PUBLIC PARTICIPATION, PLEASE CONTACT THE MAYOR'S OFFICE OF NEIGHBORHOOD SERVICES AT 617-635-3485. For more information visit boston.gov/zba-appeal.

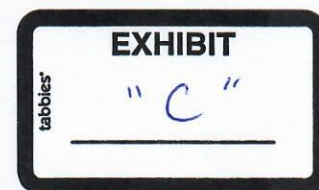
Abel Arguedas
(617)961-3438
for the Commissioner

Refusal of a permit may be appealed to the Board of Appeal within 45 days. Chapter 802, Acts of 1972, and Chapter 656, Acts of 1956, Section 19.

This form must be completed and signed by the owner-of-record, their attorney and/or authorized agent. If form is not signed by property owner, please attach a signed letter of authorization designating the authorized agent.



APPEAL
under Boston Zoning Code



Boston, Massachusetts February 11, 2021

To the Board of Appeal in the Inspection Services Department of the City of Boston:

The undersigned, being The Authorized Agent for the Owner

The Owner(s) or authorized agent

of the lot at 44-46 Soldiers Field Place 22 Allston-Brighton/CC-1
number street ward district

hereby appeal(s) under St. 1956, c. 665, s. 8, to the Board of Appeal in the Inspectional Services Department of the City of Boston the action taken by Inspectional Services Commissioner as outlined in the attached refusal letter.

DESCRIBE IN DETAIL THE REASON(S) FOR THIS APPEAL

This appeal seeks permission to construct a new six (6) story building consisting of 102 residential units, restaurant with takeout space ground floor and 62 on-site parking spaces, with related improvements in pedestrian access, robust open space programming and related public realm improvements, as per plans.

STATE REASONS FOR THIS PROPOSAL

Allowance of the within appeal will enable the Appellant to revitalize a unique and underutilized property site by removing and replacing an existing, obsolete commercial building with a new appropriately residential development that better conforms to the emerging growth of the immediate area. The new building will include ample on-site parking and related improvements in open space, landscaping, and enhanced pedestrian connectivity to the nearby Charles River parkland and the new Boston Landing train station.

PROVIDE REASONS WHY BOARD SHOULD GRANT RELIEF

Appellant submits that the proposed project is not detrimental to the surrounding community, and the site includes certain unique land conditions and other characteristics that necessitate the grant of relief requested. The project will transform and revitalize the site to better conform with the context and growth of the surrounding community, in furtherance of planning and housing goals for the Brighton neighborhood and consistent with the Board's findings for the Variances and Conditional Use Permits for the project as required by Articles 6-3, 7-3 and 29-4 of the City of Boston Zoning Code.

COMMENTS

For these and other reasons more precisely enumerated at the public hearing before the Board, the Appellant respectfully requests the allowance of the within appeal.

OWNER 1500 SFR LLC *Joseph P. Hanley*

AUTHORIZED AGENT Joseph P. Hanley, Esq.

ADDRESS McDermott, Quilty & Miller LLP
28 State Street, Suite 802
Boston, MA 02109

TELEPHONE (617) 946-4600

FAX (617) 946-4624

BOA 1163038



Boston Inspectional Services Department
Planning and Zoning Division

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

Martin J. Walsh
Mayor

ZONING CODE REFUSAL

Sean Lydon
Inspector of Buildings

KYLE COBURN
150 LINCOLN STREET
3A
BOSTON, MA 02111

February 11, 2021

Location: 44-46 SOLDIERS FIELD PL BRIGHTON MA 02135
Ward: 22
Zoning District: Allston/Brighton Neighborhood
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Abel Arguedas
(617)961-3438
for the Commissioner

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Infor Public Sector v11.2

153793 (Li Ting Sankey)

Building Permits Code Enforcement License Trade License Customer Service

My Infor Lookup Applications (BPLA)

Form Code

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Action	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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INFORMATION - APPLICATION# BOA1163038

Application Type BOA Board of Appeals

☐ Application is Open.

