

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

SUPERIOR COURT

CIVIL ACTION

NO. 21-2063F

JACQUELINE LEES, an individual,

ELIZABETH BOWEN DONOVAN, an individual,

*Plaintiffs*

v.

THE BOSTON REDEVELOPMENT AUTHORITY, d/b/a  
BOSTON PLANNING AND DEVELOPMENT AGENCY,  
BOARD OF DIRECTORS

and

WONDER GROUP LLC

*Defendants.*

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2021 SEP -8 P 4:26  
HALL J. STANLEY  
CLERK / MAJESTIC

COMPLAINT

INTRODUCTION

1. This is an Administrative Civil Action - Certiorari under M.G.L. c. 249, § 4. and City of Boston Zoning Code, Article 56 and Article 80, to correct errors by the Board of Directors, City of Boston Redevelopment Authority (BRA), doing business as the Boston Planning and Development Agency (BPDA), in approving a project at 64 Allandale Street in Boston on August 19, 2021 under a Notice of Project Change.

2. On April 8, 2021 Wonder Group LLC submitted an application to the BPDA to build a 16 unit development at 64 Allandale Street property, in a form entitled “Second Notice of Project Change.”, having received prior project approvals in May and November 2016.

3. The 16 unit project proposed by Wonder Group in 2021 constitutes a new project - owing to significantly changed project elements, increased project impacts, significantly changed project area conditions, a 5 year lapse in time since initial project approvals in 2016, and substantial, unresolved project impacts identified by the City of Boston Parks and Recreation Department.

4. In disregard of these facts and contrary to provisions of the West Roxbury Neighborhood Plan (Article 56) and requirements of law governing project review in the City of Boston (Article 80), the BPDA Board approved the 16 unit development project at 64 Allandale on August 19, 2021 via a project change.

5. Plaintiff Lees and Plaintiff Donovan now seek relief in the form of annulment of BPDA Board August 19, 2021 approval of the 64 Allandale second project change, and judgment that the BPDA must comply with Article 56, Article 80 and all requirements of the City’s Zoning Code and all relevant provisions of M.G.L. Chapter 30A, in any further consideration by BPDA of proposed development at 64 Allandale St.

### **PARTIES**

6. Plaintiff Jacqueline Lees is a City of Boston resident and resides at 104A Allandale St. Plaintiff Lees has a beneficial interest in City of Boston and BPDA compliance with provisions of the City’s the Zoning Code, and all related laws guiding growth and development, including neighborhood roadway safety along Allandale Street, and City decisions addressing the adverse

impacts of climate change, and protection of natural resources at Allandale Woods conservation area.

7. Plaintiff Elizabeth Bowen Donovan is a City of Boston resident and resides at 107 Allandale St. Plaintiff Donovan has a beneficial interest in City of Boston and BPDA compliance with provisions of the City's Zoning Code, and all related laws guiding growth and development, including neighborhood roadway safety along Allandale Street, and City decisions addressing the adverse impacts of climate change, and protection of natural resources at Allandale Woods conservation area.

8. Defendant Boston Redevelopment Authority d/b/a Boston Planning and Development Agency is the planning and economic development agency for the City of Boston, acting under the City of Boston Zoning Code, including Article 56 and provisions of Article 80 governing project review. The BPDA Board is the official agency body voting on all final determinations and agreements at the agency, including proposals for project change. The BRA was established in 1957 under the former M.G.L. c. 121, §26 Q. In 1960, the state legislature abolished the City of Boston Planning Board and transferred its powers and staff to the BRA (1960 Mass. Acts c. 652, §12). The Boston Redevelopment Authority began doing business as the Boston Planning and Development Agency in September 2016, and has its address at 1 City Hall Square, 9th Floor, City Hall, Boston, MA 02201.

9. Defendant Wonder Group, LLC is the applicant of record for the proposed project at 64 Allandale Street in the City of Boston, and has a business address of 201R Savin Hill Avenue, Dorchester, MA 02125, % ECO-BUILD Real Estate Development LLC.

### **JURISDICTION**

10. Appeals from decisions of the BPDA Board for violations of the City of Boston Zoning Code including Article 56 and Article 80 are to Suffolk County Superior Court as an Administrative Civil Action. BPDA Board decisions concerning an Article 56 project and Article 80 Project Change are not otherwise reviewable by motion or by appeal to the Mayor of Boston, the Boston City Council, or any elected or appointed body or office.

11. This Complaint has been filed with the Court within 60 days of BPDA Board approval on August 19, 2021 of the 64 Allandale Second Project Change.

#### **CITY OF BOSTON PROJECT REVIEW & APPROVAL BY THE BPDA BOARD**

12. As the planning agency for the City of Boston, the BPDA is responsible for preparing Neighborhood District plans, including for West Roxbury and the Allandale Street single family residential subdistrict portion of West Roxbury under Article 56 of the Boston Zoning Code.

13. In the City of Boston, review for many classes of building projects proceeds under Article 80 of the Zoning Code. The BPDA is lead agency for project review and compliance with Article 80 of the Zoning Code and for carrying out the purposes of Article 56 in its land use decisions.

14. The 64 Allandale property is located within the West Roxbury neighborhood, where land use decisions are governed by Article 56 of the Boston Zoning Code.

