

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

LAND COURT  
Civil Action No. 23 PS 000673

BELLEVUE HILL IMPROVEMENT  
ASSOCIATION, INC.  
Plaintiffs,

v.  
BOSTON ZONING BOARD OF APPEAL  
and UPTON BELGRADE INVESTMENT  
PARTNERS, LLC,  
Defendants

**PLAINTIFF'S MOTION TO AMEND**

Now comes the Plaintiff, Bellevue Hill Improvement Association, that, pursuant to Mass. Rule Civ. P. 15(a) moves to amend its complaint for the reasons set forth in its accompanying memorandum of law.<sup>1</sup>

Respectfully submitted,

BELLEVUE HILL IMPROVEMENT  
ASSOCIATION

By its attorney,

/s/ Paul L. Nevins  
Paul L. Nevins (BBO # 369930)  
Law Office of Paul L Nevins  
70 Oriole Street  
Boston, MA 02132  
(617) 851-0981  
paulnevins@plnevinslaw.com

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<sup>1</sup>The proposed amended complaint is attached hereto.

### **Certificate of Service**

The undersigned certifies that March 7, 2024 served a true copy of the foregoing upon counsel for Defendants via email, addressed to:

Michael W. Ford, Esquire  
Peter B. Morin, Esquire  
Ryan M. Gazda, Esquire  
FORD LAW P.C  
245 Sumner Street, Suite 110  
East Boston, MA 02168

and:

Jolie Main, Esquire  
Assistant Corporation Counsel  
City of Boston Law Department  
One City Hall Plaza, Room 615  
Boston, MA 02201

/s/ Paul L. Nevins  
Paul L. Nevins

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss**

**LAND COURT  
Civil Action No. 23 PS 000673**

BELLEVUE HILL IMPROVEMENT  
ASSOCIATION, INC., DORIS R. DOWNEY,  
GEORGE EMBLETON, JONATHAN GASS,  
BARBARA V. GASS, RUTH HARTNETT  
GUARINO, TINA GUARINO, CHARLES  
McDEVITT, VIRGINIA E. NEVINS,  
BARBARA VAN DYKE, THOMAS VAN  
DYKE, Plaintiffs

v.  
BOSTON ZONING BOARD OF APPEAL  
and UPTON BELGRADE INVESTMENT  
PARTNERS, LLC,  
Defendants

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

**Introduction**

On September 8, 2023, the Boston Zoning Board of Appeal endorsed a written decision, unsupported by any findings of fact, conclusions of law, and contrary to the scope and purposes of the applicable zoning by-laws, to formally approve an appeal of Upton Belgrade Investment Partners to develop a property at 361 Belgrade Avenue on the Roslindale/West Roxbury border. Upton Belgrade Investment Partners was granted the right to develop a property that, at a minimum, contains 12 zoning variances that, if allowed to proceed, would encroach upon public land protected by Article 97 to the Massachusetts Constitution and would adversely affect the quality of life, by causing harmful effects to the environment through pollution, traffic

density, and to public safety and public health. The requested variances, if granted, would also create a regrettable precedent that would encourage other prospective developers and property owners to seek and obtain variances that would effectively gut the existing zoning regulations to the detriment of the West Roxbury and Roslindale neighborhoods and undermine the specific purposes of Boston's zoning by-laws.

### **Parties**

1. The Plaintiff, Bellevue Hill Improvement Association, Inc., is a non-profit civic organization that represents the interests of families in the Bellevue Hill neighborhood, namely that section of West Roxbury bounded by the West Roxbury Parkway- that is directly adjacent to 361 Belgrade Avenue - Washington Street, Maplewood - St. Theresa Avenue and Centre Street.
2. The Plaintiff, Doris R. Downy, is a taxpayer and freehold estate owner in the City of Boston.
3. The Plaintiff, George Embleton, is a taxpayer and freehold estate owner in the City of Boston.
4. The Plaintiff, Jonathan Gass, is a taxpayer and freehold estate owner in the City of Boston.
5. The Plaintiff, Barbara V. Gass, is a taxpayer and freehold estate owner in the City of Boston,
6. The Plaintiff, Ruth Hartnett Guarino, is a taxpayer in the City of Boston.
7. The Plaintiff, Tina Guarino, is a taxpayer resident in the City of Boston.
8. The Plaintiff, Charles McDevitt, is a taxpayer and freehold estate owner in the City of Boston.

9. The Plaintiff, Virginia E. Nevins, is a taxpayer and freehold estate owner in the City of Boston.
10. The Plaintiff, Barbara Van Dyke, is a taxpayer and freehold estate owner in the City of Boston.
11. The Plaintiff, Thomas Van Dyke, is a taxpayer and freehold estate owner in the City of Boston.
12. The Defendant, Zoning Board of Appeal of the City of Boston, is charged with the duty to inspect and review buildings to ensure compliance with the city's zoning laws.
13. The Defendant, Upton Investment Partners, LLC, is a for-profit real estate entity with a place of business located in Dedham, Norfolk County.

#### **Statement of the Facts**

14. In August, 2022, Upton Belgrade Investment Partners filed letter of intent with the Boston Planning and Development Agency (hereinafter, BPDA).
15. Its proposed project included approximately 124 residential units and garaged parking for up to 86 vehicles in a five (5) story building of varying height; new and expanded sidewalk connections, improved pedestrian and vehicular access and overall site upgrades. of up to approximately 129,000 square feet of gross floor area.
16. As proposed by Upton Belgrade Investment Partners, LLC, the development required, at a minimum, 12 zoning variances.
17. The proposed property directly abuts the West Roxbury and Roslindale neighbored at the intersection of Belgrade Avenue and West Roxbury Parkway.
18. The City of Boston's Roslindale Zoning By-Law provides, in pertinent part:

Section 67-1. - Statement of Purpose, Goals, and Objectives.

The purpose of this Article is to establish the zoning regulations for the Roslindale Neighborhood District as required by the provisions of the Roslindale Interim Planning Overlay District, Article 27R 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, moderate income, and market rate housing compatible with adjacent areas, particularly for families; 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.

19. The City of Boston's West Roxbury Zoning By-Law, provides, in pertinent part:

Section 56-1. - Statement of Purpose and Objectives.

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.

20. On March 16, 2023, after public comment via zoom hearings, the BPDA gave its approval to the proposal and forwarded the matter to the Zoning Board of Appeal for final disposition.

21. On July 5, 2023, the Defendant, Boston Zoning Board of Appeal, conducted a virtual hearing in which public comment was solicited.

22. Five days before, on July 20, 2023, the board of directors of the Bellevue Hill Improvement Association filed a demand with the Boston Zoning Board of Appeal for an adjudicatory hearing, under the provisions of G.L. ch. 30A, §§ 10A and 11. See Exhibit 1 attached hereto.

