

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION NO.

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VINCENT BERTRAND, )  
DEBRA BERTRAND, )  
EDWARD ZARROW, )  
And CAREY BERTRAND, )  
)   
Plaintiffs, )  
)   
v. )  
)   
)   
CITY OF BOSTON BOARD OF APPEAL, )  
CHRISTINE ARAUJO, MARK FORTUNE, )  
MARK ERLICH, JOSEPH RUGGIERO, )  
KOSTA LIGRIS, ERIC ROBINSON, )  
SHERRY DONG, as Members of the )  
City of Boston Board of Appeal, )  
COLLEEN MONZON )  
aka COLLEEN BLACK, and )  
RENZO MONZON, Individually, )  
)   
Defendants, )  
)   


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**9/3/2021**

**COMPLAINT**

(Appeal from a Decision of the City of Boston Board of Appeal filed August 25, 2021)

**INTRODUCTION**

This complaint seeks judicial review, pursuant to Section 11 of Chapter 665 of the Acts of 1956 (“the Enabling Act”) of a decision of the City of Boston Board of Appeal (hereinafter referred to as “Board”), issued on August 25, 2021 (“the Decision”). The Decision improperly orders the Building Commissioner to grant a permit allowing the Defendants, Colleen Monzon aka Colleen Black and Renzo Monzon (hereinafter “Defendants”), to undertake the following renovations and additions to 175 Maple Street, West Roxbury, Massachusetts as stated by Defendants:

- 1)perform exterior and interior renovations to the existing first story, including a covered front porch and uncovered side/rear porch;
- 2)remove existing attic to replace with a second story of habitable living space and a new attic for storage;
- 3)remove all pre-existing, non-permitted work that resulted in habitable living space in basement (hereinafter referred to as “Project”), BOA 921789, ALT913323.

The Decision violates the Boston Zoning Code, as

- (i) the variances granted do not meet the requirements set forth by the Boston Zoning Code;
- (ii) the Decision fails to address all relevant violations of the Boston Zoning Code;
- (iii) the Decision violated the Code’s explicit purpose to provide adequate density control and to prevent overcrowding of land; and
- (iv) the Decision violates the Code’s explicit purpose by eliminating or very substantially reducing the amount of privacy, view, sunlight, and air entering into Plaintiffs’ home.

### **PARTIES**

1. Plaintiffs, Vincent Bertrand, Debra Bertrand, Edward Zarrow and Carey Bertrand, own and reside at 171 Maple Street, West Roxbury, MA 02132 which abuts the property at issue and will be directly affected by the Project.

2. Defendant, City of Boston Board of Appeal (“Board”) is a duly constituted municipal body with a usual place of business at 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118. The Board rendered the Decision.

3. The names and addresses of the defendant members of the Board who are named in their capacity as chairpersons and/or members of the Board are:

Christine Araujo, Chairperson and member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Mark Fortune, Secretary and member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Mark Erlich, member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Joseph Ruggiero, member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Kosta Ligris, member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Eric Robinson, member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118;

Sherry Dong, member, 1010 Massachusetts Avenue, 5<sup>th</sup> Floor, Boston, MA 02118.

4. Defendants, Colleen Monzon aka Colleen Black and Renzo Monzon (“Defendants” or “Monzons”) are the owners of and reside at 175 Maple Street, West Roxbury, MA 02132 (“175 Maple”).

### **JURISDICTION and STANDING**

5. This Court has jurisdiction over this zoning appeal pursuant to Section 11 of the Boston Zoning Enabling Act, Chapter 665 of the Acts of 1956, as amended.

6. The Plaintiffs are direct abutters to 175 Maple Street and will be directly and negatively impacted by the Project, and by the Decision and the Variances that purportedly authorize the Project.

7. Among other things, the Project and the Decision and Variances that purportedly authorize the Project will have a significant and adverse impact on the Plaintiffs’ property by eliminating or substantially decreasing air, views, and light, decreasing privacy, increasing pollution within close proximity of Plaintiffs’ home, increasing density, reducing open space and harming the value of Plaintiffs’ property.

8. The Plaintiffs are persons aggrieved by the Decision, the Variances and the Project and thus, have standing to bring and maintain this action.

### **FACTS**

#### **The Plaintiffs’ Home**

9. The Plaintiffs have owned and resided at 171 Maple Street, West Roxbury (“171 Maple”) since 2002.

10. 171 Maple Street is a two-family residence.

11. The Plaintiffs' residence shares a property line with and directly abuts 175 Maple Street.
12. The Plaintiffs are direct abutters.
13. 171 Maple Street sits less than 5 feet from the side property line with 175 Maple Street and the distance between 171 Maple and 175 Maple is approximately 15 feet.