15. Article 56, Section 56-1. - Statement of Purpose and Objectives provides as follows:

The purpose of this Article is to establish the zoning regulations for the West Roxbury Neighborhood District as required by the provisions of the West Roxbury Interim Planning Overlay District, Article 27K of this Code. The objectives of this Article are to provide adequate density controls that protect established residential areas and direct growth to areas where it can be accommodated; to retain and develop affordable housing compatible with adjacent areas, particularly for elderly residents; to promote the viable neighborhood economy; to preserve, maintain and create open space; to protect the environment and

improve the quality of life; to promote the most appropriate use of land; and to promote the public safety, health, and welfare of the people of Boston.

16. During a designated public comment period for the 64 Allandale notice of project change, residents presented evidence to the BPDA detailing the significantly changed project elements and project area conditions necessitating review of the 16 unit project as a new project and not under a project change.

17. The City of Boston Parks and Recreation Department in a letter to the BPDA dated May 21, 2021 provided BPDA a list of significant unresolved issues with the 64 Allandale 16 unit proposal, including project impacts on the immediately bordering Allandale Woods conservation area.

18. Article 80 includes provision for an applicant to seek modification of an approved project, a discretionary BPDA review initiated through a “Notice of Project Change”.

19. Under Article 80 the BPDA Director and Board may approve a Project Change, but only after making adequate factual findings that a revised project has equal or reduced adverse impacts relative to the originally approved project or a subsequently approved revised project.

20. In making the August 19, 2021 approval, the Board stated that the Second Project Change sought for 64 Allandale “does not significantly increase the impacts of the Proposed Project.”

21. The Board’s approval was not supported by evidence of reduced or equal impacts, as required by Article 80.

22. Further, the Board did not make any findings based on evidence that the proposed 64 Allandale St. project was consistent with the purposes of Article 56 and did not violate the purposes and express provisions of the West Roxbury Neighborhood District plan.

23. The Board erred in failing to acknowledge and account for substantially changed project area conditions which result in the new 64 Allandale project adding to existing and reasonably foreseeable project area impacts, also in violation of Article 80 requirements for review of a requested project change.

24. In its approval, the BPDA Board failed to acknowledge and resolve the significant project impacts listed by the City of Boston Parks and Recreation Department.

25. Finally, the BPDA Board failed to provide Plaintiff Lees, Plaintiff Donovan and other parties in interest reasonable notice of the Board's August 19, 2021 consideration of 64 Allandale St. project and failed to provide opportunity to present evidence and argument at the hearing.

26. In consideration of the foregoing, Plaintiff Lees and Plaintiff Donovan now seek relief in the form of annulment of BPDA Board August 19, 2021 approval of the 64 Allandale second project change, and judgment that the BPDA must comply with Article 56, Article 80, and all requirements of the City's Zoning Code, and provide adequate notice and opportunity to present evidence and argument at the Board hearing in any further consideration by the BPDA Board of proposed development at 64 Allandale St.

#### **THE 64 ALLANDALE STREET PROPERTY**

27. 64 Allandale St. is located in the West Roxbury neighborhood, City of Boston.

28. The site is located within the Allandale St. residential subdistrict. 64 Allandale, together with 13 other properties nearby along Allandale St., are zoned for single family homes. Exhibits A.1, A.2 Zoning Maps; Exhibit B. Zoning Code Extracts.

29. Allandale St. is the boundary line between the West Roxbury and Jamaica Plain neighborhood districts in the City of Boston.

30. Provisions for Residential Subdistricts are essentially the same for properties on the Jamaica Plain and West Roxbury sides of Allandale St.

31. The West Roxbury Neighborhood Plan states at Section 56-6. - Establishment of Residential Subdistricts:

This Section 56-6 establishes Residential Subdistricts within the West Roxbury Neighborhood District. The purpose of the Residential Subdistricts is to maintain, enhance, and promote the character of the residential neighborhoods in terms of density, housing type, and design; to provide for low- and medium-density multifamily housing appropriate to the existing built environment; and to encourage appropriate development which enhances the Residential Subdistricts while preventing overdevelopment.

The following Residential Subdistricts are established:

1. One-Family ("1F") Residential Subdistricts. The One-Family Residential ("1F") Subdistricts are established to preserve, maintain and promote low density one-family neighborhoods, to provide for new infill construction appropriate to the existing fabric, and to allow minor changes to occur as-of-right. In a 1F Subdistrict, the maximum number of Dwelling Units allowed in a single Building shall be one (1).

32. A Conservation Protection Subdistrict lies to the immediate east of 64 Allandale, occupied by Sprighthouse, a senior living community. Faulkner Hospital is located approximately 200 feet diagonally across Allandale St. in an Institutional Master Plan overlay district approved by the BPDA and Boston Zoning Commission in 2021.

33. 64 Allandale St. directly borders the Souther (Allandale Woods) Conservation Protection Subdistrict, a City of Boston Parks Department conservation area containing delineated wetlands, a certified vernal pool, and forested uplands.

34. Section 56-9. - Establishment of Conservation Protection Subdistricts states:

This Section 56-9 establishes Conservation Protection ("CP") Subdistricts in the West Roxbury Neighborhood District. The Conservation Protection Subdistricts are established to promote the most desirable use of land and siting of development in areas with special natural or scenic features in accordance with a well considered plan, and to protect and enhance the natural and scenic resources of West Roxbury.

35. This action does not challenge any zoning approvals by the City's Zoning Board of Appeal or seek defendant compliance with state or municipal laws and ordinances protecting natural resources in the Allandale Woods.

36. The sole focus of this action is whether the BPDA Board complied with Article 56 and Article 80 provisions and requirements and relevant provisions of M.G.L. Chapter 30A when it approved the Second Project Change for 64 Allandale on August 19, 2021.

