

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

C.A. NO. 22-2793 H

C.A.D. BUILDERS, LLC,

Plaintiff,

v.

THE CITY OF BOSTON; BOSTON PLANNING AND DEVELOPMENT AGENCY, By and Through its Director in his Official Capacity; and BOSTON INSPECTIONAL SERVICES DEPARTMENT, By and Through its Commissioner, in his Official Capacity

Defendants.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 DEC -9 P 1:51
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

COMPLAINT AND JURY DEMAND

INTRODUCTION

In this suit, the Plaintiff, C.A.D. Builders, LLC ("CAD"), a Massachusetts limited liability company, seeks injunctive and/or declaratory relief under 42 U.S.C. §1983, as well as relief under other substantive law, on the ground that the Defendant City of Boston, Defendant Inspectional Services Department ("ISD"), acting by and through its Commissioner, and Defendant Boston Planning and Development Agency ("BPDA"), acting by and through its Director, have, for arbitrary and capricious reasons having no basis in law, deliberately misused and intentionally misapplied the Boston Zoning Code to thwart the Plaintiff's right to construct a mixed-use building, consisting of twenty-one (21) multi-family dwelling units with one (1) commercial space unit (the "Project"), on property that CAD owns situated at 1905 - 1911 Centre Street, in the West Roxbury neighborhood of Boston (the "Property").

Specifically, the BPDA has simply failed to act: it has refused to schedule CAD's Small Project Review application to be heard by the BPDA Board of Directors. Scheduling such a hearing before the BPDA Board of Directors is a mere ministerial step necessary to move forward CAD's application for Small Project Review under Article 80E of the Boston Zoning Code. Indeed, the hearing before the BPDA Board of Directors is itself, in practical effect, also a ministerial step, as a necessary prerequisite for the BPDA Director to issue a Certificate of Approval, approving CAD's Project under Small Project Review. The actual work of determining whether any project meets Small Project Review design standards is carried out by BPDA staff in advance of the BPDA Board hearing and the BPDA Director issuing the Certificate of Approval; in practice, once the BPDA staff decide that a project is design compliant, the BPDA Board and the BPDA Director follow suit.

As to ISD, when CAD first presented its plans for the Project to an ISD Plans Examiner in April 2020, the Plans Examiner found zoning violations. After CAD revised its plans, the ISD Plans Examiner dropped one zoning violation. After another plan revision, in late 2020, ISD dropped all the zoning violations, after which ISD issued CAD what is commonly known as a "speed letter," that is, a letter that in effect states there are no zoning violations requiring zoning relief from the Boston Board of Appeal. For about twenty-three (23) months thereafter, CAD operated on the assumption that CAD's Project was "as of right" and did not require zoning relief. as CAD spent money on engineers, consultants, architects and the like in preparation for obtaining a building permit. Suddenly, by "refusal letter" dated October 11, 2022, based on a review of the same plans ISD had last reviewed in late 2020, ISD revived two (2) of the zoning violations it had previously decided (in 2020) did not exist,

and, for good measure, added two new zoning violations. Suddenly, after twenty-three months, CAD's Project had zoning violations that supposedly required zoning relief from the Boston Board of Appeal.

In the interim between 2020 and 2022, certain residents in the neighborhood of CAD's Project, and at least one Boston City Councilor, became opposed to CAD's Project. This opposition was reported in local media. It was only after community and political pressure in opposition to CAD's project mounted that ISD and the BPDA (and the Boston Landmarks Commission, as described infra) began misusing their various zoning powers to illegally thwart CAD's Project.

This is actually CAD's second lawsuit against the City relating to the same Project. An earlier suit in the Land Court against the City and the Boston Landmarks Commission is described in the body of the Complaint. The Landmarks law suit is described herein in order to provide context for CAD's claim that the City of Boston, acting through those departments which have jurisdiction over any aspect of CAD's Project, has misused its limited authority under the Boston Zoning Code to keep CAD from obtaining a building permit.

The relief CAD now seeks would, in effect, clear CAD's Project of BPDA Small Project Review and clear the zoning violations ISD purports to have "rediscovered" (after deciding there were no violations) some twenty-three months after last reviewing CAD's plans.

PARTIES

1. The Plaintiff, C.A.D. Builders, LLC ("Plaintiff"), is a limited liability company, duly organized under the laws of the Commonwealth of Massachusetts, with a

principal place of business at 200 Revere Street, Canton, Massachusetts.

2. The Defendant City of Boston (“City”) is a municipality within the Commonwealth of Massachusetts.
3. The Defendant Boston Inspectional Services Department (“ISD”) is a department within the Defendant City of Boston and is sued here by and through the ISD Commissioner, in his official capacity.
4. The Defendant Boston Planning and Development Agency (“BPDA”) is an agency that comprises a department within the Defendant City of Boston, and is sued here by and through the BPDA Director, in his official capacity.

JURISDICTION

5. This Court has jurisdiction to decide claims under 42 U.S.C. §1983. The Court has alternative jurisdiction under G.L. c. 249, §4 (Mandamus); and, G.L. c. 249, §5 (Certiorari).