**Plaintiffs', Vincent and Debra's, Apartment**

14. The Plaintiffs, Vincent and Debra Bertrand, reside in the first-floor apartment of the two-family residence.
15. Vincent is employed and has worked full time from his residence since 2018.
16. Vincent works exclusively from one of the bedrooms on the first floor.
17. The only source of natural light into Vincent's workspace is from two windows in the bedroom which face 175 Maple.
18. Vincent and Debra, have one other bedroom which has a window facing 175 Maple.
19. Vincent and Debra have one bathroom. The only source of natural light into the bathroom is from a single window that faces 175 Maple.

**Plaintiffs', Edward and Carey's, Apartment**

20. The Plaintiffs, Edward Zarrow and Carey Bertrand, reside in the apartment on the second and third floor of 171 Maple Street with their two minor, school-aged, children.
21. The Plaintiffs, Edward and Carey, have two bedrooms on the second floor. The minor children reside in these bedrooms and have windows facing 175 Maple.
22. The only source of natural light into one of these bedrooms is from two windows which directly face 175 Maple.
23. The other second floor bedroom has one window directly facing 175 Maple.
24. The two bathrooms in Edward and Carey's apartment have windows that face 175 Maple and those windows are the only source of natural light into the bathrooms.

25. The rear egress of Edward and Carey's apartment is the direct egress into their apartment. This egress is approximately 15 feet from the residence of Defendants.

### **The Project Site and the Project**

26. The Defendants own the property at 175 Maple Street ("the Lot"). The property is located in the West Roxbury Residential Subdistrict, and is governed by Article 56 of the Boston Zoning Code.

27. On August 26, 2020, the Defendants filed an appeal of a Zoning Code Refusal Letter issued by the Inspectional Services Department ("ISD") seeking to renovate and add on to their existing home which was originally constructed in 1961. The Zoning Code Refusal Letter, dated February 1, 2019, stated two violations of Article 56, Section 8: Floor area ratio is excessive and Front yard set back is insufficient. The Board's decision, granting zoning relief, was filed with the City of Boston Inspectional Services on August 25, 2021. (A true and accurate copy of that decision granting the variances is attached hereto as Exhibit "A".)

28. On the City of Boston Assessor's Website, 175 Maple is listed as a three-bedroom, two bathroom home with living area square footage of 1,080.

29. According to the Defendants, the total lot area of the property is 4,445 sq. ft and the habitable living space is 1,056.

30. The Lot is located in the 1F-6000 Subdistrict of the West Roxbury Neighborhood Zoning District.

31. Under Table D of the Article 56 of the Boston Zoning Code, the Lot is non-conforming due to its size being less than the minimum 6,000 square feet required.

32. The Floor Area Ratio ("FAR") in the 1F-6000 Subdistrict of the West Roxbury Neighborhood Zoning District is .4.

33. Under Table D of Article 56 of the Boston Zoning Code, The Lot is also non-conforming due to insufficient front yard, insufficient rear yard, insufficient lot width and insufficient lot frontage.

34. 175 Maple shares a side property line with 171 Maple.

35. The houses at 175 and 171 Maple are approximately 15 feet apart.

36. The Defendants propose adding to and reconstructing their residence, which would result in a residence with 2,112 square feet of living space located on a 4,445 square foot lot (“the Project”). The house would have an “attic” that is heated and cooled, has seven total windows and a dormer. The “attic” would be accessible via a full-sized staircase. The so-called attic space is not included in the 2,112 square feet of floor area. This space constitutes approximately 315 square feet under a flat ceiling with a ceiling height of approximately 7 feet.

37. According to the Defendants’ Plans dated July 15, 2020, the Project would be 27 ½ foot high using a measurement to the top of the dormer plate, not the roof peak (approximately 33 feet high).

38. According to the Defendants, the Project would include the addition of a gas fireplace which would result in a two foot bump out of the wall in the living room on the side of the Project that shares a property line with 171 Maple Street. The exhaust from the gas fireplace would vent directly towards the back door egress of Plaintiffs, Edward and Carey’s, apartment. The exhaust would be venting carbon monoxide. The residences are only 15 feet apart.

39. Upon information and belief, the Lot was originally an ancillary lot located between 171 and 177 Maple and the owners of 171 and 177 Maple exchanged the parcel in 1961 to develop the lot so that a home could be built for an elderly resident in 1961. The Lot was developed originally as 171A Maple Street.

40. In 1961, ISD approved permits for building on the Lot (now the Defendants’ residence at 175 Maple Street) that indicated the residence would be built 15 feet away from the property line with 171 Maple Street.