#### **64 ALLANDALE STREET PROJECT HISTORY**

37. Wonder Group LLC purchased the 64 Allandale St property in March 2015 and filed an initial project proposal for a townhome development at the site in July 2015.

38. In its application to BPDA and in subsequent public meetings in 2015 and 2016, Wonder Group consistently stated that the 64 Allandale project would be Net Zero construction.

39. Wonder Group's commitment to build a Net Zero project at 64 Allandale St. was presented to the City of Boston as well as to Plaintiff Lees, Plaintiff Donovan and others as a means to help address climate change by achieving the City's goals for Net Zero carbon new construction.

40. Wonder Group presented to the BPDA Board a 20-unit Net Zero project on the property, consisting of 16 townhomes and 4 additional residential units in an 1860 farmhouse, the only structure existing on the property.

41. The 20-unit project was approved by the BPDA Board on May 12, 2016.

42. The BPDA Board approval of May 12, 2016 included the express requirement that the 64 Allandale project use Net Zero construction.



43. Further project review in 2016 between May and November resulted in a revised project with 18 units, consisting of 14 new construction townhouses and 4 units in the existing farmhouse.

44. A Notice of Project Change for the 18 unit project was filed with the BPDA on November 1, 2016. The Board voted on November 17, 2016 to approve the 18 unit project, as revised in the Notice of Project Change.

45. The BPDA Board action of November 17, 2016 granting the Project Change included the requirement that the 64 Allandale project retain its Net Zero construction commitment.

46. Project Change documents adopted by the BPDA Board in November 2016 stated: "NET ZERO CONSTRUCTION: All of the new-construction townhouses at the project will be designed to a Net Zero performance standard. The project will! therefore create the city's fist [sic] Net Zero neighborhood."

47. On December 13, 2016, the City of Boston Zoning Board of Appeal granted variances for the use and dimensional violations of the proposed project. The Board of Appeal decisions were entered at the City of Boston Inspectional Service Department on March 3, 2017.

48. In March 2017, two civil actions were filed against Wonder Group and the Board of Appeal in Suffolk Superior Court challenging the zoning relief granted by the Board of Appeal.

49. Wonder Group reached agreement with one of the direct abutters, Springhouse Senior Living Community. The Springhouse civil action (Case No.: 1784CV00884) was dismissed pursuant to a stipulation of dismissal filed in the Suffolk County Superior Court.

50. Wonder Group filed a Motion for Summary Judgment in the other civil action (Case No. 1784CV00761) brought by abutters in the Allandale residential district including Plaintiff Lees and Plaintiff Donovan on the ground that the abutters lacked legal standing to appeal the variances.

51. On June 25, 2019, Superior Court Judge Rosemary Connolly granted the Wonder Group's Motion for Summary Judgment and ordered the entry of a dismissal of the claims of the abutters.

52. The abutters thereupon filed a Notice of Appeal with the Massachusetts Appeals Court. The appeal was voluntarily withdrawn in July 2021, as the proposal being challenged no longer existed, having been replaced by Wonder Group in favor of a new 16 unit proposal advanced under the Second Notice of Project Change of April 8, 2021.

53. The City of Boston Parks and Recreation Department provided BPDA a comment letter dated May 21, 2021, listing extensive adverse impacts on public Allandale Woods conservation land arising from the proposed 64 Allandale second project change. The Parks Department made specific recommendations for the 64 Allandale project required to eliminate or substantially mitigate these impacts.

54. The BPDA placed the 16 unit Allandale project on the Board monthly meeting agenda for August 19, 2021, with notice posted on the BPDA website 48 hours prior to the meeting.

55. Plaintiff Lees, Plaintiff Donovan, other abutters and parties in interest did not receive any written notice of the Board meeting, whether by U.S. Mail or electronically.

56. The Board did not allow for any comment by Plaintiff Lees, Plaintiff Donovans or any parties in interest at the August 19, 2021 meeting where the 64 Allandale 16 unit project was considered, but approved the project based only on BPDA staff representations as to project

history and relevant issues raised by Plaintiff Lees, Plaintiff Donovan, the City of Boston Parks Department, and others during the designated comment period.

57. In its August 19, 2021 approval, the Board found that the Second Project Change sought for 64 Allandale “does not significantly increase the impacts of the Proposed Project.”

58. The Board’s approval was not supported by any evidence of reduced or equal impacts, as required by Article 80.

59. The Board did not make any findings based on evidence that the proposed 64 Allandale St. project was consistent with the purposes of the adopted Neighborhood Plan as fully set forth in Article 56, while substantial evidence shows that the project violates basic provisions of the Neighborhood Plan.

60. Additionally, the Board erred in failing to acknowledge and account for substantially changed project area conditions which result in the 64 Allandale project adding to existing and reasonably foreseeable project area impacts, also in violation of Article 80 requirements for granting a project change on findings supported by substantial evidence.

61. The BPDA Board failed to account for the significant project impacts listed by the City of Boston Parks and Recreation Department in its letter to the BPDA dated May 21, 2021.

62. BPDA Board approval was arbitrary and capricious, constituting an abuse of the Board’s discretion, and not made in accordance with applicable law, including Article 56 and Article 80 of the Boston Zoning Code.

#### **PROJECT CHANGE REVIEW IN THE CITY OF BOSTON UNDER ARTICLE 80**

63. Project review in the City of Boston is led by the BPDA, following steps set forth in the City of Boston Zoning Code and specifically in Article 80.