Primary Applicant Nicholas Zozula

☐ Current milestone is Hearing Preparation.Address 44 to 46 Soldiers Field PL 22 Brighton MA 02135☐ Current unpaid amount of \$0.00.

Location

Job Description Application Details Reviews Inspections Conditions Required Licenses Fees Bonds V&

Primary Applicant

Name Zozula

First Name, MI Nicholas

Company MQM

Title Attorney

Contact Type AGENT

Expiration Date //

Foreign

Address 28 State Street

Suite 802

City Boston

State/Province MA

ZIP/PC 02109

Country

Mobile Number (617)429-1384

Other Phone (617)946-4600

E-Mail nzozula@mqmlp.com

Multivue

Corr. Delivery EMail

PeopleSoft

Company Name MQM

Internet ID Type 1

ID 1

Internet ID Type 2

ID 2

All Applicants (1 records)

Primary	Applicant Type	Capacity	Last Name	First Name	Professional ID	Primary DBA
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BOARD OF APPEAL

1010 MASSACHUSETTS AVENUE
4th FLOOR

List of property owners notified in connection with public hearing or petition of BZC / BOA: 1163038

44-46 Soldiers Field PL	22	1500 SFR LLC Joseph P. Hanley, Esq.
PROPERTY LOCATION	WARD	APPELLANT

relative to obtaining desirable relief from the Zoning Act of the City of Boston as established by Chapter 665 of the Acts of 1956 and amendments thereto.

Property Affected	Owner	Mailing Address of Owner
44-46 Soldiers Field PL	1500 SFR LLC Joseph P. Hanley, Esq	28 State Street, Suite 802 Boston, MA 02109
44-46 Soldiers Field PL	Nicholas Zozula	28 State Street, Suite 802 Boston, MA 02109
44-46 Soldiers Field PL	Kyle Coburn	150 Lincoln Street 3A Boston, MA 02111

The Board mailed notice of the public hearing to the above property owners on:

BOA: 1163038
[2] 1500 SFR LLC Joseph P. Hanley, Esq
28 State Street, Suite 802
Boston, MA 02109

BOA: 1163038
[3] Nicholas Zozula
28 State Street, Suite 802
Boston, MA 02109

BOA: 1163038
[4] Kyle Coburn
150 Lincoln Street 3A
Boston, MA 02111

OBJECTID	PID_LONG	PID	GIS_ID	FULL_ADDRESS	CITY	ZIPCODE
168138	2202762002	2202762002	2202762002	83 LEO M BIRMINGHAM PW	BRIGHTON	2135
168132	2202758000	2202758000	2202758000	35 SOLDIERS FIELD PL	BRIGHTON	2135
168135	2202761000	2202761000	2202761000	1500 SOLDIERS FIELD RD	BRIGHTON	2135
168136	2202762000	2202762000	2202762000	1480 SOLDIERS FIELD RD	BRIGHTON	2135
168133	2202759000	2202759000	2202759000	40 SOLDIERS FIELD PL	BRIGHTON	2135
168134	2202760000	2202760000	2202760000	1550 SOLDIERS FIELD RD XT	BRIGHTON	2135
168122	2202748000	2202748000	2202748000	N BEACON ST	BRIGHTON	2135
168131	2202757000	2202757000	2202757000	21 SOLDIERS FIELD PL	BRIGHTON	2135
168137	2202762001	2202762001	2202762001	55 LEO M BIRMINGHAM PW	BRIGHTON	2135