STATEMENT OF CLAIMS

6. The Plaintiff owns and possesses a parcel of land known generally as 1905-1911 Centre Street, in the West Roxbury neighborhood of Boston (“Property”).
7. More specifically, 1905 Centre Street was conveyed to Plaintiff by Quitclaim Deed to Plaintiff on October 30, 2019, recorded on the Land Court registration side, in Book 677, Page 79, Land Court Certificate 136279. The 1911 Centre Street property was conveyed to Plaintiff on September 19, 2019, by Quitclaim Deed to Plaintiff, recorded with the Suffolk Registry of Deeds (on the recorded land side) in Book 61766, Page 97.

8. The Plaintiff is an experienced developer that has constructed numerous single-family and multi-family structures in the West Roxbury and Roslindale neighborhoods of Boston, as well as other areas of Boston and the surrounding municipalities.
9. The Plaintiff proposes to construct a mixed-use, multi-family dwelling of twenty-one (21) residential units and one (1) commercial unit on the Property ("Project").
10. The Project is located in a zoning sub-district in West Roxbury known as a "Neighborhood Shopping District," a type of business district.
11. There were originally two (2) structures on the Property: a bank ("Bank") at 1905 Centre Street and a residential dwelling ("House") at 1911 Centre Street. Both structures were more than fifty (50) years old.
12. The Plaintiff proposed to demolish the existing structures in order to construct the Project, and has since demolished both the House and the Bank.
13. In order to construct the Project, CAD needs a building permit. Building permits are issued by ISD, usually after several other departments and agencies have reviewed and approved different aspects of a project. In order to obtain the building permit, CAD needed to apply to the following agencies, among others.
14. First, CAD needed to file architectural plans and engineering plans with Defendant ISD, on the basis of which Defendant ISD, through its Plans Examiners, would determine whether the Project presented any zoning violations.
15. Generally, if zoning violations are present, an applicant such as CAD must apply to the Boston Board of Appeal ("BOA") for zoning relief.

16. Second, CAD needed to apply to the Defendant BPDA for “Small Project Review,” under Article 80 (“Article 80”) of the Zoning Code.
17. In the case of CAD’s project, Small Project Review would consist of essentially “design review,” that is, BPDA staff would make a determination whether the Project meets certain design requirements set forth generally in Article 56 (“Article 56”) of the Code. Article 56 generally governs zoning (and certain elements of design) in the West Roxbury neighborhood.
18. Various portions of Article 56, in turn, are dedicated to zoning within West Roxbury’s Neighborhood Shopping District(s).
19. After BPDA staff determine that a project meets design requirements as part of Small Project Review, the project is then placed before the BPDA Board, which, in turn, decides by vote whether the project complies with design requirements.
20. Pursuant to Article 80E-5.2(b)(ii), the BPDA Director “shall” transmit a Certificate of Approval, or a negative finding, concerning an applicant’s Small Project Review, to ISD within sixty (60) days. A Certificate of Approval would bring Small Project Review to a close, which ISD would usually require in order for ISD to issue a building permit.
21. Third, under the Boston Zoning Code, CAD needed a demolition permit in order to demolish the House and the Bank.
22. Demolition permits are only issued by Defendant ISD after an applicant (here, the Plaintiff, CAD) has applied to the Boston Landmarks Commission (“Landmarks”), and gone through a process known as “Demolition Delay” governed by Article 85

("Article 85") of the Boston Zoning Code ("Zoning Code").

23. The Commissioner of ISD is empowered to issue a demolition permit if an application for Demolition Delay has not been heard at a Landmarks Commission public hearing and Landmarks has not issued its determination concerning Demolition Delay within forty (40) days after the Article 80 application is submitted to the Landmarks Commission.

Boston Landmarks Commission and CAD's 2021 Lawsuit Against City of Boston and the Landmarks Commission

24. The Plaintiff submitted its applications for Article 85 Demolition Delay in 2019.
25. Article 85 essentially appoints the Landmarks Commission and its staff to review applications for demolition permits of buildings located in Boston Neighborhoods to determine if the building is a "significant building" (a defined term).
26. On or about January 5, 2021, Landmarks determined that the House and Bank were "significant."
27. In the event a building is deemed "significant," Landmarks must hold a public hearing within forty (40) days after receiving the Demolition Delay application, in order to determine one thing: whether to impose, or not to impose, a delay of up to ninety (90) days before the demolition permit issues through ISD, after which the applicant can demolish the building.
28. Under existing regulations, issued by Landmarks under authority of Article 85-6, an applicant such as the Plaintiff must hold a community meeting before the Landmarks Commission holds its public hearing to determine whether to impose

demolition delay.