22. The Defendant, Boston Zoning Board of Appeal, is a regulatory agency within the meaning of G.L. c. 30A.

23. As such, Mass. Gen. Laws ch. 30A, § 11(8), mandates that any “agency decision shall include a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision. To meet that requirement, an agency must make sufficient subsidiary findings that a reviewing court can assess whether its conclusions were supported by substantial evidence.”<sup>1</sup>

24. The request for an adjudicatory hearing - with testimony taken under oath - was summarily ignored by the Zoning Board of Appeal without explanation.

25. The Zoning Board of Appeal’s grant of authority by the legislature provides, in pertinent part:

SECTION 3. Section 8 of said chapter 665, as amended by section 66 of chapter 802 of the acts of 1972... Said board of appeal shall cause to be made a detailed record of all its proceedings, *which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject 1377 Chap. 461 by vote of said board of appeal at the hearing.*

26. The Zoning Board of Appeal’s written decision on September 8, 2023 failed to comply with the requirements of chapter 665 that includes as a “principal purpose the preservation of the quality of residential life in the neighborhood.” See Exhibit 2 attached hereto.

27. The Zoning Board of Appeal’s decision also failed to comply with the requirements of chapter 665, § 9 that “said board of appeal may authorize with respect to a particular parcel of land or to an existing building thereon a variance from the terms of such zoning regulation where,

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<sup>1</sup>*Zoning Board of Appeals of Milton v. HD/MW Randolph Avenue, LLC*, 490 Mass. 257, 258

owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of such zoning regulation would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such zoning regulation, but not otherwise. In authorizing such variance, said board may impose limitations both of time and of user, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time.”

28. In addition, the Zoning Board of Appeal failed to address the issue of public land that had previously been encroached upon by the predecessors-in-interest at 361 Belgrade Avenue in violation of Article 97 to the Massachusetts Constitution.

29. In 1972, the voters of Massachusetts adopted by referendum Article 97 as an amendment to the Massachusetts Constitution.

30. That act establishes a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth.

31. Art. 97 also declares the conservation of natural resources a public purpose and provides that land or easements subject to Art. 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of the Legislature.

32. Five years later, in 1977, the Massachusetts General Court directed to MDC to convey some 6,275 feet of public land that was a part of West Roxbury Parkway to Clay Chevrolet in exchange for \$3,000.00.



33. In 1981, Clay Chevrolet conveyed the property to Howard Chevrolet. In 2019, Howard Chevrolet became Clay Consolidated, LLC.

34. The property has apparently been subsequently leased to Upton Belgrade Investment Partners, for 99 years. Upton Belgrade Investment Partners is, in some undisclosed way, the successor-in-interest to Uncommon Schools that unsuccessfully sought to convert the property into a school for Roxbury Prep.

35. The deed that originally conveyed a part of the land at 361 Belgrade Avenue to Clay Chevrolet is a restrictive deed and expressly provides that “said premises are conveyed” subject to six specific conditions. Restriction 5 provides that “said premises are conveyed subject to the condition that if at any time said premises shall cease to be used for parking purposes then, and in that event, the Commonwealth of Massachusetts shall enter upon said premises and repossess itself of its former estate therein...”

**Count 1: Violation of G.L. c. 30A**

36. The above state facts are restated and incorporated herein.

37. The Plaintiff have standing under G. L. c. 30A, § 14, to seek judicial review in the Superior Court as "...a person . . . aggrieved by a final decision of any agency in an adjudicatory proceeding.

38. The Defendant, Boston Zoning Board of Appeal, is a regulatory agency within the meaning of G.L. c. 30A.

39. The refusal of the Defendant, Boston Zoning Board of Appeal, to conduct an adjudicatory hearing and to issue findings of fact and conclusions of law is a violation of G.L. c. 30A and renders its decision null and void.

**Count 2: Violation of Article 97**

40. The above stated facts are restated and incorporated herein.
41. The Plaintiffs have standing, as ten taxpayers, to seek judicial review in the Land Court.
42. The decision of the Defendant, Boston Zoning Board of Appeal, to grant a right to Upton Belgrade Investment Partners to construct a building that continues to encroach upon public land notwithstanding the restrictive reverter deed is a violation of Article 97 to the Massachusetts Constitution.

**Count 3: Violations of Due Process and Equal Protection.**

43. The above stated facts are restated and incorporated herein.
44. The decision of the Boston Zoning Board of Appeal violates the Plaintiffs' rights to procedural due process, substantive due process, and equal protection under Articles 1, 10, and 12 of the Massachusetts Declaration of Rights.

**Count 4 : Request for Declaratory Judgment**

45. The above stated facts are restated and incorporated herein.
46. The decision of the Boston Zoning Board of Appeal, as complained of above, entitles the Plaintiffs to seek a declaratory judgment pursuant to G.L. c. 240 § 14A and G.L. c. 231- *et seq.*

**Prayers For Relief**

WHEREFORE, the Plaintiffs pray that this Court advance this case in every way on the docket and grant a speedy trial and, after said trial, they pray and demand:

- (1) With respect to Counts 1, 2, 3 and 4, determine the rights and obligations of the parties to this proceeding, or, in the alternative, remand the matter back to the Boston Zoning

Board of Appeal or set aside the decision of the Boston Zoning Board  
decision consistent with its obligations under the law.

- (2) Award the Plaintiffs their costs incurred in this litigation.
- (3) Award the Plaintiffs such other and further relief as may be just and meet.

Respectfully submitted,

BELLEVUE HILL IMPROVEMENT  
ASSOCIATION, INC, ET AL

By their attorney,

/s/ Paul L. Nevins  
Paul L. Nevins (BBO # 369930)  
Law Office of Paul L. Nevins, Esq.  
70 Oriole Street  
Boston, MA 02132  
(617) 851-0981  
paulnevins@plnevinslaw.com

**EXHIBIT 1**

**PAUL L. NEVINS**

*Attorney at Law*

70 ORIOLE STREET

BOSTON, MASSACHUSETTS 02132

*Concentrating in civil litigation  
and employment law, including  
discrimination claims*

Telephone: 617-851-0981  
Facsimile: 617-327-3453  
Email: paulnevins@plnevinslaw.com

July 20, 2023

Sherry Dong, Chair  
Zoning Board of Appeal  
1 City Hall Square, Room 801  
Boston, MA 02201

**Delivered in-hand and via email**

*Re: Request for Adjudicatory Hearing, Appeal of Upton Belgrade Investment Partners,  
for variances to the premises at 361 Belgrade Avenue, Ward 20*

Dear Ms. Dong:

The Board of the Bellevue Hill Improvement Association respectfully demands an adjudicatory hearing, under the provisions of M.G.L. ch. 30A, §§ 10A and 11, in the appeal of Upton Belgrade Investment Partners, LLC. Its appeal is currently scheduled for a virtual hearing on July 25, 2023 at 9:30 a.m. I am a member of the Board of Directors and serve as its counsel in this matter.

The appeal by Upton Belgrade Investment Partners, LLC requests, at a minimum, 12 zoning variances that, if granted, would adversely impact the quality of life, by causing harmful effects to the environment through pollution, traffic density, and to public safety and public health. The requested variances, if granted, would also create a regrettable precedent that would encourage other prospective developers and property owners to seek and obtain variances that would effectively gut the existing zoning regulations to the detriment of the West Roxbury and Roslindale neighborhoods.

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1. In 1972, the voters of Massachusetts adopted by referendum Article 97 as an amendment to the Massachusetts Constitution. That act establishes a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth. Art. 97 also declares the conservation of natural resources a public purpose and provides that land or easements subject to Art. 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of the Legislature. However, five years later, in 1977, the Massachusetts General Court directed to MDC to convey some 6,275 feet of public land that was a part of West Roxbury Parkway to Clay Chevrolet in exchange for \$3,000.00, in an apparent sweetheart deal, by a voice vote only. In 1981, Clay Chevrolet conveyed the property to Howard Chevrolet. In 2019, Howard Chevrolet became Clay Consolidated, LLC. The property has apparently been subsequently leased to Upton Belgrade

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The Board of Appeal of the City of Boston is a regulatory agency within the meaning of M.G.L. c. 30A. As such, Mass. Gen. Laws ch. 30A, § 11(8), mandates that any "agency decision shall include a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision. To meet that requirement, an agency must make sufficient subsidiary findings that a reviewing court can assess whether its conclusions were supported by substantial evidence."

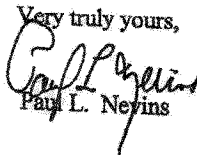
The Board's grant of authority by the legislature provides, in pertinent part:

SECTION 3. Section 8 of said chapter 665, as amended by section 66 of chapter 802 of the acts of 1972...

Said board of appeal shall cause to be made a detailed record of all its proceedings, *which record shall set forth: the reasons for its decision; the vote of each member participating therein; the absence of a member or her or his failure to vote; and any conditions or provisos to which the granting of any variance or exception was made subject 1377 Chap. 461 by vote of said board of appeal at the hearing.*

For the above-stated reasons, we demand that, as part of the appeal's process in the instant matter, the Board of Appeal conduct an evidentiary hearing in which witnesses are required to testify under oath, and where Upton Belgrade Investment Partners, LLC is required to meet its burden of persuasion by substantial, credible evidence. Upon completion of the adjudicatory proceeding, we further demand that the Board issue articulated findings of fact and conclusions of law to support its decision, for review, if necessary, by the Suffolk Superior Court.

Very truly yours,



Paul L. Nevins

cc: Board of Directors, Bellevue Hill  
Improvement Association, Inc.:  
Ginny Gass, Athena Yerganian, June Downey,  
George Embleton, Charles McDevitt

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Investment Partners, for 99 years. Upton Belgrade Investment Partners is, in some undisclosed way, the successor-in-interest to Uncommon Schools that unsuccessfully sought to convert the property into a school for Roxbury Prep. The deed that originally conveyed a part of the land at 361 Belgrade Avenue to Clay Chevrolet is a restrictive deed and expressly provides that "said premises are conveyed" subject to six specific conditions. Restriction 5 provides that "said premises are conveyed subject to the condition that if at any time said premises shall cease to be used for parking purposes then, and in that event, the Commonwealth of Massachusetts shall enter upon said premises and repossess itself of its former estate therein..."

2. *Zoning Board of Appeals of Milton v. HD/MW Randolph Avenue, LLC*, 490 Mass. 257, 258



City of Boston  
Board of Appeal

NOTICE OF DECISION  
CASE NO. BOA1478134  
PERMIT # ERT1442188  
APPEAL SUSTAINED  
WITH PROVISOS

In reference to the appeal of

Upton Belgrade Investment Partners, LLC

Concerning the premises located at

361 Belgrade Avenue, Ward 20

for relief from the provisions of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

The Board's decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, Fourth Floor, Boston, MA 02118, and is open for public inspection. A copy of the decision is available on the Board's website at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal-decisions>. The decisions are organized by filing date.

Date of filing of this decision with the Inspectional Services Department was September 08, 2023.  
**The relief granted by this decision expires on September 08, 2025, and must be exercised or extended for good cause only on or before this date. Requests for extensions must be submitted in writing before the expiration date.**

Please be advised, this decision of the Board has been reviewed and signed electronically by the signing Board Members. The addition of the certification of the Executive Secretary to the signature page attests that each Board Member who has signed this decision electronically has had an opportunity to review the written decision and has given his or her express written permission to the Executive Secretary to sign this decision electronically.

FOR THE BOARD OF APPEAL

/s/ Javier Salas

Javier Salas  
Executive Secretary



**DECISION OF THE BOARD ON THE APPEAL OF**

July 25, 2023  
DATE

**Upton Belgrade Investment Partners, LLC**

to provide relief from the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,

at premises: **361 Belgrade Avenue, Ward – 20**

Appellant requires relief from the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: **Variance, Conditional Use Permit, and for other relief as appropriate.**

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 67 Sect 12	Dimensional Regulations	Will exceed dimensional FAR of 1.0. The Project proposes a FAR of 3.0.
Article 67 Sect 12	Dimensional Regulations	Will exceed dimensional Height of 35' (feet). The Project proposes Height of 63'(feet).
Article 67 Sect 12	Dimensional Regulations	Will exceed dimensional stories height of 3. The Project proposes height of 5 stories.
Article 67 Sect 12	Dimensional Regulations	Will not meet the dimensional Front Yard setbacks of 10' (NS). The Project proposes Street Conformity (Modal Alignment).
Article 67 Sect 12	Dimensional Regulations	Will not meet dimensional Side Yard setbacks of 10'(NS). The Proposed project has a Side Yard setback of 3'.
Article 67 Sect 12	Dimensional Regulations	Will not meet dimensional Rear Yard setbacks of 10' feet (NS). The proposed Project will not have a Rear Yard setback, it will be 0' feet.
Article 67 Section 32	Off-Street Parking & Loading Req	The number of Parking Spaces & Loading Bays are subject to BPDA Large Project Reviews. The Project proposes a garage for 86 vehicles.
Article 67, Section 9	Front Yard Insufficient	Will not meet dimensional Front Yard setbacks of 20' (feet) for 2F-5000.
Art. 67 Sec. 09	Side Yard Insufficient	Will not meet the dimensional Side Yard setbacks of 10' for 2F-5000
Article 67, Section 9	Rear Yard Insufficient	Will not meet dimensional Rear Yard setback of 40' for 2F-5000.
Art. 29 Sec. 04	Greenbelt Protection Overlay District Applicability.	The proposed project is subject to Greenbelt Protection Overlay District Applicability.
Article 67, Section 8	Use Regulations	Use- Accessory Parking in the 2F-5000 subdistrict for the MFR use. (underground parking).

Purpose: Erect a 5-story, 129,000 gsf building with 124 Residential units, 2600 sf of commercial space garaged parking for up to 86 vehicles and overall site upgrades.

In his formal appeal, Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-1478134 and made a part of this record.

In conformity with the law, the Board mailed reasonable notice of the public hearing to the Appellant and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

**THE BOSTON HERALD on Tuesday, July 4, 2023**

The Board reviewed relevant documents, photographs, and other submissions and conducted other reviews as necessary to determine the location, layout, and other characteristics of the Appellant's land, the scope of its proposal, and the issues presented by the appeal. The Boston Planning and Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, July 25, 2023, in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned terms of the Boston Zoning Code, all as per Application for Permit# ERT1442188 and February 16, 2023 plans submitted to the Board at its hearing and now on file in the Building Department.



**DECISION OF THE BOARD ON THE APPEAL OF**

361 Belgrade Avenue, Ward 20  
BOA1478134  
Date of Hearing: July 25, 2023  
Permit #ERT1442188  
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This appeal seeks permission to combine three (3) parcels at 355 Belgrade Avenue (#2001590000), 361 Belgrade Avenue (#2001593000), and 371 Belgrade Avenue (#2001593005) into one lot of approximately 43,014 square feet in Roslindale (the "Site" or "Project Site"); construct a five (5) story building of up to approximately 129,000 square feet of gross floor area with 124 residential units, up to approximately 2,950 square feet of commercial retail space, below-grade garaged parking for up to 83 vehicles, 125 interior bicycle parking spaces and overall site upgrades, as per plans (the "Project").

The appellant, Upton Belgrade Investment Partners LLC ("Appellant"), seeks to transform and revitalize an underutilized industrial property site of approximately 43,014 combined square feet, which is uniquely burdened by its existing non-conforming conditions and severe grade change (of approximately +/- 18 feet from its western side, along West Roxbury Parkway, to its eastern side along Anawan Avenue, with a new mixed-use development of much-needed residential housing, neighborhood serving commercial/retail space and improved pedestrian connectivity at a transit-based location in the City's Roslindale neighborhood. Situated at the foot of the MBTA's Bellevue Commuter Rail Station, with routine subway service to downtown Boston and connections through its Forest Hills node, the Appellant submits that the Site is appropriate for the Project's replacement of its long-existing and non-conforming industrial uses, outdated and distressed structure and unimproved surface areas, in order to create a vibrant mixed-use development of market rate and income restricted housing, active ground floor commercial/retail uses, new open space and an improved public realm at a residential section of the neighborhood. Specifically, the Appellant submits that the Project will create a much-needed scale of new housing opportunities, and "development without displacement", with a greater allotment of on-site income-restricted units than currently required by the City's Inclusionary Development Policy (the "IDP"), and also make significant improvements to its surrounding public sidewalks, pedestrian safety, and access to the MBTA's





DECISION OF THE BOARD ON THE APPEAL OF

361 Belgrade Avenue, Ward 20  
BOA1478134  
Date of Hearing: July 25, 2023  
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nearby Commuter Rail Station. In response to the unique land conditions imposed by the property Site, as further detailed herein, the Appellant also contends that its new building program has been carefully designed, shaped and sited to better conform with the context and growth of the surrounding community, in furtherance of City planning and housing goals, and consistent with the Board's findings for the required Variances and Conditional Use Permits for the Project as required by Articles 6-3, 7-3, 29, and 67 of the City of Boston Zoning Code ("Zoning Code").

The appeal is necessary, as the Project requires certain relief under the terms of the Zoning Code, as follows: Article 29, Section 4, Greenbelt Protection Overlay District ("GPOD") Applicability Conditional Use Permit; Article 67, Section 9: Side Yard Insufficient (2F-5000); Article 67, Section 12: Floor Area Ratio ("FAR") Excessive (Neighborhood Shopping Subdistrict ("NS")); Article 67, Section 12: Building Height Excessive (Feet) (NS); Article 67, Section 12: Building Height Excessive (Stories) (NS); Article 67, Section 12: Front Yard Insufficient (NS); Article 67, Section 12: Side Yard Insufficient (NS); Article 67, Section 12: Rear Yard Insufficient (NS); Article 67, Section 32: Off-Street Parking & Loading Insufficient, with the number of Parking Spaces & Loading Bays subject to BPDA Large Project Review; Article 67, Section 8: Use Regulations: Accessory Parking in the 2F-5000 subdistrict for the MFR use (underground parking) is Forbidden; Article 67, Section 9: Front Yard Insufficient (2F-5000); and, Article 67, Section 9: Rear Yard Insufficient (2F-5000).

With a new building size in excess of 50,000 gross square feet in the Roslindale Neighborhood District, the Project is also subject to Large Project Review by the Boston Planning and Development Agency ("BPDA"), pursuant to Article 80B of the Zoning Code. In modifying the Project to a final on-site parking allotment of approximately 83 parking spaces, the off-street parking and loading program was adjudicated by the BPDA, pursuant to Article



**DECISION OF THE BOARD ON THE APPEAL OF**

361 Belgrade Avenue, Ward 20  
BOA1478134  
Date of Hearing: July 25, 2023  
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80B of the Zoning Code. Specifically, the Appellant seeks and is hereby granted relief from the Zoning Code violations identified in the Building Commissioner's denial letter for the Project, dated May 24, 2023, and appealed on the same date of May 24, 2023. At the public hearing before the Board, the Appellant was joined and represented by its legal counsel, Joseph P. Hanley, Esq., and Nicholas J. Zozula, Esq. of McDermott, Quilty & Miller, LLP of Boston, who presented the case for the relief requested along with its architect for the Project.

After the Appellant filed the appeal, the Board, in conformity with applicable law, mailed reasonable notice of the public hearing to the Appellant and to the owners of all property deemed by the Board to be affected thereby, as they appeared in the then most recent local tax list. The notice of a public hearing was duly advertised in a daily newspaper published in the City of Boston in accordance with applicable law. The Board held a public hearing on the appeal on July 25, 2023.

**I. Site, Existing Conditions and Context of Area**

As outlined in its presentation, testimony and materials offered at the Board's public hearing, and further detailed herein, the Appellant submits that the Site and its peculiar land conditions are *unique* and appropriate for grant of the relief required for the Project. Furthermore, the Appellant contends that the context of the immediate area includes certain abutting conditions and recent development growth to mitigate potential impacts and justify the grant of its appeal, as the minimum relief necessary to address the hardship imposed by the Site's unique conditions, while also integrating certain mitigating measures into its overall development program thereat.