OWNER

INFINITY BROADCASTING CORPORATION

CRIMMINGS CATHERINE C TR

FIFTEEN HUNDRED SOLDIERS

QILU BOSTON LLC

BASS GILBERT S

RESIDENCES AT 1550 SOLDIERS FIELD ROAD LIMITED PARTNERSHIP

COMMONWLT OF MASS

RESIDENCES AT SOLDIER FIELD ROAD CONDOMINIUM LIMITED PARTNERSHIP

VINFEN CORPORATION

ADDRESSEE

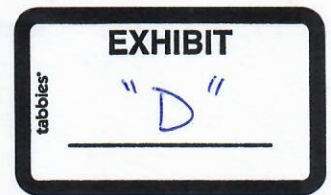
INFINITY BROADCASTING CORPORATION
CRIMMINGS CATHERINE C TR
FIFTEEN HUNDERED SOLDIERS
QILU BOSTON LLC
BASS GILBERT S
RESIDENCES AT 1550 SOLDIERS FIELD ROAD LIMITED PARTNERSHIP
COMMWLTH OF MASS
RESIDENCES AT SOLDIER FIELD ROAD CONDOMINIUM LIMITED PARTNERSHIP
VINFEEN CORPORATION

Owner2

MAIL_ADDRESS

ENTERCOM OPERATIONS, INC.
PO BOX 35310
1500 SOLDIERS FIELD RD EXT
1480 SOLDIERS FIELD RD
40 SOLDIERS FIELD PL
100 C/O SMC MANAGEMENT CORP, Unit 301
NO BEACON
100 GALEN STREET
950 CAMBRIDGE ST

MAIL_CS	MAIL_ZIPCODE	EGIS_WM_dbo_Live_Assessing_Data	Shape_Area	Shape_length
PHILADELPHIA	19013	0	15781.32031	544.3263562
BRIGHTON	2135	0	5431.085938	324.4302148
BRIGHTON	2135	0	4643.15625	280.5492116
BRIGHTON	2135	0	6831.429688	341.447479
BRIGHTON	2135	0	3892.339844	261.6514418
WATERTOWN	2472	0	7699.875	338.5509301
BRIGHTON	2135	0	158444.293	4555.700567
WATERTOWN	2472	0	4309.847656	294.4120855
CAMBRIDGE	2138	0	4631.875	297.5050778



Boston Inspectional Services Department Board of Appeals

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-4775

Notice is hereby given that at **11:00 am on 04/27/2021**

the Board of Appeal of the City of Boston will hold a public hearing virtually,

City Hall, upon the appeal of **1500 SFR, LLC**

seeking with reference to the premises at **44 - 46 Soldiers Field Place, Ward - 22**

for the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect – **Variance + GPOD**

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 51 Section 16	Use Regulations	Multifamily (102 units) - Conditional
Article 51 Section 17	Dimensional Regulations	Floor Area Ratio - 3.9 > 1.0max
Article 51, Section 17	Dimensional Regulations	Building Height - 69.2' > 35'max
Article 51 Section 17	Dimensional Regulations	Front Yard (Through-Lot) - 6.6'/0.3' < 7'min
Article 29 Section 4	GPOD Applicability	

Purpose: Construct a new six (6) story building of approximately 101,000 gross square feet consisting of 102 residential units and a small restaurant with takeout of approximately 870 square feet with 62 on-site parking spaces.

A complete description of the variances, exceptions or other zoning relief sought can be obtained in the office of the Board of Appeal, by Calling (617) 635-4775. Hours of Operation are weekdays, 8:00 a.m. to 4:00 p.m., excluding legal holidays.

Please be advised that the instructions for attending and participating in the virtual hearing will be posted with the Hearing agenda at Boston.gov at least 48 hours prior to the hearing date.

If you wish to express an opinion in regards to the above proposal either in favor or in opposition, please email: isdboardofappeal@boston.gov or detach the portion of this announcement and mail to:

**Board of Appeals
1010 Massachusetts Avenue, 4th floor
Boston, MA 02118**

Please feel free to call the Board of Appeals at (617) 635-4775 with any questions you might have regarding this matter.

Name:

Address:

RE: **44 - 46 Soldiers Field PL, Ward - 22**
Appeal # **BOA1163038**

Remarks: