

PARCEL #

APPLICANT MUST USE TYPEWRITER IN FILLING IN

THIS APPLICATION

CITY OF BOSTON
INSPECTORIAL SERVICES DEPARTMENT

Certified Street Numbers

53 Hull St

1123

Street Numbering Inspector.



Application to the Commissioner for Permit for Alterations, Repairs or Change of Occupancy

Location, 53 Hull Street District, Ward 3
Name of owner is? William Verdi Address, same
Name of architect or engineer is? Lic. No.
Material of building is? Brick Style of roof? Pitch Construction of roof? Slate
Size of building, feet front? 20; feet rear? 20; feet deep? 30; No. of stories? 3
No. of feet in height from sidewalk to highest point of roof? 35 Material of foundation? Stone
Thickness of external walls? Party walls?

Description of Present Building

LEGAL OCCUPANCY OR USE (Applicant is not to fill in this box)
THREE FAMILY DWELLING DOC# 1750/1938

Front stairs? Back stairs? Fire escape? Con. balconies? Any other?
Is building equipped with automatic sprinkler system?
Type of construction? Group occupancy?
Building to be occupied for THREE FAMILY DWELLING after alteration

Description of Proposed Extension

IF EXTENDED ON ANY SIDE OR VERTICALLY
Size of extension, No. of feet long?; No. of feet wide?; No. of feet high above sidewalk?
No. of stories high?; style of roof?; material of roofing?
Of what material will the extension be built? Foundation?
How will the extension be occupied? Type of Construction

GENERAL DESCRIPTION OF THE PROPOSED WORK AND ITS LOCATION.
(ALL STRUCTURAL, MECHANICAL, ELECTRICAL, ETC., SHALL BE INCLUDED)

ADDITON OF FIFTH FLOOR LEVEL AND TO INCREASE LIVING SPACE OF THIRD APARTMENT AND RENOVATIONS OF FLOORS 2nd, 3rd, 4th.

No change in occupancy will remain as three.

Electrical and plumbing sheetrocking, flooring, renovations to existing kitchen and bathroom.

MASS DEBRIS DISPOSAL LAW
MGL c40, S54, c584, S9, all S150A
Will work result in any debris?
Yes No Initials _____

*** Work Involves ***
Sprinkler
Electrical
Plumbing/Gas
Fire Alarm
Smoke Detector

PLAN FILED WITH APPLICATION

GROUND WATER SURVEY
Repairs to: Exterior Wall: yes no , Foundation: yes no , Basement Area: yes no

Date Dec. 2, 1998
Estimated Cost, \$ 60,000.00
Owner's Phone 617 227-2857

The facts I have set forth above in this application and accompanying plans are a true statement to the best of my knowledge and belief.

William Verdi
(Signature of Owner)

Type Name of Person Signing William Verdi
(Address) 53 Hull Street, Boston Ma. 02113

Paddy Caputo
(Signature of Licensed Builder)

Type Name of Person Signing
(Name of Contractor)

(Address) 170 Salem St
Lic. No. B18194 Class BC
My license expires 9/18/02

(Address)

Phone 908-9012

Phone

PERMIT MUST BE OBTAINED BEFORE BEGINNING WORK

2177

No. 002177

2177

2-408
B2C-20191
4-30-99

APPLICATION FOR

Permit for Alterations, Repairs or
Change of Occupancy

No. 53

CONDITIONS
Card 3

1213
PBT 7/20/02

MAR 15 2002

Permit Granted
Date issued
Permit was voided
by

EXAMINATION OF PLANS

Approved.....19

MAR 15 2002

P. B. Taylor, Jr.
Supervisor of Plans.

Arch./Struc./Safety
APPROVED
as shown on plans

P. B. Taylor, Jr.

EXAMINATION OF PLANS

PERMIT NUMBERS

Electrical..... Gas
Plumbing..... Sprinklers

Electrical APPROVED as shown on plans

See plans

Egress APPROVED as shown on plans

P. B. Taylor, Jr.

Plumbing..... Gas
H.V.A.C..... Sprinklers

Mechanical APPROVED as shown on plans

See plans

ZONING

INSPECTIONAL SERVICES DEPT.
CITY OF BOSTON

ZONING DIVISION
NOT APPROVED

DATE 11/2/99
Proposed building would be in violation of
Chap. 555A of 1986 amended.