64. Article 80 Section Sec. 80A-6 contains provisions for further review of a project in the case of a material change or a significant lapse of time from an initial approval or a subsequently approved project change.

65. Relevant portions of Sec. 80A-6 provide that in the instance of a material change or significant lapse of time, the BPDA Director shall determine whether the project change or lapse of time significantly increases impacts of the Proposed Project, and whether such increased impacts warrant resubmission of the Project Notification Form, rescoping, supplementary documentation, or a further development plan.

66. For purposes of Section 80A-6, a lapse of time shall be considered significant under defined circumstances, including, for Large Project Review, a lapse of more than three (3) years between the filing of a Project Notification Form for a Proposed Project and the filing of a building permit application for such Proposed Project, unless such lapse of time is approved in the Adequacy Determination.

67. For the 64 Allandale project there exists a lapse of 4 years 9 months from the November 17, 2016 Board action approving the first project change to the August 19, 2021 approval of the second project change, and a total lapse of 6 years and 1 month from the initial project filing on July 20, 2015 to the August 19, 2021 approval of the second project change.

68. Section 80A-6 further provides that in determining whether a project change or a lapse of time may significantly increase the impacts of a Proposed Project, the Director shall consider the following factors:

- (a) increase in the Proposed Project's size or intensity of use;
- (b) generation of additional or greater impacts of the type that may be examined by the applicable review;
- (c) increase in traffic impacts or increase in the number of proposed parking spaces;

- (d) change in the expected commencement or completion date, or change in the schedule of work on the project;
- (e) change of project site;
- (f) the need for additional Zoning Relief;
- (g) changes in the surrounding area, when a lapse of time is the reason for the Director's review under this Section 80A-6.

69. Factors listed in Section 80A-6 applicable to the new 16 unit 64 Allandale project - in addition to the lapse in time - that significantly increase the impacts of the proposed project include: increase in the proposed project intensity of use; generation of additional or greater impacts examined under Article 80, including impacts on climate change; increase in traffic and roadway safety impacts; change in the expected start and completion date; the need for additional Zoning Relief; and changes in the surrounding area.

70. In disregard of the lapse of time and of the clearly documented significant increase in impacts from the new 16-unit project, the BPDA Board found that the project did not significantly increase impacts over original project and the first revised project

**ELIMINATION OF THE NET ZERO NEW CONSTRUCTION  
REQUIREMENT AT 64 ALLANDALE GIVES RISE TO A SUBSTANTIALLY  
INCREASED ADVERSE IMPACT ON CLIMATE CHANGE.**

71. Climate change is acknowledged to be among the most critical issues facing the City of Boston, in common with other cities and areas world-wide.

72. In September 2015, the U.S. Department of Energy (DOE) Building Technologies Office defined "zero energy building" as a building which produces enough renewable energy to meet its own annual energy consumption requirements, thereby reducing the use of non-renewable energy in the building sector.

73. The BPDA has stated that the Agency acknowledges the risk of climate change and that it is committed to addressing climate risk by specific measures including advancing net zero carbon for new construction.

74. BPDA's web page entitled *Climate Change and Environmental Planning* states: "Boston is already experiencing climate change impacts including more extreme heat, rain, snow and flooding events; the frequency and severity of which are forecasted to intensify."

75. BPDA's web page entitled *Zero Net Carbon Building Zoning Initiative* states that measures to achieve net zero carbon for new construction are "a critical step for advancing practices to meet the City of Boston's goal for Boston to be carbon neutral by 2050".

76. Reflecting the imperative to address climate change through City of Boston policies and project approvals, the BPDA established the requirement that Wonder Group incorporate net zero construction for the 64 Allandale project, both in the Board's initial approval of May 2016 and in the Board's granting the first project change of November 2016.

77. The second project change approval of August 19, 2021 eliminates the Net Zero requirement for the 64 Allandale project.

78. The approval agreement states only that the project will comply with City requirements.

79. The City of Boston does not require Net Zero new construction as of the August 19, 2021 approval date.

80. In relieving Wonder Group of the requirement to construct a net zero carbon project at 64 Allandale, the BPDA Board acted contrary to BPDA's and the City of Boston's stated goals with respect to effectively addressing climate change, including through provision for net zero new construction.

81. BPDA Board action reliving Wonder Group of its prior requirement to construct a net zero project means that the new 64 Allandale project without net zero will have a measurably greater impact on climate change than the original project which required net zero construction.

82. The August 19, 2021 BPDA Board approval does not acknowledge the net zero requirements at 64 Allandale the Board had previously required in its two prior project approvals.

83. The Board did not make any findings based on evidence in its August 19, 2021 approval as to why the 64 Allandale developer should be relieved of the BPDA's prior requirements that the project use net zero construction.

84. The Board's approval states only that "The Proposed Project has been designed and will be built in accordance with the goals set out in the City of Boston's Greenovate Boston 2014 Climate Action Plan."

85. In the August 19, 2021 Board approval, City of Boston goals and requirements are not specified, quantified, or compared to the net zero energy use commitment in the initial and first project change approvals for 64 Allandale.

86. Without a detailed, quantitative carbon budget or energy use comparison between the new project and the previously approved project, the Board could not make the required finding that the proposed new project does not result in increased adverse impacts.