The combined Project Site is situated within two (2) different Zoning Subdistricts, with most of its land area in the Neighborhood Shopping ("NS") Subdistrict of the Roslindale Neighborhood District and a smaller parcel in its 2F-5000 Subdistrict ("2F-5000"). As such, the



**DECISION OF THE BOARD ON THE APPEAL OF**

361 Belgrade Avenue, Ward 20  
BOA1478134  
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Project at the combined Site is regulated by Article 67 of the Code, which Allows its proposed Multi-Family Residential ("MFR") Use in the NS Subdistrict, where the Project's main building area is situated, but restricts the extension of its underground parking garage as an Accessory Use at the smaller parcel within the 2F-5000 Subdistrict of the combined Site. The Project Site is also located within a GPOD and subject to Article 29 of the Code, thus requiring a Conditional Use Permit from the Board, as well as being subject to Parks Design Review Ordinance 7.4-11.

The Site is rectangular in shape, with an asymmetrical curvature section at its base (along Anawan Avenue). It is bordered by three (3) public streets, at its front and along both sides, and along the MBTA's railroad tracks at its rear. Thus, there are no directly abutting residential structures of private ownership with any shared lot line conditions at the Site. The length of the Project Site fronts along Belgrade Avenue, extending from its lower elevation at Anawan Avenue to the intersection of the West Roxbury Parkway, with the MBTA's railroad tracks running along the entirety of its rear lot line. In addition to its unique topography (approximate grade change of 18-feet), the Site is also burdened by its long-existing industrial uses and structure(s), which includes two (2) non-descript automotive garage buildings, vast unimproved asphalt surface areas, excessive curb cut openings, deficient public sidewalks, and a lack of green open space. The surrounding area includes a mix of residential and commercial uses, with newer multifamily and mixed-use developments along Belgrade Avenue and a variety of existing structures in the immediate vicinity. With its close proximity to the MBTA's Commuter Rail Station, and along its many bus routes, the Appellant submits that the Project will better contribute to the character and needs of the surrounding community, by remediating and replacing its prior industrial uses with improved site conditions, new public realm, pedestrian access, safety and connectivity at a transit-based location, The Appellant also notes that, due to the immediate availability of public transportation, the City's nearby bike share outlet and the



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Project's improved walkability for its immediate area, its reliance on automobile use will be reduced, consistent with modern planning principles and the City's transportation policy.

Due to its unique land conditions and related property constraints at this location, the Appellant contends that that the Project Site is well positioned for its proposed infill improvement and revitalization -- with enhancements to the greenway along West Roxbury Parkway by eliminating the existing paved parking area and infilling with new greenspace and plantings, strengthening connections to the adjacent Bellevue Commuter Rail Station by improving the intersection at the corner of Belgrade Avenue and Anawan Avenue, and improving the pedestrian experience by locating active residential uses including fitness and lobby spaces along the commuter pathway. The Appellant submits that, in response to these circumstances, it has carefully designed and planned the Project with an appropriate building scale for much-needed housing and related improvements.

II. Project Summary

The Appellant seeks to revitalize the Site's oversized, underutilized, and distressed parcel assemblage with a vibrant mixed-use residential development of appropriate scale; improving its public realm with better connectivity to the MBTA's Commuter Rail Station; remediating its long-existing industrial impacts; and, creating much-needed scale of market-rate and income-restricted at an underserved part of the City. Specifically, the Project includes the construction of a mixed-use development with a new, five (5) story building of up to approximately 129,000 square feet of gross floor area with 124 residential units, up to approximately 2,950 square feet of retail commercial space, below-grade garaged parking for up to 83 vehicles, 125 interior bicycle parking spaces, and overall site upgrades, as per plans (again, the "Project"). It will remove a former automotive sales and service use (an existing non-conforming use under the



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Zoning Code), reduce the Site's excessive industrial curb-cut openings and provide much-needed upgrades in on-site open spaces, pedestrian connectivity, and new public realm.

The Appellant submits that the scope and scale of the Project is also intended to help address the unique challenges of Roslindale's housing market, and to advance the policy goals of the City of Boston's 2030 Housing Plan and its recently adopted Affirmatively Furthering Fair Housing initiative, by creating more on-site affordable housing with a greater portion of family-sized units than otherwise required by the City's Inclusionary Development Policy (the "IDP"). In this regard, the Project's new residential program will be made available for both market rate and income-restricted housing, with a greater percentage of on-site affordability for a wider range of earners. Specifically, the Project will create 21 on-site income restricted units for much-needed affordable opportunities in the Roslindale neighborhood which equates to approximately 17% of its total unit count, including: 16 units made affordable to households earning not more than 70% of the Area Median Income ("AMI"); one (1) unit made available to households earning not more than 50% AMI; one (1) unit made available to households earning not more than 60% AMI; one (1) unit made available to households earning not more than 80% AMI; and, two (2) units made available to households earning not more than 100% AMI. These income restricted units will consist of four (4) studio units, eleven (11) one-bedroom units, and six (6) two-bedroom units. These unit selections and percentages were addressed in response to public feedback provided by the BPDA's Impact Advisory Group ("IAG") during its Article 80 Large Project Review ("LPR") process.

In further response to the special land conditions at the Site, Appellant notes that its Project will also transform a currently underutilized and neglected Site into an active, pedestrian friendly and improved environment that better contributes to the residential character and needs of the surrounding community. Its new building has been carefully designed to address and



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respond to the Site's approximate 18 foot change in grade, the fact that the Site is abutted on all sides by public streets and the MBTA railroad tracks, being burdened by the existing non-conforming industrial/commercial structure and use, and limited by a portion of a deed-restricted "no build" area of approximately 1,473 square feet along West Roxbury Parkway; these conditions all uniquely burden the Project Site, but nonetheless, the Project is designed to comport with the character and context of the immediate neighborhood. In this regard, in addition to improving access to housing, the Project's urban design goals include to: enhance the greenway along West Roxbury Parkway by eliminating the existing paved parking area and infilling with new greenspace and plantings; strengthen connections to the adjacent Bellevue Commuter Rail Station by improving the intersection at the corner of Belgrade Avenue and Anawan Avenue; improve the pedestrian experience by locating active residential uses including fitness and lobby spaces along the commuter pathway; strengthen bicycle commuter infrastructure by incorporating dedicated bike lanes along Belgrade Avenue, as well as providing dedicated space for a BlueBikes station; increase pedestrian and vehicular safety by reconfiguring the Belgrade/ Anawan Avenue intersection for slower traffic, higher pedestrian visibility, and accessible crosswalks at multiple locations; respond to neighborhood context along Belgrade Avenue by creating front-facing units with direct access from sidewalk, and include porches, stoops and other exterior spaces that activate the street edge and public realm along Belgrade Avenue; and, upgrade the pedestrian experience along Belgrade Avenue by widening the sidewalk, and providing frontage and greenscape zones in keeping with Boston's Complete Streets Neighborhood Connector guidelines.

