

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, S.S.

**SUFFOLK SUPERIOR COURT
NO.**

**PAUL J. ADAMS, AS TRUSTEE
FOR ADAMS-LOTHROP
TRUST ET AL**

Plaintiffs

v.

**CITY OF BOSTON
BOARD OF APPEAL ET AL**

Defendants

COMPLAINT

NOW COME Plaintiffs and through their counsel bring this complaint for an appeal of a zoning decision from the City of Boston Board of Appeal.

Parties

Plaintiffs

1. Plaintiff Paul J. Adams is a Massachusetts resident and the trustee of the Adams-Lothrop Trust, which owns 9-11 Lothrop Street, Boston, Massachusetts.
2. Plaintiff Paul J. Adams is a Massachusetts resident and trustee of the Adams-Lothrop II Trust and the owner of 7-7A Lothrop Street, Boston, Massachusetts.

Defendants

3. Defendant City of Boston Board of Appeal is a municipal agency located at 1010 Massachusetts Avenue, Boston, MA 02118.
4. Defendants Sherry Dong, Norm Stembridge, Giovanni Valencia, Raheem

Shepard, Hansy Better Barraza, Katie Whewell, and Alan Langham are all members of the City of Boston Board of Appeal, located at 1010 Massachusetts Avenue, Boston, MA 02118.

5. Danny Moll, upon information and belief, is a Massachusetts resident who resides at 11 Isabella Street, Unit 4, Boston, MA 02116.

Statement of Facts

6. This lawsuit is an appeal of a decision from the City of Boston Board of Appeal, concerning a proposal to develop 46-48 Leo M Birmingham Parkway, Brighton, Massachusetts. This property was presently used as a Massachusetts State police barracks.

7. This proposed development seeks to construct a new six-story building with multi-family residential apartments.

8. The City of Boston Inspectional Services Department issued a zoning code refusal for this development on the following grounds:

- a. Use: Conditional (Article 51, Section 8)
- b. Floor Area Ratio Excessive (Article 51, Section 9)
- c. Building Height Excessive (Stories) (Article 51, Section 9)
- d. Building Height Excessive (Feet) (Article 51, Section 9)
- e. Off-Street Parking and Loading Requirements (Article 51, Section 56)

9. The developer applied for variances and a conditional use permit from the Board of Appeal.

10. The Board held hearings on this matter on March 28, 2023 and June 6, 2023.

In a written decision, entered with the Inspectional Services Department on August 4, 2023, the Board approved these requested variances and conditional use permits. (Exhibit A).

CAUSES OF ACTION

Count I – Annulment of Variances

11. Plaintiffs restate and reaffirm all prior allegations.

12. Plaintiffs are direct abutters to 46-48 Leo M Birmingham Parkway, Brighton, Massachusetts and are aggrieved by the Board's decision. The proposed development would, *inter alia*, interfere with Plaintiffs' privacy, increase density in the neighborhood, reduce air, reduce lighting and increase shadows on Plaintiffs' properties, decrease Plaintiffs' properties value, and decrease on-street parking.

13. The Board's decision failed to identify any particular circumstances or conditions about 46-48 Leo M Birmingham Parkway, Brighton, Massachusetts which are peculiar to this property and not the neighborhood as a whole.

14. The Board's decision further failed to identify any hardship that the applicant would suffer if the Board of Appeal failed to grant this hardship.

15. The Board failed to make any specific findings on the Board's reasoning for granting these variances.

16. The Board's decision to grant these variances was unreasonable, legally untenable, whimsical, capricious and arbitrary and should be annulled.

Count II – Annulment of Conditional Use Permit

17. Plaintiffs restate and reaffirm all prior allegations.

18. Plaintiffs are direct abutters to 46-48 Leo M Birmingham Parkway, Brighton, Massachusetts and are aggrieved by the Board's decision. The proposed development would, *inter alia*, interfere with Plaintiffs' privacy, increase density in the neighborhood, reduce air, reduce lighting and increase shadows on Plaintiffs' properties, decrease Plaintiffs' properties value, and decrease on-street parking.

19. The Board failed to make detailed and specific findings required for these conditional use permits.

20. The Board's decision to grant the conditional use permits unreasonable, legally untenable, whimsical, capricious and arbitrary and should be annulled.

CONCLUSION

WHEREFORE Plaintiffs respectfully request that the Court do the following:

- A. Determine that the Board of Appeal exceeded its authority in issuing the variances;
- B. Determine that the Board of Appeal exceeded its authority in issuing the conditional use permit;
- C. Enter such other relief as may be just and appropriate.