**ALLANDALE STREET RELATED PROJECTS CONSTITUTE SUBSTANTIALLY  
CHANGED SURROUNDING AREA CONDITIONS THAT MUST BE CONSIDERED IN A  
PROPER PROJECT CHANGE EVALUATION.**

87. In 2021, at the time the project change notice was filed, Allandale St. project area conditions had substantially changed from 2016 when prior approvals were granted by BPDA for 64 Allandale.

88. A major expansion at Faulkner Hospital was approved by BPDA in 2021 and a proposed 8 unit townhome development at 90 Allandale was presented to BPDA in 2021.

89. These two projects individually and cumulatively constitute a substantial change in project area conditions which under Article 56 and Article 80 must be considered by the BPDA in its evaluation of the 64 Allandale second project change.

90. In its August 19, 2021 approval for the 64 Allandale project, the BPDA Board did not acknowledge or evaluate the substantially change in project area conditions as required under Article 56 and Article 80.

### **THE FAULKNER HOSPITAL EXPANSION PROJECT**

91. A major expansion project at Faulkner Hospital was first filed with the BPDA on June 14, 2019 and approved by the BPDA Board June 10, 2021.

92. The Hospital expansion project approved by BPDA includes 108,000 square feet of new construction, including a 5 story addition and 500 new parking spaces.

93. Faulkner Hospital is diagonally opposite the 64 Allandale site, and the hospital's approved new main entrance and exit is on Allandale St. approximately 250 feet from the 64 Allandale entrance and exit.

94. According to project documents approved by the BPDA, the new hospital facilities will generate substantial added traffic, including 340 new trips along Allandale St. each morning rush hour period.

95. At a public meeting May 11, 2021 on the 64 Allandale plan, a Wonder Group representative stated that they had not taken the Faulkner Hospital expansion and associated traffic roadway safety impacts into account in preparing the new 64 Allandale plan.



96. During the public comment period for the project, Plaintiff Lees, Plaintiff Donovan and others informed BPDA that Allandale St is not currently configured to accommodate significant new growth from the Faulkner Hospital, 90 Allandale, and 64 Allandale developments, and stated that the 64 Allandale project change application needed to evaluate roadway safety impacts together and not in a piecemealed, siloed fashion.

97. Allandale Street is a narrow, two-lane road with blind curves and extensive speeding. The street's narrow width cannot accommodate separate lanes for passing, dedicated turns, or for bicycles. Only one side of Allandale St. has an improved pedestrian sidewalk. Buses and trucks regularly travel along Allandale, despite signs prohibiting such heavy vehicles. The roadway is increasingly a cut-through for morning and afternoon commuter traffic seeking to avoid severe congestion on Centre St. or as directed by software programs.

98. In a project update meeting concerning the Allandale corridor on April 30, 2021 a City of Boston transportation expert acknowledged these existing conditions and identified a Road Safety Audit as a possible step to evaluate issues associated with the Faulkner Hospital Campus Expansion together with the 64 and 90 Allandale development proposals.

99. Allandale Street residents and others, requested that the BPDA commission a Road Safety Audit as part of further review of these major new construction projects on immediately bordering parcels at 64 and 90 Allandale St. together with Faulkner Hospital expansion.

100. The Massachusetts Department of Transportation ) MassDOT describes the Road Safety Audit (RSA) as a "formal safety review of an existing, or planned road or intersection. During the audit, an independent, multidisciplinary team identifies potential safety issues and opportunities for safety improvements."

101. MassDOT has established guidelines and templates for completing a Road Safety Audit (RSA), making completion of the RSA a standard and efficient process.

102. BPDA did not follow the recommendation for a Road Safety Audit following MassDOT guidelines.

103. Instead the BPDA Board approved the 64 Allandale project without any acknowledgement, inquiry, or factual evaluation of the significant new roadway safety issues associated with the Faulkner Hospital expansion, and the two bordering developments at 64 and 90 Allandale St. totalling an estimated 50,000 square feet.

104. The 64 Allandale approval included “Vehicular calming measures along the driveway, such as speed advisory signage and additional speed limit signs along Allandale Street”, but failed to further specify these measures.

105. The approval did not include any evidence that these two general measures are sufficient in light of existing conditions and proposed future growth along the Allandale St. corridor.

106. Plaintiff Lees, Plaintiff Donovan and others indicated to BPDA during the public comment period that the approved Faulkner Hospital expansion represented a significant new project area condition that under Article 80 needed to be fully evaluated as part of 64 Allandale project change review.

107. The project change materials considered by the Board for the 64 Allandale project change do not acknowledge the major new hospital expansion project and do not make any finding based on evidence that the expansion project constitutes a de minimis impact on Allandale road safety conditions.

#### **THE 90 ALLANDALE TOWNHOME PROJECT**

108. 90 Allandale is a two-acre property directly bordering 64 Allandale and, like 64 Allandale, zoned for single family homes in the Article 56 West Roxbury neighborhood plan and Allandale residential subdistrict.

109. In 2016 the long-time owner of 90 Allandale died, and the property subsequently purchased by a housing developer.

110. In early 2021 the 90 Allandale developer reviewed plans with the City of Boston, proposing to raze the existing single family home on the site and construct an 8 unit townhome development with an estimated total 15,000 sq feet of new building construction.

111. Townhomes are a forbidden use in a single family neighborhood under the Article 56 Neighborhood Plan approved by BPDA.

112. The 90 Allandale developer review of the 8 unit townhome proposal with the City of Boston consisted of a January 20, 2021 filing with the Conservation Commission and a presentation to the BPDA on or about February 15, 2021.