As a result of its carefully designed program and resulting mitigation measures, the Appellant further suggests that the Project will not result in any detriment to the surrounding community. Rather, meaningful accommodations have been made to ensure its proper operation at this location, to better activate the Site with much-needed housing and improved neighborhood



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conditions. Residents will access the parking garage at the east end of the site from Anawan Avenue. The frontage along Anawan Avenue, at the building façade will be an attractive entry plaza including greenspace and bicycle parking, with paving similar to the landscape treatment along Belgrade Avenue. Primary pedestrian access will be provided at the southeast corner of the building, with secondary access provided along the north and west sides of the building through landscaped greenspace. Access to the below grade parking garage will be provided at the existing curb-cut located on Anawan Street, while three (3) existing curb cuts along Belgrade Avenue will be closed, thereby improving the pedestrian experience and allowing for additional on-street parking along Belgrade Avenue, as needed. Finally, residential loading activity of move-in/move-out, furniture deliveries, contractor/repair calls, and shorter-term activity such as package delivery will be accommodated within a designated loading zone along the west side of Anawan Street, adjacent to the Project Site.

Finally, the Appellant submits that the Project includes a robust and much improved landscape design approach and character in accordance with its location in the GPOD and adjacent to the West Roxbury Parkway. Fronting on Belgrade Avenue, the building is adjacent to the sidewalk for practically the entire length of the Site's frontage with little opportunity for greenscape relief inside the property line, but with opportunities to comply with the Boston Complete Streets guidelines within the right of way. The Project thus proposes a 15' dimension from the front of curb to face of building and proposes within this space to improve the streetscape along this edge by following Complete Streets guidelines; creating a four (4) foot wide Furnishing Zone which will accommodate decorative paving, street trees planted in open tree pits consistent with Boston Complete Streets, and other furnishings such as bicycle racks and possible street signage. The rhythm of the street tree planting strip is only interrupted by two (2) new street light poles. Street trees will meet City of Boston standards for species selection. Additionally, behind the Furnishing Zone will be an eight (8) foot wide Pedestrian Zone of cast



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in place scored concrete. Between the Pedestrian Zone and the face of the building there will be a three (3) foot wide Frontage Zone. Within the Frontage Zone there will be unit access consisting of stairs and private porches and raised planters along the porches will provide a buffer to those private spaces and unit entries. Lastly, because of the deed-restricted "no build" area of approximately 1,473 square feet along West Roxbury Parkway, this end of the Project Site includes a passive green space in the setback, which will be a combination of on grade plantings and lawn and low berms on top of the proposed underground parking that will buffer the units fronting this space. The Appellant submits that this underground parking was added to the Project at a significant cost in order to provide additional green space adjacent to the West Roxbury Parkway in response to BPDA urban design/planning input (this qualitative improvement also contributed to the requirement for the proposed building design and zoning variances as detailed herein). At the northeastern corner of the building, a portion of the Site extends toward the MBTA tracks. This approximately 120-foot long by 14-foot-wide lot portion is currently paved and will be converted to landscape space and planted with a combination of deciduous and coniferous trees to provide an additional buffer.

**III. Extensive Public Review/Support and Resulting Project Modifications**

As part of the BPDA's Article 80 Large Project Review ("Article 80 LPR") process, and as also presented at the public hearing before the Board, the Appellant submits that the Project underwent extensive City agency review and scoping, public engagement, and detailed input as to its proposed uses, building massing, scale, density, heights, open space, on-site parking, loading and overall site plan component as well as its proximity to the MBTA's Bellevue Commuter Rail Station. This process included extensive community outreach with abutting property owners, nearby residents, local businesses, District City Councilor Arroyo, At Large City Councilors Flaherty and Murphy, community organizations and the neighborhood interest





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group for the area, resulting in significant public support for the Project. In particular, the Appellant presented and discussed its proposal at numerous community meetings with the Greater Belgrade Neighborhood Associations, WalkUP Roslindale, and the BPDA sponsored and held virtual IAG Meeting on September 22, 2022, and a virtual Public Meeting on September 28, 2022. Pursuant to Section 80B-5.3 of the Zoning Code, the BPDA also held a so-called Scoping Session for the Project, on September 13, 2022, with participation and input from City agencies and other interested parties. On October 4, 2022, the Appellant then presented development plans to the Boston Civic Design Commission ("BCDC"), received comments, and met again with BCDC Design Committee on December 12, 2022. The BPDA issued a Request for Supplemental Information ("RSI") on November 3, 2022, and the Appellant responded to the RSI on February 13, 2023. Subsequently, the BPDA held additional IAG and Public Meetings on February 28, 2023, as advertised in local newspapers, posted on BPDA's website, and distributed to its Roslindale email list. The Project then successfully completed the BCDC's review process, on March 7, 2023, and the BPDA Board voted to recommend the approval of the Project under Article 80-B of the Zoning Code, at its public Board meeting on March 16, 2023.

In addition to the above-mentioned meetings, the Appellant notes that it also conducted extensive community outreach and attended a series of meetings before and during the Article 80 review process, with nearby property residents, local elected officials and the BPDA. The Appellant states that the overall process was also shaped by the Appellant's prior proposal to construct a new three (3) to four (4) story charter school at the Site, which included years of prior review and input. During this process, the Appellant submits that it was disclosed to the community that the charter school was a lower proposed height than what a multifamily residential alternative use would require for adequate feasibility (i.e., the Project), with a new neighborhood group formed in opposition to the school and on record as favoring residential instead. The Appellant then notes that it returned to the community, to seek further input and



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feedback on the Project's mixed-use residential program (instead of the school), and worked diligently through the BPDA's Article 80 process to make certain responsive changes and modifications to its Project. This included reducing the Project's overall Gross Floor Area; increasing its percentage of on-site IDP units, from 14.5% of total units to 17% of total units (for a total of 21 on-site IDP units); providing a 20 foot setback from the curb of West Roxbury Parkway, to allow for the creation of a planted side yard with new street trees (with planned MassDOT Parkway improvements); adding ground floor retail space at the corner of Belgrade and Anawan Avenue, to support an active entryway and access point to the Bellevue Commuter Station located directly behind the Site; and, reconfiguring its building massing with a south facing courtyard and improved street connections (collectively, the "Project Modifications").

As a result of the Appellant's community outreach and responsive Project Modifications (above), the Appellant submits that the Project was favorably received by several of the IAG members and supported by WalkUp Roslindale. As part of its public comment period under Article 80 LPR, the BPDA also received significant written support for the Project, from abutting and nearby residents and other interested parties. Based on this strong showing of public support, the BPDA Board then voted to recommend approval of the relief requested for the Project under Article 80 LPR, at its March 16, 2023, meeting date. Thus, the Appellant submits that the BPDA's Article 80 LPR recommendation of approval, coupled with this strong public support, is evidence that the requested relief may be granted without adversely affecting the neighborhood, without substantial detriment to the public good, and without nullifying or substantially derogating from the intent and purpose of the Zoning Code.