41. The Defendants’ plot plans submitted to the Board indicate that 175 Maple is 11 feet away from the property line with 171 Maple. Thus, 175 Maple was not built according to the permits ISD approved in 1961 as it was built 4 feet closer to the property line with 171 Maple than permitted.

42. The Defendants’ currently have a fully finished basement which contains a bedroom and bathroom (this work, done by a prior owner, was never permitted by the City). There are four full windows and an egress which is a full-sized door, not a hatch.

43. The current living space in the basement (approximately 500 sq. ft.) is not reflected on the City Assessor's Website nor was it contained in the Defendants' representations of the living space square footage of their home to the Board or in the Decision.

44. When Defendants' purchased the home in 2011, it had been marketed as a residence with 1,500 sq. ft. of living space, including a full finished basement. The basement was marketed as a potential teen or in-law suite.

45. The Defendants' have a bump out foundation which expands the footprint of the residence and is not reflected in the plot plan submitted to ISD. The bump out foundation is approximately 4 feet wide and 24 feet long.

46. The bump out foundation decreases the open space of the Lot and affects the rear yard set-back.

47. The Defendants' driveway encroaches onto the property at 177 Maple Street and said encroachment was not reflected in the plot plans submitted to ISD or the Board.

### **Procedural History**

48. On or about August 26, 2020<sup>1</sup>, the Defendants, through counsel, submitted a modified set of plans to the Board which appealed the ISD's refusal from 2019 ("2020 Plans"). The Defendants made minor modifications to plans previously submitted to ISD in 2019. The 2020 Plans submitted to ISD were dated July 15, 2020. The 2020 Plans changed the purpose of the proposal to reflect the scope of work.

49. ISD issued a Zoning Code Refusal letter after submission of the 2020 Plans, showing the Defendants had changed the purpose of the proposal and scope of work, and citing two violations of the Boston Zoning Code. The violations listed were Article 56, Sec. 8 floor area ratio excessive and Art. 56, Sec. 8, front yard setback insufficient. ISD did not change the date of the letter, February 1, 2019.

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<sup>1</sup> The Defendants submitted plans in 2019 ("2019 Plans") and were issued a Zoning Code Refusal Letter from ISD on February 1, 2019 for the same violations. Defendants started the appeals process in 2019, the details of which are listed in Additional Procedural History.

50. At the abutters' meeting on March 4, 2021, Jack Duggan, West Roxbury Liaison in the Mayor's Office of Neighborhood Services ("ONS") informed Plaintiffs that an abutters' meeting was not required and that the Proposal was already scheduled to go before the West Roxbury Neighborhood Council ("WRNC").

51. On March 23, 2021, the WRNC voted 5-2 to approve the project despite the opposition from the Plaintiffs, other direct abutters and other abutters who received notice of the meeting and submitted opposition letters to the WRNC.

### **Additional Procedural History**

52. On February 14, 2019, the Defendants provided Plaintiffs with Notice of a Meeting of the West Roxbury Neighborhood Council ("WRNC") regarding the Project scheduled for February 19, 2019.

53. February 18, 2019 was a Federal and City Holiday.

54. No abutters meeting was held prior to the WRNC meeting.

55. The Defendants did not provide Plaintiffs with any plans or information regarding the Project prior to the WRNC meeting on February 19, 2019.

56. The Defendants never spoke with the Plaintiffs directly about the proposed Project and their need for zoning relief.

57. Plaintiffs obtained the proposed plans ("2019 Plans") from Jack Duggan at ONS.

58. The 2019 Plans contained plumbing stacks for a future bathroom on the third floor of the proposed Project (which was listed as an "attic" floor).

59. The WRNC meeting was held on February 19, 2019 at the E-5 Boston Police Station in West Roxbury. One of the Defendants, Renzo Monzon, is an employee of the City of Boston Police Department.

60. The Defendants were represented by an attorney at the WRNC meeting.

61. Plaintiffs attended the meeting and voiced their opposition to the Project.

62. The WRNC declined to vote on the Project as no abutters meeting had been held previously.



63. No changes were made to the plans of the Project after the WRNC meeting on February 19, 2019.

64. The Defendants notified Plaintiffs of an abutters meeting on March 6, 2019.

65. An abutters meeting was held on March 6, 2019, and despite the opposition of neighbors and questions being raised during the WRNC meeting, the Defendants did not bring an architect to the meeting, they did not consider making any changes, nor did they attempt to address any of the concerns raised at the WRNC meeting during the abutters meeting.

66. The Defendants were represented by a different attorney at the meeting on March 6, 2019.

67. After the abutters meeting on March 6, 2019, the Defendants did not reach out to the Plaintiffs in any way to discuss the proposed Project.