113. Plaintiff Lees, Plaintiff Donovan and others including the City of Boston Parks Department provided comment to the BPDA that that the 90 Allandale 8 unit townhome project represented a substantially new project area condition requiring evaluation as part of the 64 Allandale project change application.

114. Plaintiff Lees, Plaintiff Donovan and others further advised BPDA during the comment period that as the City's designated planning agency, the BPDA should carry out coordinated evaluation of 90 and 64 Allandale projects together and not separately in a series of piecemeal, siloed project reviews.

115. Plaintiff Lees, Plaintiff Donovan and others indicated to BPDA that the combined sq ft of the estimated 15,000 new construction at 90 Allandale and the 35,000 sq ft of construction at 64

Allandale together total 50,000 sq feet of new construction, and that 50,000 sq feet of construction is the BPDA threshold for Large Project Review.

116. Plaintiff Lees, Plaintiff Donovan and others further informed BPDA that a proposal to construct townhomes at 90 Allandale and 64 Allandale via zoning variances constituted in effect an impermissible amendment to Article 56, the West Roxbury neighborhood plan, rezoning from single family to multi-family use in the Allandale residential subdistrict, in violation of Article 56.

117. BPDA was informed that well-established steps exist for the BPDA to carry out a neighborhood replan as the City's planning agency, should BPDA believe that changing a single-family residential subdistrict to multi-family zoning advances a legitimate public interest.

118. In disregard of its statutory responsibilities as the City's planning agency and in violation of Article 56 and Article 80 requirements, BPDA failed to consider the 90 Allandale townhome proposal in its evaluation of the 64 Allandale proposed project change.

#### **CITY OF BOSTON PARKS & RECREATION LIST OF PROJECT IMPACTS**

119. The City of Boston Parks and Recreation Department creates and maintains clean, green, safe, and accessible open space in more than 2,300 acres of park land throughout the city.

120. The Parks Department personnel includes staff with expert knowledge about protecting natural resources and ensuring public enjoyment of City green spaces.

121. The BPDA staff does not claim expert knowledge concerning protection of parks and natural resources in Boston.

122. The 64 Allandale site borders the Allandale Woods, an 86 acre City of Boston conservation area and immediately adjoins the Souther (Allandale Woods) Conservation Protection Subdistrict.

123. By a letter dated May 21, 2021, the Parks Department provided the BPDA an extensive list of 64 Allandale project elements giving rise to significant adverse impacts, and a set of recommendations to eliminate or mitigate these adverse impacts.

124. BPDA Board approval on August 19, 2021 did not acknowledge or address the impacts and mitigation recommendations stated in writing by the Parks Department. Instead, the BPDA project approval included provision for a \$50,000 payment to the Parks Department.

125. The Parks Department did not seek or request this \$50,000 payment.

126. BPDA approvals did not show how the \$50,000 payment substantially addresses the adverse impacts listed by Parks Department experts.

#### **COUNT I**

#### **VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 80: THE BPDA BOARD VIOLATED OF ARTICLE 80 REQUIREMENTS WITH RESPECT TO REQUIRED FINDING THAT THE 64 ALLANDALE PROJECT DID NOT SIGNIFICANTLY INCREASE ADVERSE IMPACTS.**

127. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 126 of this complaint.

128. In approving the 64 Allandale Second Notice of Project Change, the Boston Planning and Development Board erred in its affirmative decisions and by its failures to act in compliance with Article 80 requirements with respect to evaluating adverse impacts associated with a proposed project change.

129. The Board's finding that the Second Project Change does not significantly increase the impacts of the Proposed Project was not supported by substantial evidence and adequate factual findings as required by Article 80.

130. In making this conclusory finding, the Board did not articulate a standard of significance which can be evaluated for sufficiency and compliance with Article 80 requirements.

131. As extensive evidence submitted by Plaintiff Lees, Plaintiff Donovan, and others including the City's Parks Department clearly shows that the proposed project gives rise to significantly increased impacts, the Board's approval of the 64 Allandale project change was in violation of Article 80.

132. Plaintiff Lees has a beneficial interest in BPDA Board compliance with Boston Zoning Code provisions when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with Article 80 requirements in finding that the 64 Allandale project does not significantly increase adverse impacts.

133. Plaintiff Donovan has a beneficial interest in BPDA Board compliance with Boston Zoning Code provisions when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with Article 80 requirements in finding that the 64 Allandale project does not significantly increase adverse impacts.

## **COUNT II**

### **VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 80: THE BPDA BOARD FAILED TO PROVIDE ANY ANALYSIS AND MAKE CREDIBLE FINDING OF CLIMATE CHANGE IMPACTS ARISING FROM ELIMINATION OF THE NET ZERO REQUIREMENT FOR 64 ALLANDALE**

134. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 133 of this complaint.

135. The City of Boston and the BPDA have stated that addressing climate change is a public policy imperative and priority.

136. The initial and first amended approvals by BPDA Board for 64 Allandale St. development included a requirement that the project have net zero carbon new construction.

137. The second amended project eliminated the net zero new construction requirement, but failed to acknowledge this significant change and to quantify the impact on climate change caused by eliminating the net zero requirement.

138. With respect to the critical issue of addressing climate change, the Board's finding that the Second Project Change does not significantly increase the impacts of the Proposed Project was not supported by substantial evidence as required by Article 80.