29. However, before an applicant holds the community meeting, the applicant is supposed to submit to the Landmarks staff a simple document stating potential “Alternatives to Demolition” (“Alternatives to Demolition”).
30. CAD, or its agents, being an experienced developer in Boston, had previously been through the Demolition Delay process and had previously submitted such Alternatives to Demolition.
31. In previous Demolition Delay cases in which CAD or one of its agents had been involved, submitting Alternatives to Demolition consisted of submitting a brief document describing possible Alternatives to Demolition.
32. Previous Alternatives to Demolition submitted by Plaintiff, or persons affiliated with the Plaintiff, or with which Plaintiff is otherwise familiar, have listed actions which, if taken, would result in a particular building not being demolished.
33. Article 85-5.2(b) empowers the Landmarks Commission to “invite” (emphasis added) an applicant such as Plaintiff to “submit any information that the applicant believes will assist the Landmarks Commission in determining whether the building is subject to demolition delay . . . and . . . evaluating Alternatives to Demolition . . .” Other provisions of Article 85 contain hortatory language to the same effect.
34. In a break from previous practice, in the case of CAD’s Project, Landmarks required that Landmarks staff “approve” an applicant’s Alternatives to Demolition.
35. In a virtual meeting between CAD representatives and Landmarks Commission’s

staff in June 2021, Landmarks staff informed CAD's representative that, for unexplained reasons, Landmarks would no longer accept some very obvious Alternatives to Demolition as true alternatives.

36. For example, Landmarks staff claimed that relocating a building to a different site would not qualify as an Alternative to Demolition.
37. In the same vein, Landmarks staff unilaterally decreed that, were CAD to "swap" sites with the City of Boston (an Alternative to Demolition that CAD had proposed, including CAD informing Landmarks that CAD would accept a particular City-owned site around the corner from CAD's Property in an exchange of sites with the City), that too would not qualify as an Alternative to Demolition.
38. And again, in the same vein, Landmarks staff decided that a buy-out by a preservation group (another of CAD's Alternative to Demolition) would likewise not qualify, despite that such a conveyance would obviously result in the House and the Bank not being demolished.
39. All of these newly-minted "rules" contravened existing written regulations. For example, Article 85 as well as Landmarks' own regulations and instructions expressly state that relocating a "significant" building to a different site is an Alternative to Demolition. Past Landmarks Commission practice also deemed off-site relocation an Alternative to Demolition. But for CAD's Project, suddenly the "rules" were different.
40. However, as outrageous as these newly-fashioned decisions were, the most outrageous, and the decision which forced CAD to sue the City and Landmarks in

Land Court, was this: Landmarks staff ordered CAD to produce expensive but useless architectural plans in order to show Alternatives to Demolition. CAD determined that such plans would cost between \$40,000 to \$80,000.

41. Specifically, Landmarks staff ordered CAD to submit: 1.) detailed architectural plans for the existing House and the Bank, showing each floor of the interior of the existing structures, together with front elevations of each building; 2.) separate, full architectural drawings showing the exterior of the House and the Bank each incorporated into the exterior of a “new project,” each existing structure to be so incorporated in two different ways; 3.) these two “new project” plans were each to include elevations from all sides, including from above, as well as floor plans and, possibly, renderings.
42. In response to Plaintiff’s protest that it would be impossible, as a matter of economics and engineering, to incorporate the poured concrete walls of the Bank as a load-bearing structure within a new project, Landmarks staff replied that impossibility is not an excuse for not producing the requested plans, because “feasibility should be argued to the Commission” at the public hearing, or words to that effect.
43. And anyway, Landmarks staff assured CAD, the “new project” into which the existing structures should be shown as “incorporated” did not have to be the Plaintiff’s actual proposed project; rather, the “new project” could be “any building at all,” which the Plaintiff was free to “make up,” or words to that effect.
44. Indeed, Landmarks staff freely acknowledged that the expensive, multiple sets of

detailed architectural plans Commission staff demanded would never be used to construct anything whatsoever.

45. For that matter, the expensive plans Landmarks suddenly required would only mislead the public into believing that the plans depicted a proposed building that Plaintiff intended to (and was able to) build.
46. And, finally, when CAD's representative asked Landmarks staff whether CAD could submit (less expensive) plans showing the existing structures rehabilitated for use without being incorporated into any new project, Landmarks staff once again rewrote long-standing rules on the spot and decreed that rehabilitating the existing structures would not constitute an "Alternative to Demolition" (no reason given), yet another response from Landmarks that contravened not just existing rules and previous practice, but also common sense,
47. By the time of CAD's June 2021 meeting, far more than forty (40) days had already passed since CAD submitted its Demolition Delay application and CAD still had not even been placed on the schedule for a public hearing to determine whether Demolition Delay should be imposed.
48. On or about August 31, 2021, CAD sued the City and Landmarks in Land Court.
49. On or about November 15, 2021, CAD and the City signed a settlement agreement. Under that settlement agreement, the City agreed to accept CAD's original, two-page submission of Alternatives to Demolition.
50. Under the settlement agreement, the Land Court case was dismissed "nisi" 120 days (meaning, a dismissal would actually issue in March 2022).