#### **VIRTUAL HEARING**

68. On May 4, 2021, a hearing was held before the Board via the WebEx platform.

69. Seven members of the Board were virtually present: Christine Araujo, Chair, Mark Fortune, Secretary, Mark Erlich, Joseph Ruggiero, Eric Robinson, Kosta Ligris and Sherry Dong.

70. A recording of the Virtual Hearing is available at:  
[https://www.cityofboston.gov/cable/video\\_library.asp?id=35780](https://www.cityofboston.gov/cable/video_library.asp?id=35780).

71. The Virtual Hearing did not comply with the Open Meeting Law and did not provide adequate, alternative means for participation.

72. During the Virtual Hearing, the Board did not request and the Proponent did not present, any evidence as to the whether the Proposed Project met any of the requirements for a variance under Section 7-3 of the Boston Zoning Code.

73. The Mayor's Office through the Office of Neighborhood Services opposed the Project.

74. City of Boston Council President Matt O'Malley's office spoke in opposition to the Project.

75. City of Boston Councilor Michelle Wu's office spoke in opposition to the Project.

76. Several abutters who received a Notice of Hearing from the Board submitted letters in Opposition to the Project.

77. The Board noted and quantified letters of support they had received for the Project but did not specify whether said letters were from abutters or neighbors who had received notice of the hearing. Upon information and belief, only one letter of support received by the Board was from an abutter who had received notice of the Project.

78. Plaintiffs, Edward Zarrow and Carey Bertrand, spoke in opposition as well, noting well founded concerns regarding light, privacy, air, quality of life, density, and view, such concerns being unique to Plaintiffs, Edward and Carey.

79. Plaintiffs, Vincent and Debra Bertrand, were not permitted to speak by the Board because they had the same last name as Plaintiff, Carey, despite living in a different apartment on a different floor and being direct abutters.

80. Plaintiffs submitted written opposition to the Project but the Board did not acknowledge receipt of said written materials, nor did the Board deliberate on any of the issues raised by Plaintiffs regarding the need for protection from excessive density and its effects including but not limited to overcrowding, reduced and eliminated light and air, intrusions on privacy, increased noise and pollution, and diminished property value.

81. Upon information and belief, other abutters who received notice of the Board meeting from the Board were not permitted to speak.

82. The Board instructed the ISD administrator to only unmute a meeting participant if they lived on Maple Street, preventing abutters who lived on other streets who received notice of the meeting from the Board from speaking.

83. The Lot abuts two properties which are on Westover Street. Residents of Westover Street received the Notice of Hearing from the Board.

84. No one from Westover Street was permitted to speak during the Hearing.

85. The Board's hearing severely curtailed direct abutters' and abutters' ability to speak in opposition of the Project.

86. Only one abutter who had received notice from the Board spoke in support of the Project.

87. At each stage of the Board's proceeding, the Board failed to carry out its legal obligations pursuant to the Enabling Act, Boston Zoning Code, Massachusetts Open Meeting Law and fundamental due process requirements.

88. Section 7-3 of the Boston Zoning Code states: "The Board of Appeal shall grant a variance only if it finds that all of the following conditions are met:

(a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;

(b) That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;

(c) That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

(d) That, if the variance is for a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Extraction Requirements set forth in Section 80B-7.3, except if such variance is for a deviation from said requirements.

In determining its findings, the Board of Appeal shall take 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."

89. The Board's hearing was procedurally and substantively deficient.

90. During the hearing, no specific facts were presented to the Board as to the existence of a substantial hardship to the appellant "owing to the conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located", as required by section 9 of the Enabling Act.

91. No relevant facts were presented to the Board, as required by Article 7 of the Code, that there were “special circumstances or conditions....applying to the land or structure...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 Zoning Code] would deprive the appellant of the reasonable use of such land or structure.”

92. During the Virtual Hearing, the Board failed to request or receive relevant evidence regarding why the variances sought for excessive floor area ratio and insufficient front yard setback, Article 56, Section 8, were not the minimum required.

93. During the Virtual Hearing, the Chairperson of the Board revealed that the Board took an *ex-parte* view of the Project Site at an unknown time, with unknown participants and discussions, without notice or Plaintiffs’ prior knowledge or participation.

94. During the Virtual Hearing, the Board failed to consider the existing conditions at the Property, including but not limited to existing, untaxed and non-permitted living space in the basement, conflicting living space measurements, a bump out foundation which affects the footprint of the residence, open space and rear yard set-back, and a driveway that encroaches on an abutting property. Additionally, the Board failed to consider the existing non-conformities of the Lot which include rear yard minimum depth, insufficient front yard, insufficient rear yard, insufficient lot width, and insufficient lot frontage pursuant to Article 56, Table D of the Boston Zoning Code.