**IV. Consistency of Variance Findings**

Again, the Appellant submits that the Site consists of certain *unique* characteristics and conditions which support the grant of the required Variances for the Project. Due to these



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characteristics and conditions, the Appellant contends that it is constrained and deprived from its reasonable use of the land; and application of the subject Zoning Code violations would unnecessarily prohibit the much-needed upgrade and conversion of the Site into a more desirable mixed-use commercial and residential development of appropriate scale, which better conforms with the character and context of the surrounding community. Absent the grant of the relief requested, the Site would remain burdened by its existing non-conforming industrial/commercial structure and vast impermeable parking surfaces, which have long negatively impacted the environment and neighborhood, while failing to contribute to the vibrancy and residential character of the community. Finally, the Project will further the City's planning and housing goals for the Roslindale neighborhood, as the Project's MFR component is an Allowed Use in the NS Subdistrict and is in close proximity to readily available public transportation, and its resulting scale and overall development program is consistent with the Board's required findings for the requested Variances.

In particular, the Appellant notes the following unique land and Site aspects, challenges, and limitations for the grant of requested Variances herein:

- i. *First*, the Site is constrained by a steep grade change of approximately 18 feet, as it generally slopes from a high point along West Roxbury Parkway to a low point near Anawan Avenue which, in part, necessitates and justifies the grant of relief for the Project's Excessive Building Height under the Zoning Code (Stories and Feet). In response to these unique land conditions, the Project's variable building heights and responsive elevation measures are the minimum necessary to address the hardship imposed for a purpose in keeping with the spirit and intent of the Zoning Code. The Appellant also notes that the Project's variable building heights and responsive elevation measures are further enhanced by its design characteristics of certain stepped back areas, upper-level setbacks and amenity spaces along Belgrade and Anawan Avenues, to lessen the Project's potential impacts on the streetscape, as reasonable and necessary for its Building Height and Setback Variances.



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- ii. *Second*, the Site's shape, including its asymmetrical curvature at the base of a rectangular form (along Anawan Avenue), presents certain siting challenges for any feasible development. When combined with its topographical change of grade (approximately 18-feet), it imposes a substantial burden on the Appellant's reasonable use of the land.
- iii. *Third*, the Site's bordering of public streets on its front and both sides, with the MBTA's railroad tracks at the rear, mitigate potential impacts associated with the Project's dimensional and setback deviations from the Zoning Code, and support the grant of the relief as the minimum necessary under the circumstances.
- iv. *Fourth*, the Site has long been used for the existing auto dealership and industrial uses thereat, which requires potential environmental remediation. In response, the Appellant's commitment to pursue certain passive house design standards for the building at the request of BPDA urban design/planning input and the community in the design review process also contributed to the need for current design. The Site's outdated use is also nonconforming and the existing structures on the Site are not readily adaptive for any feasible re-use, as otherwise allowed by the Zoning Code. Allowing a lot of this type and size mere steps from public transportation is suboptimal for a variety of reasons and is not a proper use in conformance with modern day planning standards and prevailing land use patterns in this neighborhood.
- v. *Fifth*, the Site is further limited by a portion of a deed-restricted "no build" area of approximately 1,473 square feet, which land area runs along the West Roxbury Parkway (to its west), and adjacent to the MBTA commuter rail tracks behind the Site (to its north). As a result, this subject land area is unavailable for new development, thereby further limiting available building siting and land area circulation for feasible development.
- vi. *Sixth*, the Site is burdened by four (4) separate and very large curb cuts which provided the previous access needed for an auto dealership/service use, and with a surrounding public realm that fails to conform with the character and pedestrian safety needs of the immediate area and those of a Site closely adjacent to an MBTA Commuter Rail Station. These conditions limit its reasonable re-use for a conforming MFR Use, while constraining available areas for building siting, on-site parking, and open space, as required by the Zoning Code. In this regard, the Project proposes to close three (3) of the four (4) existing curb cuts on the Site, and only utilize the existing curb cut located on Anawan Avenue.



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- vii. *Seventh*, the Site to be combined is located in two (2) different Zoning Subdistricts, with most of its land area situated within the NS Subdistrict (approx. 35,966 square feet of the Site), which Allows the Project's principal MFR Use, and a smaller parcel located within the 2F-5000 Subdistrict (approx. 7,048 square feet of the Site), which does not Allow the Project's Accessory Parking to the MFR Use, although it is only underground parking in the 2F-5000 Subdistrict. As such, of the total combined land area, only approximately 16% is located within the 2F-5000 Subdistrict, with the vast majority situated in the NS Subdistrict. The Appellant again notes that the former automotive sales and service use at the Site is an existing non-conforming use under the Zoning Code in both the NS and the 2F-5000 Subdistricts.

Due to these unique land conditions and related property constraints at this location, the Appellant submits that the Site is appropriate for the Project's proposed infill improvement and revitalization -- with 400+ linear feet of Boston Complete Streets implementation, 7,000+ total square feet of increased green space along West Roxbury Parkway, up to approximately 2,950 square feet of commercial space for a local business, traffic calming reconfiguration of nearby intersection for vehicular and pedestrian safety, restriping of portions of Belgrade Avenue, coordination with West Roxbury Parkway and Bridge improvement project, and contributions to local MBTA Bus Station infrastructure. In response to these circumstances, the Project has been carefully designed and planned with an appropriate building scale of much-needed housing, on-site amenities, robust open space, and landscaping. Taken together, the Appellant contends that the unique characteristics and special circumstances at the Site present a substantial hardship and support the grant of the requested Variances, as the minimum relief necessary for the desired upgrade and remediation of the Site as a contributing multifamily residential development of much-needed residential units in the Roslindale neighborhood, with robust open space, new public realm, transportation infrastructure and pedestrian safety improvements. Consistent with the required Variance findings, and as detailed herein above, the Appellant contends that these unique conditions and special circumstances result in a demonstrable and substantial hardship,



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necessitating the relief requested herein. Appellant submits that it has appropriately responded to the same by integrating certain building section setbacks, height, massing, density, and overall design measures into its Project. As a result, it submits that the relief requested is the minimum necessary to address and alleviate the hardship imposed by the unique land conditions of the Project Site; to allow for the Appellant's reasonable use of the Site, as contemplated by its Project.