51. Despite that under the settlement agreement the City agreed to “promptly schedule” CAD’s public hearing, the City took three months just to schedule CAD’s community meeting (which, again, was only a step toward CAD’s public hearing).
52. On February 17, 2022, CAD finally held its community meeting. More than 60 community members attended.
53. On February 22, 2022, CAD finally appeared before the actual Landmarks Commission for the public hearing at which the Commission was supposed to decide whether to impose or not to impose 90-day Demolition Delay.
54. However, in a procedural move that one commissioner called “unprecedented” on the record, Landmarks decided that, because three abutters claimed not to have received the flyer notifying them of the community meeting (but never claimed that they lacked actual notice), Landmarks voted to have CAD re-do its community meeting.
55. On March 10, 2022, CAD filed an emergency motion in the Land Court, following which a Land Court judge held a status conference.
56. CAD held another community meeting. On March 22, 2022, CAD again appeared before Landmarks for its second public hearing and Landmarks imposed 90-day Demolition Delay.
57. But that was not the end of Landmarks meddling with CAD’s project.
58. In May 2022, Landmarks received a citizens’ petition to designate the House on CAD’s Property a landmark.

59. The House had an existing “survey rating” within Landmarks, as designated by Landmarks staff, as a structure that held, at best, local significance. The House could not even be considered for landmark status unless it’s “status” with Landmarks was upgraded by two levels of “survey rating.”
60. Although it appeared that, by imposing 90-day Demolition Delay, Landmarks had divested itself of jurisdiction to take action on this citizen’s petition, Landmarks nevertheless scheduled a hearing, on May 24, 2022 (having given CAD eleven (11) days notice), days to determine whether to upgrade the House’s existing “survey rating” so that the House could even be considered for landmark status.
61. On May 25, 2022, Landmarks voted to upgrade the House’s “survey rating” and to commission a “study report,” the next step toward designating the House a landmark.
62. By letter dated June 21, 2022, Landmarks notified CAD that the 90-day Demolition Delay applicable to both the House and the Bank on CAD’s property had expired. Subsequently, CAD began preparations to obtain a demolition permit.
63. On or about July 19, 2022, Landmarks publicly released a “Study Report” which purported to trace the history of the House and its occupants.
64. On August 9, 2022, demolition permits issued for both the House and Bank.
65. That same day, August 9, 2022, Landmarks held a public hearing for comments on the Study Report.
66. On August 11, 2022, CAD demolished the House.

67. On August 12, 2022, ISD issued a “Stop Work” order for both 1905 Centre Street and 1911 Centre Street. ISD posted notice that CAD’s “Short Form Demolition Permits” were revoked.
68. As a consequence of ISD’s Stop Work order, CAD’s contractor was forced to vacate the 1905-1911 Centre Street site without having demolished the Bank or having cleaned up the debris from demolishing the House.
69. On August 17, 2022, without ever explaining the reasons for the Stop Work orders, ISD lifted both Stop Work orders.
70. Thereafter, in late September and early October, CAD demolished the Bank.

ISD Zoning Review and the Project’s Supposed Zoning Violations

71. On or about April 8, 2020, CAD filed plans for the Project with ISD for a “pre-intake” zoning review.
72. An ISD Plans Examiner was assigned to review CAD’s plans.
73. By “refusal letter” dated April 21, 2020, ISD notified CAD of four (4) zoning violations in CAD’s proposed Project.
74. The violations were:
 - a. Rear Yard insufficient (Article 56-16)
 - b. Usable open space insufficient (Article 56-16)
 - c. Building height in feet excessive (Article 56-16)
 - d. Off-street parking has insufficient maneuverability due to the use of stackers (Article 56-39).
75. CAD then submitted revised plans to ISD.

76. By refusal letter dated May 14, 2020, ISD cited the same violations as on April 21, 2020, but removed the “Usable Open Space” violation.
77. CAD submitted to ISD various further revised Project plans.
78. By November 2020, ISD’s Plans Examiner agreed with CAD’s representatives that the plans for the proposed Project no longer contained zoning violations.
79. By letter dated November 5, 2020, ISD issued CAD a “More Information Request” letter (also known among developers as a “speed letter”).
80. By established custom, a More Information Request letter from ISD indicates that a project will not require zoning relief from the Boston Board of Appeal (“BOA”), that zoning review is complete, and that the applicant may proceed to obtain a permit once the applicant submits the construction-supporting documents and City-agency approvals listed in the More Information Request Letter.
81. Thereafter, in reliance on ISD’s More Information Request letter, CAD invested substantial amounts of money and time into the Project, in the form of engineering, consultants, and other persons, and undertook numerous expensive tasks, all as necessary for CAD to obtain a building permit.
82. On or about March 27, 2022, on information and belief, the acting head of ISD at that time called a meeting with the Plans Examiner who had previously reviewed CAD’s Project and requested that the Plans Examiner review CAD’s Project yet again to try to find zoning violations.
83. On information and belief, the Plans Examiner stated that he stood by his original determination that CAD’s revised plans for the Project were zoning compliant.