95. At the conclusion of the Virtual Hearing, the Board failed to properly make the requisite findings of fact, pursuant to Section 7-3 of the Boston Zoning Code, prior to the Board Chairperson requesting a motion to approve with Boston Planning and Development Agency (“BPDA”) design review and a motion was made “to approve with BPDA design review and no living space in the attic.”

96. The Board did not deliberate in regards to the motion to approve.

97. Six members of the Board voted in favor of the motion with one member opposing the motion.

### The Board's Decision

98. On August 25, 2021, the Board's Decision was filed with the Inspectional Services Department.<sup>2</sup> **Exhibit A.**

99. The second page of the Decision notes that the Board considered plans dated January 8, 2019. However, the 2019 Plans were not presented by Defendants to the Board. The 2020 Plans were the plans submitted to the Board and considered by the Board in rendering their Decision.

100. The text of the final page of the Decision states that the Board voted unanimously to grant the requested variance. However, the electronic signatures of the Board indicate that one Board member, Kosta Ligris, voted in Opposition.<sup>3</sup> Therefore, the vote was not unanimous.

101. The Board never publicly deliberated or voted on any of the material findings expressed in the Decision.

102. Upon information and belief, the counsel for the Defendants drafted the Decision for the Board using a generic template provided by the Board.

103. The Board's *ex-parte* view of the Project Site violated the Plaintiffs' due process rights, including adequate notice and meaningful participation.

104. The Decision is inconsistent with the evidence that was submitted to the Board during the Virtual Hearing and ignores evidence submitted to the Board by Plaintiffs and other abutters who opposed the Project. The majority of evidence submitted to the Board by actual abutters who received notice of the Project was in opposition to the Project.

105. The Decision states that "the Board received testimony and several signatures from local residents in support." Only one abutter testified in support of the Project and only one abutter submitted a letter in support.

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<sup>2</sup> The Decision is issued "In reference to appeal of John Pulgini," who was the Defendants' attorney in 2019 at the WRNC meeting.

<sup>3</sup> At the Virtual Hearing, one member, Kosta Ligris, voted in opposition.

106. The Decision fails to mention that 15 of the letters that were submitted to the Board did not contain an actual street address. The Decision also fails to mention that majority of the letters in support of the Project were from employees of the City of Boston Police Department, not actual abutters to the Project.

107. The Decision is inconsistent with the Board's discussions and deliberations that were publicly undertaken during the Virtual Hearing.

108. Pursuant to Section 7-3 of the Boston Zoning Code, the Board "shall grant a variance only if it finds that all of the [applicable conditions listed therein] are met."

109. In the Decision, the Board purported to find that all of the conditions required to grant a variance of Article 56, Section 8, "Floor Area Ratio Excessive" and "Front Yard Set Back Insufficient" had been met, pursuant to Section 7-3 of the Boston Zoning Code.

110. The Decision made no finding of any special circumstances or conditions applicable to 175 Maple Street.

111. In fact, there are no special circumstances or conditions applicable to 175 Maple Street. There is no special shape of the lot or topography and nothing unique about the land or structure, as required.

112. 175 Maple Street's lot size and shape are typical of those in the neighborhood.

113. The Project as proposed would result in a residence with a FAR of .47.

114. Four properties directly abut 175 Maple Street; 177 Maple, 171 Maple, 34 Westover and 30 Westover. 177 Maple has a FAR of .41, 171 Maple has a FAR of .36, 34 Westover has a FAR of .19 and 30 Westover has a FAR of .33. The average FAR of homes on Maple Street (in the immediate vicinity between Weld Street and Corey Street) is .33.

115. If built as proposed, 175 Maple would have the largest FAR of any of these directly abutting residences. It would not be modest compared to the abutting residences or the neighborhood in general as the average FAR is .33 on Maple Street.

116. There are no circumstance or conditions such that the application of the Boston Zoning Code would deprive the Defendants of reasonable use of 175 Maple Street. Defendants currently reside in a three bedroom, two bathroom home with 1,500 square feet of living space.

117. The Decision ignored evidence that the Defendants have approximately 500 square feet of habitable living space in the basement, including a bedroom and bathroom, which is untaxed, unpermitted and not accounted for in the Defendants' representations to the Board regarding the actual living space that currently exists.

118. The Board made no finding that there was "practical difficulty and demonstrable and substantial hardship" and the Decision's reasoning that having a family justifies the granting of a variance does not meet the criteria.

119. The Decision merely repeated the statutory words required to grant variances and contained no subsidiary findings as to the basis for concluding that the conditions required to grant variances were met.

120. Pursuant to Section 2 of the Enabling Act, the zoning regulations are designed to protect health, safety and the value of land and buildings, and "provide adequate light and air."