Respectfully Submitted,

Plaintiffs

By their attorney,

/s/ Adam Sherwin

Adam T. Sherwin, Esq. (BBO# 680751)

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Dated: August 18, 2023

Exhibit A



City of Boston
Board of Appeal

NOTICE OF DECISION
CASE NO. BOA 1432486
PERMIT # ERT1406471
APPEAL SUSTAINED
WITH PROVISOS

In reference to the appeal of

Danny Moll

Concerning the premises located at

46 - 48 Leo M Birmingham Parkway, Ward 22

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 August 4, 2023.

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



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

June 06, 2023
DATE

Danny Moll

to provide relief from the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,
at premises: **46 - 48 Leo M Birmingham Parkway, Ward - 22**

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

<u>Violation</u>	<u>Violation Description</u>
Article 51, Section 8	Use: Conditional
Article 51, Section 9	Floor Area Ratio Excessive
Article 51, Section 9	Bldg Height Excessive (Stories)
Article 51, Section 9	Bldg Height Excessive (Feet)
Article 51, Section 56.	Off-Street Parking & Loading Req

Purpose: Demo of existing building. New construction of a residential use building with thirty eight (38) dwelling units and thirteen (13) parking spaces at grade.

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-**1432486** 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, March 07, 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, March 28, 2023 and discussed again on Tuesday, June 06, 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# **ERT-1406471** and October 21, 2022 plans submitted to the Board at its hearing and now on file in the Building Department.



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

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This appeal seeks to erect a new 38-unit residential dwelling with 13 off-street parking spaces. 18% of the units will be restricted for affordable housing. This project will be fully solar powered, and include green space as well as green roofs. This proposal will renovate the streetscape to improve the pedestrian experience. This development is also incorporating a car sharing system and has the ability to include stackers in the garage to offset any parking concerns.

The appeal is necessary as the proposed project requires relief from the terms of the Boston Zoning Code (Code). The specific relief required in furtherance of the proposed project is as follows:

Article 51, Section 9	Floor Area Ratio is Excessive
Article 51, Section 9	Building Height Excessive (Stories)
Article 51, Section 9	Building Height Excessive (feet)
Article 51, Section 56	Off Street Parking & Loading
Article 51, Section 8	Use Conditional

The proposed project will allow the Appellant to have reasonable use of the premises by erecting a 38-unit mixed bedroom count residential dwelling with 13 off-street parking spaces. 18% of the units will be restricted for affordable housing. This project will be fully solar powered, and include green space as well as green roofs. This proposal will renovate the streetscape to improve the pedestrian experience. This development is also incorporating a car sharing system and has the ability to include stackers in the garage to offset any parking concerns. The project is located within a community commercial subdistrict of the Allston/Brighton neighborhood, which makes this project an appropriate use of the lot that will not adversely affect the community or create any detriment for abutting residents. 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.

After the Petitioner filed the appeal, the Board, in conformity with applicable law, mailed reasonable notice of the public hearing to the Petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared 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 June 6, 2023.



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At the hearing, a representative from the Mayor's Office of Neighborhood Services spoke on the community process and deferred judgement to the Board. The Allston Civic Association deferred to the Board as well. A representative from the Brighton Allston Improvement Association and multiple abutters testified in opposition to the project. Additionally, there are 71 letters of support on file with the Board. After consideration, the Board finds that the requested relief will have no negative impact on the surrounding area and is in harmony with the general purpose and intent of the Code.

The Board of Appeal makes the following findings:

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

The Board 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 variance is sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this Code would deprive the appellant of the reasonable use of such land or structure; and
- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the



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Board of Appeal

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reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; and

- (c) That the granting of the variance will be in harmony with the general 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.

The Board is of the opinion that all conditions required for the granting of a Conditional Use Permit under Article 6, Section 6-3 and a Variance 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) voted to grant the requested Conditional Use Permit and Variance as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following proviso(s), which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:



Assistant Corporation Counsel

PROVISO(S):

- 1) BPDA design review

Signed: August 1, 2023

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


Javier R. Salas Esq.
Executive Secretary
Board of Appeal

/s/ Sherry Dong
Sherry Dong – Chair (Voted In Favor)
/s/ Norm Stembridge
Norm Stembridge – Secretary (Voted In Favor)
/s/ Giovanny Valencia
Giovanny Valencia (Voted In Favor)
/s/ Raheem Shepard
Raheem Shepard (Voted In Favor)
/s/ Hansy Better Barraza
Hansy Better Barraza (Voted In Favor)
/s/Katie Whewell
Katie Whewell (Voted In Favor)
/s/ Alan Langham
Alan Langham (Voted In Favor)