84. On or about September 27, 2022, CAD notified the BPDA that CAD intended to bring suit against the BPDA, for reasons explained infra.
85. Then, fourteen (14) days later, by letter dated October 11, 2022, purportedly signed by an ISD Plans Examiner, ISD notified CAD of four (4) supposed zoning violations.
86. The October 11, 2022 refusal letter was based on the same plans that ISD's Plans Examiner had previously examined in order to issue the November 5, 2020 "More Information Request" letter that cleared CAD's Project of zoning violations.
87. It is extremely unusual for ISD to issue a "refusal letter" finding zoning violations after having given a project the go-ahead by way of a More Information Request letter.
88. It is even more unusual for ISD to issue an applicant for a building permit a "refusal letter" twenty-three (23) months after having declared a project free of zoning violations.
89. The zoning violations cited in ISD's October 11, 2022 refusal letter were:
 - a. Rear yard insufficient (Article 56, Section 16) (previously cited);
 - b. Building height in feet excessive (Article 56, Section 16) (previously cited);
 - c. Front yard insufficient (Article 56, Section 16) (new);
 - d. Traffic visibility across corner (Article 56, Section 40.2) (new).
90. On information and belief, an ISD Plans Examiner did not issue the October 11, 2022 refusal letter, despite a Plans Examiner's name being at the bottom of the letter.

91. On information and belief, the October 11, 2022 refusal letter was issued at the direction of ISD's Assistant Commissioner, with the subsequent acquiescence of ISD's Commissioner.
92. ISD's extremely belated October 11, 2022 refusal letter should be of no force and effect on CAD's Project, given that ISD previously determined that CAD's project was free of zoning violations, including two (2) of the zoning violations identified in the October 11, 2022 refusal letter.
93. In any event, CAD's project is zoning compliant and does not contain any zoning violations. The Project does not contain the supposed violations cited in ISD's extremely belated October 11, 2022 refusal letter.
94. CAD's Project does not show an insufficient rear yard. Under the Boston Zoning Code, only one line can comprise the Rear Lot Line, and that line is the required forty (40) feet from CAD's proposed structure.
95. CAD's Project does not show an insufficient front yard. CAD's Project is located in a West Roxbury Neighborhood Shopping District, and in said districts there is no dimensional requirement for front yards. Furthermore, the Project is at best subject to the building alignment described in Article 56-36, not building alignment described in Article 56-40.
96. CAD's Project does not show a building excessive in height by feet. Under Article 2A's definition of building height, CAD's Project is allowed to exceed the maximum allowed height of thirty-five (35) feet because an existing structure on an abutting lot in the same Neighborhood Shopping District already exceeds the

allowed height limit and CAD's Project would be lower as measured in feet.

97. CAD's Project does not show a violation for traffic visibility across a corner, because that section of Article 56 does not apply in Neighborhood Shopping Districts.

The Boston Planning and Development Agency (BPDA)

98. Because CAD's Project would contain between 20,000 and 50,000 square feet of Gross Floor Area, the Project is subject to Article 80 Small Project Review by the BPDA.
99. In the case of CAD's Project, Small Project Review consists only of Design Review.
100. Design Review consists of review of the exterior of a building and its various design components for compliance with broadly stated standards set forth in the Boston Zoning Code, and specifically in Article 56 of the Zoning Code. Design Review does not consist of reviewing the number of units in a project or determining whether the developer should offer affordable units.
101. On February 11, 2021, CAD submitted a Project Notification Form to the BPDA, triggering Small Project Review.
102. On March 8, 2021, CAD held its first BPDA-required community meeting.
103. On March 23, 2021, CAD informally presented its Project to the West Roxbury Neighborhood Zoning Advisory Committee (without requesting a vote).
104. On April 26, 2021, CAD held a second BPDA-related community meeting. This second community meeting was not required under BPDA guidelines, but CAD

- held the meeting because BPDA staff requested that CAD do so.
105. Subsequently, BPDA recommended several design changes to the Project.
 106. CAD instituted all of the BPDA's recommended design changes.
 107. At that point, CAD's personnel understood that the Project met Small Project Review community-meeting and design requirements.
 108. Based on public comments and articles in the local newspaper, between 2020 and 2022, it became clear that a number of community members and at least one politician (a City Councilor) opposed CAD's Project.
 109. Under Article 80, Small project Review is supposed to be completed within sixty (60) days.
 110. Small Project Review is completed when the BPDA Board of Directors has reviewed a project and the BPDA Director issues a Certificate of Approval (or a negative finding).
 111. However, review by the BPDA's Board of Directors and the Director's issuance of the Certificate of Approval are both, in effect, ministerial steps. The actual work of determining whether a project meets Design Review criteria established in the Boston Zoning Code is undertaken by BPDA staff, who then recommend revisions to the design to bring the project's design into compliance. The BPDA Board and BPDA Director typically follow the recommendation of the BPDA staff.
 112. Beginning in May 2021, CAD requested that the BPDA issue CAD's Project a Certificate of Approval for Small Project Review.
 113. Various BPDA staff were aware that CAD's Project was ready to be presented to

the BPDA Board for a Certificate of Approval but did not take the steps to present the Project to the BPDA Board.