121. Section 1-2 of the Boston Zoning Code states the purpose of the Boston Zoning Code is:  
"to promote the health, safety, convenience, morals and welfare of the inhabitants of the City; to encourage the most appropriate use of land throughout the City; to prevent overcrowding of land; to conserve the value of land and buildings; to lessen congestion in the streets; to avoid undue concentration of population; to provide adequate light and air; to secure safety from fire, panic and other dangers; to facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and to preserve and increase the amenities of the City."

122. The Decision did not make any findings with regard to the Plaintiffs' demonstrated need for protection from excessive density and its effects.

123. Permitting the Defendants to go forward with the Project will block sunlight and fresh air from entering the Plaintiffs' bedrooms and bathrooms.

124. The Proposal will eliminate Plaintiffs' views from the bedrooms and bathrooms.

125. Removing the Plaintiffs' access to sunlight, fresh air and eliminating their views will decrease the value of their property.

126. The elimination and reduction in sunlight, fresh air and views will decrease the Plaintiffs' health, welfare and quality of life.

127. Based on the Plans, the addition proposed would eliminate privacy to the second and third floor of the Plaintiffs' home.

128. This reduction of privacy will decrease the value of the Plaintiffs' property.

129. Permitting the Defendants to install a direct vented gas fireplace would allow carbon monoxide to be directed towards the main egress into Plaintiffs', Edward and Carey's, home.

130. Having a carbon monoxide vent at Plaintiffs' door will directly impact the health and welfare of the Plaintiffs and their minor, school-aged children.

### **COUNT 1**

#### **(Annulment of the Variances pursuant to Section 11 of the Enabling Act)**

131. Plaintiffs repeat and incorporate by reference the allegations as contained in paragraphs 1-130 of this Complaint above as they were set forth therein.

132. On August 25, 2021, the Board filed its Decision with ISD, granting relief from two requirements of Art. 56, Section 8 of Boston Zoning Code, Floor Area Ratio and Front Yard Setback. This relief would enable the Defendants to renovate and build a two and a half story home with finished attic and covered front porch and if allowed to stand, would adversely affect and damage the Plaintiffs' property.

133. As an abutter to the proposed Project, Plaintiffs are presumed to be a "person aggrieved" by the Board's Decision.

134. According to Article 56 of the Boston Zoning Code, entitled West Roxbury Neighborhood District, the Defendants' property is located in a 1F-6000 Zone. The Floor Area Ratio in this 1F-6000 Zone is .4.



135. The renovation and additions as proposed by the Defendants are forbidden pursuant to the Boston Zoning Code to wit: Article 56, Section 8, Floor Area Ratio is Excessive. The average FAR of homes on Maple Street (from Corey Street to Weld Street) is .33. The average lot size on Maple Street is 6,417 square feet. As purported by the Defendants', their addition would result in a FAR of .47. This not only exceeds the permitted ratio, but would result in a FAR approximately 42% greater than the other homes on Maple Street.

136. Plaintiffs will suffer specific and unique harms that will not be experienced by the public generally if the Decision is not annulled and the Project goes forward. As direct abutters, Plaintiffs would be directly harmed and impacted which will include, but not be limited to, increase in density, increased artificial light, decreased privacy, obstruction and elimination of views, diminishment and elimination of light and air, increased shadows, increased pollution, loss of open space, diminution in the value of their property and would make Plaintiffs' property a less attractive place to live, and for other reasons evidence of which will be presented at trial.

137. Additionally, Plaintiffs are aggrieved by the fact that due to the attic's size, ceiling height, windows, heating/cooling and egress, once the Project is built, the attic will be, in fact, habitable living space. With the mere addition of furniture, the attic will be used as living space with all the attendant impacts to Plaintiffs' property rights and legal interests, without further scrutiny. In the 2019 Plans, the Defendants included plumbing stacks for a future bathroom in their building plans indicating the intent to have the attic serve as living space.

138. Defendants' property has been put to a reasonable use without variances and Defendants could increase the size of their existing dwelling by 68% while still being in compliance with the Code's existing Floor Area Ratio requirements.

139. The Defendants' proposal would result in the doubling of the size of their home, a 100% increase in living space, with a FAR of .47. The real reason for seeking this relief is simply to make the existing building larger and not because of any "hardship" or any other unique quality of the property in question.

140. The aforementioned grounds as well as other grounds set forth in the Board's Decision are not legally permissible grounds upon which the Board can grant the relief requested.

141. The Board's Decision to grant the variances is arbitrary and capricious and the Board also failed to make the necessary specific findings as required by Section 7-3 of the Boston Zoning Code and the decision merely recites the legal requirements for a variance and/or improper grounds for granting of the variance. The findings contained in the Decision were drafted by Defendants and were not specifically deliberated on or discussed during the Virtual Hearing.