139. Plaintiff Lees has a beneficial interest in the BPDA and BPDA Board effectively addressing the adverse impacts of climate change, and in Board compliance with Boston Zoning Code provisions with respect to climate change, and is aggrieved by the Board's failure to comply with Article 80 and make findings supported by substantial evidence that the 64 Allandale project does not significantly increase adverse impacts of climate change over the previously approved project.

140. Plaintiff Donovan has a beneficial interest in the BPDA and BPDA Board effectively addressing the adverse impacts of climate change, and in Board compliance with Boston Zoning Code provisions with respect to climate change, and is aggrieved by the Board's failure to comply with Article 80 and make findings supported by substantial evidence that the 64 Allandale project does not significantly increase adverse impacts of climate change over the previously approved project.

### **COUNT III**

#### **VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 80: IN ITS ASSESSMENT OF NET PROJECT IMPACTS, THE BPDA BOARD FAILED TO ACKNOWLEDGE OR EVALUATE SUBSTANTIALLY CHANGED PROJECT AREA CONDITIONS ALONG ALLANDALE STREET.**

141. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 140 of this complaint.

142. Substantially changed project area conditions exist along Allandale St. from the approved Faulkner Hospital expansion and the proposed 90 Allandale townhome project.

143. Impacts from these projects include greatly increased intensity of uses, including the two pending proposals at 64 and 90 Allandale St. to locate 24 housing units on bordering properties in a residential district designated for single family homes.

144. The BPDA as Boston's Planning Agency has authority and responsibility to advance orderly development in the City, including coordinated evaluation of multiple proposals submitted to the Agency for consideration, especially where these proposals are located on immediately bordering properties, where the combined square foot size of the two projects together exceed the Agency's Large Project review threshold, and where the proposed developments are each for the same use forbidden under the BPDA's own approved Neighborhood Plan.

145. In approving the second project change, the BPDA and its Board elected to proceed with consideration of 64 Allandale St. in a segmented, piecemeal, way, rather than coordinated review and taking into account significantly changed project area conditions as required under Article 56 and Article 80.

146. Plaintiff Lees has a beneficial interest in BPDA Board compliance with Boston Zoning Code provisions of Article 56 and Article 80 when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with Article 56 and Article 80 requirements concerning orderly, coordinated land use planning and sufficient inquiry into changed project area conditions when considering a proposed project change.

147. Plaintiff Donovan has a beneficial interest in BPDA Board compliance with Boston Zoning Code provisions of Article 56 and Article 80 when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with Article 56 and Article



80 requirements concerning orderly, coordinated land use planning and sufficient inquiry into changed project area conditions when considering a proposed project change.

#### **COUNT IV**

### **VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 80: PROJECT TRANSPORTATION MEASURES ARE NOT SUFFICIENTLY DETAILED TO SUPPORT A FINDING OF NO NET ADVERSE IMPACT.**

148. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 147 of this complaint.

149. The approved Faulkner Hospital expansion will generate significant new traffic along Allandale St, including a minimum of 340 new weekday morning trips.

150. A City of Boston transportation expert as well as residents recommended that a road safety audit be conducted for the Allandale corridor to evaluate existing conditions and inform BPDA consideration of future projects along Allandale Street.

151. The BPDA refused to conduct the road safety audit as suggested by City traffic experts and residents.

152. The Board approval includes one sentence addressing roadway safety, consisting of "Vehicular calming measures along the driveway, such as speed advisory signage and additional speed limit signs along Allandale Street."

153. The cursory, general statement of roadway safety measures is insufficient to support a finding of no net adverse impact.

154. Plaintiff Lees owns property along Allandale St. and will be harmed by the BPDA's failure to evaluate impacts on road safety arising from the 64 Allandale project, in violation of Article 56 and Article 80 requirements.

155. Plaintiff Donovan also owns property along Allandale St. and will likewise be harmed by the BPDA's failure to evaluate impacts on road safety arising from the 64 Allandale project, in violation of Article 56 and Article 80 requirements.

**COUNT V**

**VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 56 AND ARTICLE 80:  
FAILURE TO ACKNOWLEDGE AND ADDRESS IMPACTS FROM PROJECT  
INCONSISTENCIES WITH THE NEIGHBORHOOD PLAN.**

156. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 155 of this complaint.

157. Article 56 of the Boston Zoning Code - the West Roxbury Neighborhood District Plan prepared by the BPDA and approved by the BPDA Board includes among its objectives "to provide adequate density controls that protect established residential areas and direct growth to areas where it can be accommodated" and "to protect the environment and improve the quality of life; to promote the most appropriate use of land; and to promote the public safety, health, and welfare of the people of Boston."

158. The 64 Allandale St. project approved by the BPDA Board on August 19, 2021 directs growth to an area where clear evidence shows such growth cannot be accommodated, and where serious unresolved questions of roadway public safety exist.

159. In failing to retain the Net Zero new construction requirement from its approvals of the prior project at 64 Allandale, the BPDA Board did not act to protect the environment and promote the health and welfare of the people of Boston.

160. The Board did not acknowledge any relevant provisions of Article 56 concerning the project site or the surrounding Allandale residential subdistrict, and further did not make any findings of consistency of the proposed 64 Allandale project with the approved neighborhood plan.

161. In approving the 64 Allandale project without any reference to the express provisions of Article 56, the Board violated and ignored its responsibilities and legal obligations as the City's Planning Agency.

162. Plaintiff Lees has a beneficial interest in BPDA Board compliance with Boston Zoning Code Article 56 when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to acknowledge and address Article 56 and Article 80 provisions when the Board found that the new 64 Allandale project does not give rise to significantly increased adverse impacts.