114. By hand delivered letter (also sent by certified mail, return receipt requested) dated March 30, 2022, to BPDA's Director at the time, CAD's attorney requested that the BPDA schedule CAD's Project to be presented to the BPDA Board of Directors.
115. Then, by hand delivered letter (also sent by certified mail, return receipt requested) dated April 11, 2022, to BPDA's Director at the time, CAD's attorney again requested that the BPDA schedule CAD's Project to be presented to the BPDA Board of Directors.
116. By a third hand delivered letter (also sent by certified mail, return receipt requested) dated August 19, 2022, to the BPDA's current Director CAD's attorney yet again requested that the BPDA schedule CAD's Project to be presented to the BPDA Board of Directors.
117. Finally, by hand delivered letter (also sent by certified mail, return receipt requested) dated September 27, 2022, to the BPDA's current Director, CAD's attorney requested for the fourth time that the BPDA schedule CAD's Project to be presented to the BPDA Board of Directors.
118. CAD's attorney's fourth letter, the letter dated September 27, 2022 to BPDA's current Director, specifically stated that if CAD's Project was not on the BPDA Board's hearing schedule by September 30, 2022, CAD "would have no choice but to bring suit against the City and the BPDA next week to resolve this dispute. . ."

119. Fourteen (14) days after CAD's attorney's last (fourth) letter to the BPDA Director, ISD issued the previously described October 11, 2022 refusal letter stating that CAD's Project contained zoning violations for which zoning relief would be necessary in order to obtain a building permit.
120. In October 2022, BPDA staff contacted one of CAD's agents and informed CAD's agent that the BPDA would send CAD's Project to the BPDA Board if CAD added an affordable unit to the Project and removed some parking spaces.
121. The BPDA staff admitted to understanding that removing parking spaces might reduce the number of units allowed in the Project and might trigger ISD to find zoning violations requiring a variance.
122. BPDA has no jurisdiction to demand affordable units in the course of the BPDA undertaking Design Review as part of Small Project Review. The BPDA's demand for an affordable unit amounted to an illegal attempt to impose an exaction (so-called "linkage") on CAD.
123. The BPDA likewise has no jurisdiction to reduce the number of units in a project under Small Project Design Review.
124. At all relevant times described herein, the acts of ISD were attributable to policies created or endorsed by ISD's Commissioner, acting in his official capacity.
125. At all relevant times described herein, the acts of the BPDA were attributable to policies created or endorsed by the BPDA's Director, acting in his official capacity.
126. The ISD Commissioner is the final policy maker and decision maker for Boston

Inspectional Services with respect to zoning violations.

127. The Director of the BPDA is the final policy maker and decision maker for the BPDA with respect to issuing Certificates of Approval or otherwise completing Small Project Review.
128. The acts of the BPDA's Director and the acts of ISD's Commissioner as described herein were in effect acts of the City of Boston.
129. Since at least 2021, CAD's Project has been the subject of numerous articles in the media in which various members of the community have voiced opposition to the Project.
130. At least one City Councilor has publicly voiced opposition to CAD's Project on multiple occasions.
131. The BPDA's (former) Director, on information and belief, made statements to the media to the effect that the BPDA would not allow CAD's Project to be constructed in its current form.
132. At the various community meetings described herein, community members voiced opposition to the Project.
133. CAD has within forty-five (45) days of receiving the October 11, 2022 Refusal Letter, appealed to the Boston Board of Appeal for a determination over-turning ISD's decision.
134. In addition to filing this Complaint, CAD has filed a Complaint in the Land Court seeking relief under G.L. c. 240, §14A, among other claims for relief.

COUNTS

COUNT I

(42 U.S.C. §1983)

**(Defendants City of Boston; Inspectional Services Department, by and through its
Commissioner; Boston Planning and Development Agency, by and through its
Director)**

135. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
136. The City of Boston, the Commissioner of Boston's Inspectional Services Department, and the Director of the Boston Planning and Development Agency, are all "persons" within the meaning of 42 U.S.C. §1983.
137. The ISD Commissioner is the final policy maker and decision maker for Boston Inspectional Services with respect to zoning violations.
138. The Director of the BPDA is the final policy maker and decision maker for the BPDA with respect to issuing Certificates of Approval or otherwise completing Small Project Review.
139. At all times herein, persons within Boston Inspectional Services Department, including the Inspectional Services Department's Commissioner, were acting under color of law.
140. At all times herein, persons within Boston Planning and Development Agency, including the BPDA Director, were acting under color of law.
141. The City of Boston, ISD, by and through ISD's Commissioner, and the BPDA, by and through the BPDA's Director, acting under color of law, have, by way of regulation, custom, acts, or usage, deprived the Plaintiff of rights, privileges and

immunities secured by the United States Constitution for which the Plaintiff is entitled to redress under §1983.