142. There is no special circumstance or conditions relating to the land or structure which would deprive the Defendants of the reasonable use of such land or structure, nor was there any evidence presented to that effect at the Hearing before the Board.

143. There is no practical difficulty or substantial hardship requiring the granting of the variances, nor was there any evidence presented to that effect at the Hearing before the Board.

144. The granting of the variances will derogate from the intent and purpose of the Boston Zoning Code.

145. The Decision exceeds the authority of the Board by violating the express purpose of Section 2 of the Enabling Act and Section 1-2 of the Boston Zoning Code.

146. The Decision is erroneous as a matter of law and is arbitrary and capricious.

147. The Plaintiffs are aggrieved by the Decision and the Plaintiffs will suffer substantial harm if the Decision is permitted to stand.

### **RELIEF REQUESTED**

For the above reasons, the Plaintiffs respectfully request that the Court enter a judgment:

(a) Annuling the Decision, issued and filed with ISD on August 25, 2021 in BOA 921789, ALT913323;

(b) Finding that the variances granted do not comply with the conditions set forth in Section 7-3 of the Boston Zoning Code;

- (c) Finding that the Proposal does not comply with the conditions set forth in Section 2 of the Enabling Act and Section 1-2 of the Boston Zoning Code;
- (d) Awarding the Plaintiffs their reasonable costs and attorneys' fees incurred in bringing this action; and
- (e) Granting such other relief this Court deems just and proper.

Respectfully submitted,

Plaintiffs,  
VINCENT BERTRAND,  
DEBRA BERTRAND,  
EDWARD ZARROW, and  
CAREY BERTRAND,  
By their attorney/pro se,

/s/ Carey Bertrand  
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171 Maple Street  
West Roxbury, MA 02132  
(617)686-8822

Dated: September 3, 2021

# **EXHIBIT A**



**NOTICE OF DECISION  
CASE NO. BOA921789  
PERMIT #ALT913323  
APPEAL SUSTAINED  
WITH PROVISOS**

In reference to appeal of

John Pulgini

Concerning premises

175 Maple Street, Ward 20

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

Decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, fifth floor, Boston, MA 02118, and is open for public inspection. Date of entry of this decision in the Inspectional Services Department was August 25, 2021.

Please be advised, due to the ongoing COVID-19 public health emergency, this decision of the Board has been reviewed and signed electronically by the signing Board Members. The addition of the certification of the Executive Secretary to the signature page attests that each Board Member who has signed this decision electronically has had an opportunity to review the written decision and has given his or her express written permission to the Executive Secretary to sign this decision electronically.

**FOR THE BOARD OF APPEAL**

**/s/Thomas J. Broom**

**Thomas J. Broom  
Principal Administrative Assistant**



DECISION OF THE BOARD ON THE APPEAL OF

May 04, 2021  
DATE

John Pulgini

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,  
at premises: 175 Maple Street, Ward - 20

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

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Art. 56, Section 8	Dimensional Regulations	Floor area ratio is excessive
Art. 56, Section 8	Dimensional Regulations	Front yard setback is insufficient

Purpose: Renovate existing, single-family dwelling as follows: perform exterior and interior renovations to the existing first story, including a covered front porch and uncovered side/rear porch per plans. Remove existing attic to replace with a second story of habitable living space and a new attic for storage. Remove all pre-existing, non-permitted work that resulted in habitable living space in basement

In his formal appeal, the Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-921789 and made a part of this record.

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

THE BOSTON HERALD on Tuesday, April 13, 2021

The Board took a view of the petitioner's land, examined its location, layout and other characteristics.

The Boston Planning & Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, May 04, 2021 in accordance with notice and advertisement forementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned section of the Boston Zoning Code, all as per Application for Permit#ALT-913323 and January 08, 2019 plans submitted to the Board at its hearing and how on file in the Building Department.



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This appeal seeks permission to renovate an existing, single-family home by performing exterior and interior renovations to the existing first-story, including installation of a covered porch and uncovered side/rear porch per plans. Renovations will also include removing the existing attic to replace with a second story of habitable living space and adding a new attic for storage. Finally, renovation work will include the removal of all pre-existing, non-permitted work that resulted in habitable living space in the basement.