The Appellant further contends that the Board's grant of the relief requested is consistent with the purpose and intent of the Zoning Code and not injurious to the neighborhood or detrimental to the public welfare, as its Project has been thoroughly reviewed via the BPDA's Article 80 LPR process, including its detailed City agency scoping, planning and public review component. As a result of this extensive regulatory process, the Project was shaped and modified to mitigate potential impacts, with a multi-family use and overall development scale that better conforms with and contributes to the character and needs of the community. The Appellant also notes that the BPDA's recommendation of approval under Article 80 LPR includes certain terms, conditions, measures, and public benefit agreements with the Agency, in order to ensure that the Project is designed, built, and operated in accordance with the public input and support received, and consistent with the required findings for the grant of the requested Variances. The Appellant contends that its Project's new Allowed MFR Use for the Site is also consistent with and complementary to the City's planning and public policy goals for the expansion of housing production, as detailed by its updated 2030 Housing Plan ("2030 Plan"). Specifically, as a result of record population numbers, income diversity and changing demographics throughout the City, the 2030 Plan has specifically identified a drastic need for the creation of significantly more units of housing (by the year 2030). In this regard, the Appellant notes that its housing program will help to meet this demand by providing new market rate and affordable rental housing options, with a greater percentage of on-site affordability for a wider range of income earners than



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required by the City's IDP. As result, the Project will not adversely affect the neighborhood but, rather, revitalize and replace an oversized and vastly underutilized Site, with market rate and income restricted housing for much needed residential options in the Rosiindale neighborhood.

V. **The GPOD Conditional Use Permit**

As part of the BPDA Article 80 LPR process, and further subject to required design review by the City of Boston's Parks and Recreation Commission, the Project has been specifically designed to address and comply with the applicable GPOD standards of the Zoning Code. In this regard, the Appellant submits that it has paid particular attention to vehicular and pedestrian access, on-site parking and potential traffic impacts at the Site; has committed to appropriate landscape and Site improvements and buffers, mitigation measures and community benefit provisions for landscaping treatment that ensures the natural and aesthetic quality of the West Roxbury Parkway will be maintained; and, as detailed above, the overall scope and design of the Project is compatible with that of the surrounding neighborhood for which the GPOD is applicable, as well as recently approved multi-family development projects in the immediate vicinity. Specifically, the Project will also improve the existing streetscape by providing an active new use along the highly visible Belgrade Avenue and at the corner of West Roxbury Parkway, by replacing an underutilized and existing non-conforming industrial/commercial structure and use with no substantial landscaping or buffering and which is mostly surrounded by asphalt surface parking spaces, with a new and architecturally pleasing building with interior garage spaces, which is appropriately setback from West Roxbury Parkway. This comprises approximately 7,000+ total square feet of increased green space along West Roxbury Parkway including utilization of the Site's deed-restricted "no build" area of approximately 1,473 square feet along West Roxbury Parkway.



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In further support of the required GPOD Conditional Use permit, the Appellant also notes that the Project was subject to initial design review and recommended approval by the BPDA, as part of its Article 80 LPR process, resulting in detailed open space, landscape, site and building design measures and modifications to comport with the policy objective and findings of the GPOD. As part of this process, and in accordance with the BPDA Board Approval dated March 16, 2023, the Appellant also agreed to implement the above-detailed project mitigation and community benefits to help mitigate potential impacts and improve pedestrian connectivity and transit access at this section of Roslindale. Finally, the Appellant notes that the Project is also subject to the BPDA's further and final design review approval prior to its ultimate permitting and construction. Thus, the Appellant submits that the Project is reasonable and appropriate for the issuance of a GPOD Conditional Use Permit.

**VI. Resulting Community Support and Zoning Code Findings**

As part of the BPDA's Article 80 LPR process, the Appellant again notes that the Project is the result of extensive community outreach and public review, with resulting Project Modifications and a strong showing of support from area and nearby residents, WalkUP Roslindale, District City Councilor Arroyo, At Large City Councilors Murphy and Flaherty, and several of the BPDA's IAG members. Support for the Project was also received during the BPDA's Article 80 LPR process and provided to the Board in advance of its public hearing on the appeal. At the public hearing itself, the Board then received testimonial support from District City Councilor Arroyo and At Large City Councilors Murphy and Flaherty, a representative from WalkUP Roslindale and Roslindale residents Evan Zinner (at 396 Beach Street) and Matt Lawlor, also an IAG member (at 15 Besto Terrace). Although deferring to the judgment of the Board, the Mayor's Office of Neighborhood Services noted that it had received some neighborhood opposition to the Project, while acknowledging the Appellant's extensive public





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outreach and support. Testimony in support was also provided by the BPDA's project manager, Mr. Quinn Valcich, who detailed the Appellant's robust community engagement and resulting Project Modifications for the BPDA's Article 80 LPR process. Finally, while the Board notes that it did receive certain public testimony and written opposition from area residents regarding the Project's size, density, parking, and perceived traffic issues, it ultimately found these concerns were outweighed by the Project's strong showing of public support and merits of the appeal herein. For these reasons, the requested relief may be granted in harmony with the general purpose and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

As a result, the Board of Appeal finds that all of the following conditions are met:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the Variances are sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that application of the provisions of this Code would deprive Appellant of the reasonable use of such land or structure; and
- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the Variances is necessary for the reasonable use of the land or structure and that the Variances as granted by the Board are the minimum variances that will accomplish this purpose; and
- (c) That the granting of the Variances will be in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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



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

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

In addition, the Board of Appeal makes the following Conditional Use Permit findings:

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

The Board is of the opinion that all conditions required for the granting of the Conditional Use Permits under Article 29, Section 6 and Article 6, Section 6-3 of the Zoning Code and for the granting of the Variances under Article 7, Section 7-3 of the Zoning Code have been met, and that the varying of the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code.

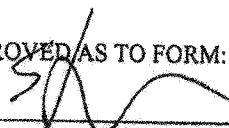


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Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) unanimously voted to grant the requested Variances, GPOD, and Conditional Use Permits as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following provisos, which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:

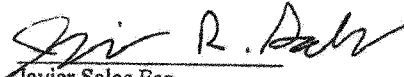
  
Assistant Corporation Counsel

PROVISO:

1) BPDA Design Review

Signed: September 05, 2023

With my signature, I certify that the signatories of this decision have given their express permission for electronic signature:

  
Javier Salas Esq.  
Executive Secretary  
Board of Appeal

/s/ Sherry Dong  
Sherry Dong – Chair (Voted In Favor)  
/s/ Norm Stenbridge  
Norm Stenbridge - Secretary (Voted in Favor)  
/s/ Giovanni Valencia  
Giovanni Valencia (Voted In Favor)  
/s/ Raheem Shepard  
Raheem Shepard (Voted In Favor)  
/s/ Jeanne Pinado  
Jeanne Pinado (Voted In Favor)  
/s/ Hansy Better Barraza  
Hansy Better Barraza (Voted In Favor)  
/s/ David Collins  
David Collins (Voted In Favor)