142. Specifically, Defendant ISD, by and through its Commissioner acting in his official capacity, issued or allowed a subordinate to issue CAD a Refusal Letter almost two years after clearing CAD of all zoning violations, which letter revived specific zoning violations that the ISD Plans Examiner had, multiple times, previously found did not exist.
143. The decision of the Defendant ISD, acting by and through its Commissioner, to issue or to allow a subordinate to issue the October 11, 2022 Refusal Letter was an arbitrary and capricious decision and an arbitrary and capricious application of ISD's power and authority.
144. By issuing or allowing a subordinate to issue the October 11, 2022 Refusal Letter, Defendant ISD, by and through its Commissioner, violated CAD's right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.
145. By issuing or allowing a subordinate to issue the October 11, 2022 Refusal Letter two years after clearing CAD of all violations, including two of the violations revived by the October 11, 2022 Refusal Letter, Defendant ISD, by and through its Commissioner, singled CAD out as a "class of one" for arbitrary and capricious treatment in violation of CAD's right to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.
146. By refusing to process Plaintiff's Small Project Review application and place

Plaintiff's Project before the BPDA Board of Directors, the Defendants City of Boston and the BPDA, by and through its Director acting in his official capacity, have violated CAD's right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.

147. By refusing to process Plaintiff's Small Project Review application and place Plaintiff's Project before the BPDA Board of Directors, the Defendants City of Boston and the BPDA, by and through its Director, have singled CAD out as a "class of one" for arbitrary and capricious treatment in violation of CAD's right to Equal Protection as guaranteed by the fourteenth Amendment to the United States Constitution.
148. The Constitutional offenses named herein are, as to Plaintiff, ongoing.
149. Accordingly, Plaintiff has stated an entitlement to prospective, injunctive relief against the Defendants City of Boston, ISD, by and through its Commissioner, and the BPDA, by and through its Director, all in their official capacities.

COUNT II
(42 U.S.C. §1988: Attorney's Fees
Against all Defendants)

150. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
151. Plaintiff is entitled to attorney's fees and costs of suit as allowed by law in the event Plaintiff is a prevailing party in this suit under 42 U.S.C. §1983.
152. WHEREFORE, Plaintiff requests the Court award Plaintiff attorney's fees, costs, and expenses of suit as a prevailing party on any and all claims in which Plaintiff

proves an entitlement to relief based upon violation of a right protected by federal law or the United States Constitution.

COUNT III
(G.L. c. 12, §11H and §11I, Massachusetts Civil Rights Act)
(Against All Defendants)

153. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
154. The BPDA and ISD have each made decisions and issued orders that misinterpret or contravene the Boston Zoning Code and are legally incorrect, unreasonable, arbitrary, and capricious, which adversely affect Plaintiff's legal rights to develop Plaintiff's Property, and impose unjustified and unnecessary expense and delay on the Plaintiff's completion of the permitting process.
155. The foregoing decisions and orders exceed the respective authority of ISD and the BPDA.
156. The inaction of the BPDA and the issuance by ISD of the October 11, 2022 Refusal Letter each amount to an interference, by threats, intimidation, or coercion, with rights Plaintiff enjoys under the Boston Zoning Code, or rights otherwise secured by the Federal Constitution or laws of the United States, or of rights secured by the Constitution or laws of the Commonwealth, including the Boston Zoning Code.
157. Wherefore, the Plaintiff is entitled to such temporary and permanent injunctive and equitable relief as has been demanded herein, and attorney's fees, and money damages to the extent permitted by law.

COUNT IV
(Injunctive and Other Temporary and Permanent Equitable Relief)
(All Defendants)

158. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
159. ISD and the BPDA have each exceeded their respective authority by making decisions and issuing orders that are legally incorrect, unreasonable, arbitrary, and capricious, which adversely affect Plaintiff's legal rights to develop Plaintiff's Property.
160. ISD's October 11, 2022 refusal letter is an unreasonable, arbitrary and capricious decision and order that should be declared null and void on the ground that ISD previously cleared CAD's Project of zoning violations; in addition, ISD's refusal letter arises out of an incorrect interpretation of various sections of the Boston Zoning Code.
161. The BPDA's unreasonable, arbitrary and capricious decision to take no action on CAD's application for Small Project Review contravenes the provisions of the Boston Zoning Code.
162. As a result of the foregoing decisions and orders, the Plaintiff is suffering and will continue to suffer irreparable harm, namely unjustified, unnecessary expense and delay incurred in the permitting process and unjustified, unnecessary delay of Plaintiff's rights to develop its Property.
163. Plaintiff has no adequate remedy at law.
164. Wherefore, Plaintiff is entitled to a permanent Order, or such temporary orders as

Plaintiff may hereafter request by motion to the Court, ordering, as to the City of Boston and ISD, through its Commissioner acting in his official capacity: 1.) that ISD retract the October 11, 2022 Refusal Letter; 2.) or, alternatively, that the zoning violations cited in ISD's October 11, 2022 Refusal Letter each represent an incorrect and unreasonable interpretation of the Boston Zoning Code and that Plaintiff's Project is therefore zoning compliant and that ISD may accordingly issue CAD a building permit without Plaintiff seeking or obtaining variances.