The appeal is necessary as the requested relief 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 56, Section 8	Floor Area Ratio is Excessive
Article 56, Section 8	Front Yard Setback is Insufficient

The requested relief will permit the applicants, Renzo Monzon and Colleen Black (“applicants”), sufficient space to accommodate their growing family that includes an infant and toddler. As currently constructed, the home is a single-story, bungalow style dwelling with only 1,056 sf of habitable living space. The proposed renovations will reflect the late Victorian architectural identity of the homes in the neighborhood. The renovations will add 1,056 of additional habitable space which will provide the applicants with sufficient space to raise their family which will further allow the applicants to remain in the City of Boston as opposed to being forced to move to a suburb in search of a home and property with adequate space to raise their family. This familial use of the applicant’s lot is reasonable and consistent with the surrounding neighborhood zoning subdistrict within which the property is situated.

The floor area ratio (“FAR”) violation is quite modest. The renovated home will have an FAR of .47 in a zone with a maximum FAR of .4. Said another way, the maximum gross floor area (“GFA”) for a home on this lot, that is 4,445 sf, is 1,778 sf. The GFA of the renovated home will be 2,112 sf which exceeds the maximum by just 334 sf. Even at 2,112 sf, the renovated home will be significantly smaller than the homes that immediately abut it on the right and left side. The left side abutter at 177 Maple Street, which is a preexisting two-family home, is listed in the City of Boston Assessor’s office as containing 3,002 sf of living space while the right-side abutter at 171 Maple Street, which is also a preexisting two-family home, is listed in the Assessor’s office as



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containing 3,193 sf of living space. Photographs provided to this Board reveal that both of these abutting homes are significantly larger such that as existing, the applicant's home appears out of place and inconsistent with the design and character of the surrounding neighborhood.

Further mitigating the FAR violation is that the home will not impose on any abutting properties. At 27 feet, the home will be 8 feet below the maximum height of 35 feet and will remain lower than the left and right abutting homes. Furthermore, the home will not encroach upon the left and right abutting lots due to its compliance with the side yard setback requirements. To the extent that the right side abutter at 171 Maple Street expresses undue encroachment, which is due to that home only being set back 4'7" from the applicant's lot.

Further mitigating any issue regarding the size and/or mass of the home on the lot is the fact that there will exist 2,811 sf of usable open space which is 1,011 sf more than the 1,800 sf minimum required by the zoning code.

The front porch is set back 14'8" inches from the sidewalk which constitutes a violation of the modal set back of 16 feet. This 16-inch violation is very modest and will not impact the abutting properties. The three dwellings to the right of and between the applicant's home and Weld Street all have front setbacks less than the proposed 14'8" inches for the applicant's home, including a setback of just 10'3" at the immediate right side abutter's property (171 Maple).

The lot itself is a typical, rectangular parcel laid out well before the existing zoning regulations were enacted. While the lot is typical in design, it is unique in its size. At 4,445 sf, the lot is over 400 sf smaller than the average lot along Maple Street and the rear abutting street, Westover. The lot is 2,785 sf smaller than the left side abutting lot at 177 Maple and is 4,350 sf smaller than the combined right side abutting property at 171 Maple. Working within the confines of this small lot, the applicants were mindful to design their home to remain within the side yard setbacks and the height restrictions so as not to impose upon their abutters while creating a reasonable, suitable and livable space for their family. Accordingly, the variances necessary for this renovation, FAR and front setback, are necessary for the applicant's reasonable use of their home and are the minimum variance that will accomplish that purpose.





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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.

At the hearing, representatives of the Mayor's Office of Neighborhood Services and City Councilors Michelle Wu and Matthew O'Malley stood in opposition of the project. The Board received testimony in opposition along with signatures in opposition, including from the owners of abutting property owners at 177 and 171 Maple Street. The Board also received testimony and several signatures from local residents in support of this project along with the vote of approval from the West Roxbury Neighborhood Council's Zoning Subcommittee.

This showing of approval from the community further supports the Board's finding 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 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 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



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- (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 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) unanimously voted to grant the requested 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 which, if not complied with, shall render this decision null and void.

AS TO FORM:


  
Assistant Corporation Counsel

PROVISOS:

- 1. BPDA design review
- 2. No living space in the attic

Signed, August 20, 2021

With my affixed signature I, the Executive Secretary of the Board of Appeal, hereby certify that the signatories of this decision have given their express permission for electronic signature:

  
Thomas J. Broom, Esq.  
Executive Secretary  
Board of Appeal

/s/ Christine Araujo  
Christine Araujo – Chair (Voted In Favor)  
/s/ Mark Fortune  
Mark Fortune – Secretary (Voted In Favor)  
/s/ Mark Erlich  
Mark Erlich (Voted In Favor)  
/s/ Joseph Ruggiero  
Joseph Ruggiero (Voted In Favor) ,  
/s/ Kosta Ligris  
Kosta Ligris (Voted in Opposition)  
/s/ Eric Robinson  
Eric Robinson (Voted in Favor)  
/s/ Sherry Dong  
Sherry Dong (Alternative) (Voted In Favor)