163. Plaintiff Donovan has a beneficial interest in BPDA Board compliance with Boston Zoning Code Article 56 when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to acknowledge and address Article 56 and Article 80 provisions when the Board found that the new 64 Allandale project does not give rise to significantly increased adverse impacts.

#### **COUNT VI**

#### **VIOLATION OF CITY OF BOSTON ZONING CODE ARTICLE 80: FAILURE TO ACKNOWLEDGE AND ADDRESS THE NET ADVERSE IMPACTS FROM THE 64 ALLANDALE PROJECT IDENTIFIED BY THE CITY'S PARKS DEPARTMENT.**

164. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 163 of this complaint.

165. The Boston Parks and Recreation Department (BPRD) provided comment on prior 64 Allandale St development proposals as the agency responsible for protection of the Souther (Allandale Woods) Conservation Protection Subdistrict bordering the 64 Allandale site.

166. In their written communication to BPDA concerning the proposed second project change, the Parks Department stated:

BPRD previously provided input intended to minimize impacts on Allandale Woods from the site design, density, height, setbacks, insufficient onsite open space, impervious surface, grading, drainage and stormwater retention. Many issues remain open and are summarized below.

167. The BPRD letter lists 13 specific impact categories associated with the proposed revised project, and lists corresponding measures to eliminate or reduce these impacts.

168. The BPDA Board final approval for the 64 Allandale second project change does not acknowledge or address the impacts listed by the Parks Department.

169. As the BPDA Board failed to identify and resolve the impacts identified by natural resource experts in the City's Parks Department, the Board's finding that the Second Project Change does not significantly increase the impacts of the Proposed Project was not supported by substantial evidence as required by Article 80.

170. Plaintiff Lees owns property directly bordering the Souther (Allandale Woods) Conservation Protection Subdistrict and will be harmed by the BPDA's failure to evaluate impacts to the Conservation Area arising from the new 64 Allandale project as listed by the Parks Department, in violation of Article 56 and Article 80 requirements.

171. Plaintiff Donovan also owns property along Allandale St. and derives enjoyment and benefit from protection Souther (Allandale Woods) Conservation Protection Subdistrict. Plaintiff Donovan the will be harmed by the BPDA's failure to evaluate impacts to the Conservation Area arising from the new 64 Allandale project as listed by the Parks Department, in violation of Article 56 and Article 80 requirements.

#### **COUNT VII**

**VIOLATION OF BOSTON ZONING CODE ARTICLES 80 AND M.G.L. CHAPTER 30A  
FAILURE TO PROVIDE REASONABLE NOTICE AND OPPORTUNITY TO PRESENT  
EVIDENCE AND ARGUMENT CONCERNING THE 16 UNIT PROJECT.**

172. Plaintiff Lees and Plaintiff Donovan reallege and incorporate by reference the allegations contained in paragraphs 1 through 171 of this complaint.

173. The BPDA Board failed to provide reasonable notice of the August 19, 2021 hearing to Plaintiff Lees or Plaintiff Donovans as parties in interest to the 64 Allandale St. 16 unit project.

174. Further, the BPDA Board failed to provide opportunity for Plaintiff Lees or for Plaintiff Donovans to prepare for the August 19, 2021 hearing on the 16 unit project at 64 Allandale, and to present evidence and argument concerning the project, and their beneficial interest in BPDA decisions concerning the property filed under the Notice of Project Change.

175. Plaintiff Lees has a beneficial interest in BPDA Board compliance with Boston Zoning Code and M.G.L. Chapter 30A provisions when considering projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with requirements for sufficient notice and presentation of evidence and argument in BPDA Board proceedings concerning the 64 Allandale project.

176. Plaintiff Donovan has a beneficial interest in BPDA Board compliance with Boston Zoning Code and M.G.L. Chapter 30A provisions when the Board considers projects in the Allandale St. residential subdistrict and is aggrieved by the Board's failure to comply with requirements for sufficient notice and presentation of evidence and argument in BPDA Board proceedings concerning the 64 Allandale project.

### **CONCLUSION**

177. An actual controversy exists between the parties.

178. A copy of the Notice of Project Change approval of August 19, 2021 is attached hereto.

WHEREFORE, Plaintiffs respectfully request that this court:

- i. Enter judgment in favor of Plaintiff Lees on Counts I through VII of this Complaint; and
- ii. Enter judgment in favor of Plaintiff Donovan on Counts I through VII of this Complaint; and
- iii. Vacate approvals granted by the Board of the Boston Redevelopment Authority d/b/a as the Boston Planning and Development Agency, on August 19, 2021 for the 64 Allandale St. project, and return this matter to the Agency and its Board for any further consideration consistent with the Court's decision; and
- iv. Declare that the Agency and its Board must fully comply with all relevant provisions of the City Zoning Code Article 56, Article 80, and for M.G.L. c. 30 concerning any future review of the 64 Allandale project submitted for project change; and
- v. Enter such further and other relief as the Court deems equitable and just.

Respectfully Submitted,

s/ *Jacqueline Lees*

Jacqueline Lees

Plaintiff Lees PRO SE

100B Allandale St.

Jamaica Plain, MA 02131

thefoawcoalition@gmail.com

Dated: September 8, 2020

s/ *Elizabeth Bowen Donovan*

Elizabeth Bowen Donovan

Plaintiff PRO SE

107 Allandale St.

Jamaica Plain, MA 02131

thefoawcoalition@gmail.com

Dated: September 8, 2020