165. Wherefore, Plaintiff is entitled to a permanent Order, or such temporary orders as Plaintiff may hereafter request by motion to the Court, ordering, as to the City of Boston and BPDA, through its Director acting in his official capacity: 1.) that the BPDA, having failed to act on Plaintiff's Article 80E application for Small Project Review within the required sixty (60) days, is divested of jurisdiction over CAD's Small Project Review and that ISD may issue CAD a building permit as if CAD's Project had successfully completed Small project Review; 2.) or, alternatively, that CAD's Small Project Review application be scheduled for a hearing before the BPDA Board forthwith.

COUNT V
(G.L. c. 231A, Declaratory Judgment)
(All Defendants)

166. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
167. A legal controversy exists between Plaintiff, the Defendant City, the Defendant ISD, and the Defendant BPDA, which is ripe for decision.

168. Defendants have made unreasonable, arbitrary and capricious decisions, the BPDA has unreasonably refused to schedule CAD's Small Project Review application for review by the BPDA Board of Directors, and ISD has issued an unreasonable, arbitrary and capricious order, all in excess of their authority, which acts and failures to act adversely affect Plaintiff's legal right to develop Plaintiff's Property.
169. Wherefore, Plaintiff is entitled to a declaration declaring that: the October 11, 2022 Refusal Letter issued by ISD is null, void, and of no legal effect; or, alternatively, that the zoning violations cited in ISD's October 11, 2022 Refusal Letter each represent an incorrect and unreasonable interpretation of the Boston Zoning Code and that Plaintiff's Project is therefore zoning compliant and a building permit may issue without Plaintiff seeking or obtaining variances.
170. Wherefore, Plaintiff is entitled to a declaration declaring that: the BPDA, having failed to act on Plaintiff's Article 80E application for Small Project Review within the required sixty (60) days, is divested of jurisdiction over CAD's Small Project Review and that ISD may issue CAD a building permit as if CAD's Project had successfully completed Small project Review; or, alternatively, declaring that CAD's Project be scheduled for a hearing concerning CAD's Small Project Review application before the BPDA Board of Directors forthwith.
171. The Plaintiff is also entitled to a declaration setting forth such other remedial orders as will redress the wrongs Plaintiff has suffered, including an order that the Plaintiff be free to apply to the ISD Commissioner for a building permit.

COUNT VI
(G.L. c. 249, §4 and §5, Certiorari and Mandamus)
(All Defendants)

172. Plaintiff repeats and re-alleges the previous paragraphs and allegations as if more fully set forth herein.
173. A legal controversy exists between Plaintiff, the Defendant City, the Defendant ISD, and the Defendant BPDA, which is ripe for decision.
174. The BPDA has a clear, ministerial duty under Article 80E to advance Plaintiff's Small Project Review application through the Small Project Review process.
175. ISD has a clear, ministerial duty under the Boston Zoning Code to make one final and non-retractable decision as to code violations.
176. The ISD and the BPDA have made decisions and issued orders that are legally incorrect, unreasonable, arbitrary, and capricious, which adversely affect Plaintiff's legal rights to develop Plaintiff's Property.
177. As a result of said decisions and orders, the Plaintiff will incur unjustified, unnecessary expense and delay in the permitting process and unjustified, unnecessary delay of Plaintiff's rights to develop its Property.
178. In the event there is any question whether other substantive law applies, then the Plaintiff has no other adequate means of appeal or redress.
179. Wherefore, Plaintiff is entitled to an order in Mandamus directing: 1.) ISD to retract the October 11, 2022 Refusal letter; and 2.) the BPDA to schedule Plaintiff's Small Project Review application for a hearing before the BPDA Board; or, alternatively, that the ISD Commissioner treat CAD's Small Project Review as

successfully completed when deciding whether to issue CAD a building permit.

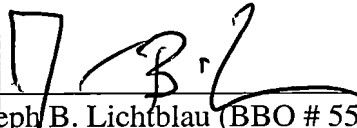
PRAYERS

WHEREFORE, the Plaintiffs request that this Honorable Court enter the following Orders and award the following relief:

- A. That the Court award the Plaintiff judgment in Plaintiff's favor together with all the relief requested herein;
- B. That the Court issue such orders and declarations in favor of Plaintiff as are requested herein;
- C. That the Court otherwise declare the rights of the parties herein, as requested herein, in Plaintiff's favor;
- D. That the Court issue such other remedial orders, judgments, and decrees as will redress the wrongs Plaintiff has suffered;
- E. That the Court award Plaintiff money damages pursuant to the Massachusetts Civil Rights Act;
- F. That the Court order the Defendants to pay Plaintiff's attorney's fees as well as to pay Plaintiff's costs and expenses of suit, all as permitted by law;
- G. That the Court enter such other and different orders, injunctions, declarations, awards, or afford such other relief as it deems equitable, just and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY OF ALL COUNTS, CLAIMS, AND ISSUES SO TRIABLE

Respectfully submitted,
C.A.D. BUILDERS, LLC,
By its attorney,



Joseph B. Lichtblau (BBO # 555020)
50 Congress Street, Suite 225
Boston, MA 02109
617-722--9955
617-722-9966 (Fax)
jbl@jbllaw.com