Article 54-10, 18

To WH: P. B. Taylor, Jr.

ZONING ADMINISTRATOR

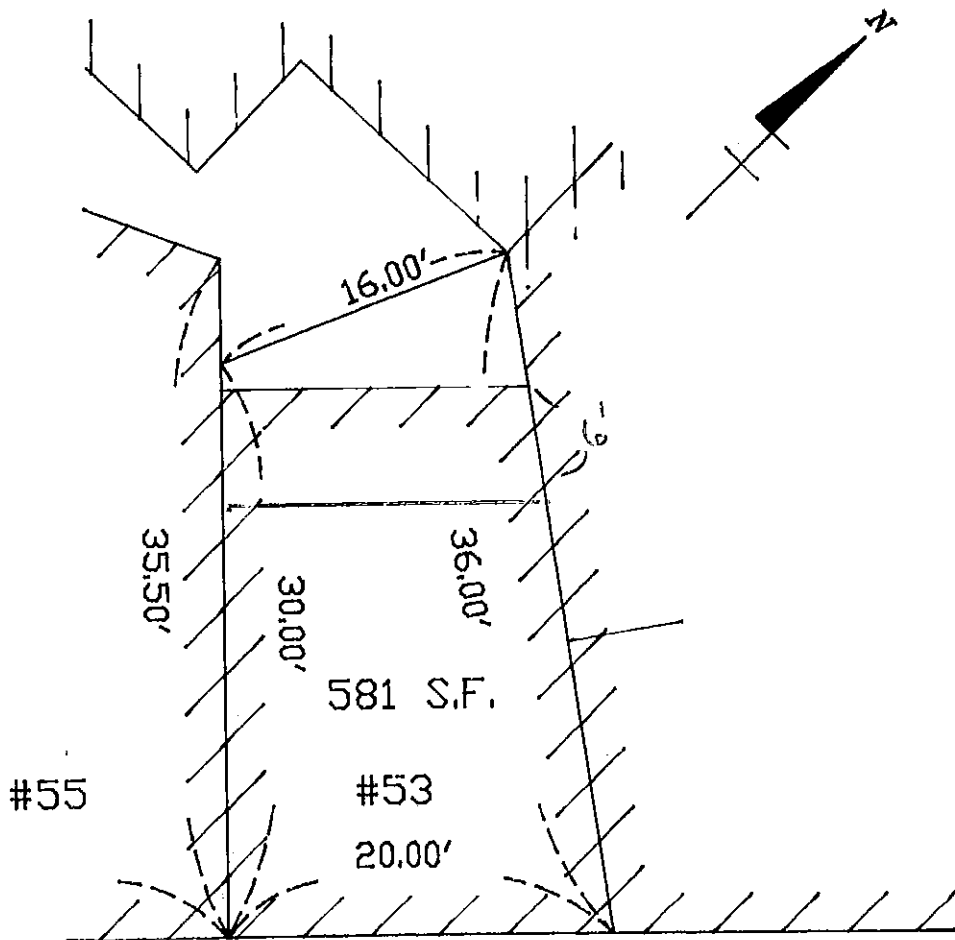
IN BOARD OF APPEAL
DATE 2/12/99
APPEAL SUBMITTED WITH PROVISIO
CASE # B2C-20191

DATE.....19

INSPECTOR'S REPORT

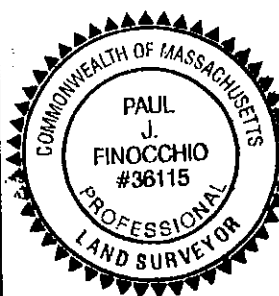
This building is approved for satisfactory Egress.

Signature of Inspector.



HULL STREET

PLOT PLAN OF LAND
IN
BOSTON, MASS.



PREPARED BY:
PJF & ASSOCIATES
11 GLEASON ST. MEDFORD, MA.
PAUL J. FINOCCHIO-P.L.S.
(617)395-7662

SCALE: 1" = 10'

DEED REF.:

DATE: 11-27-98

FILE No.: 4113-A

PAUL J. FINOCCHIO P.L.S. No.36115

DATE



**City of Boston
Board of Appeal**

Boston City Hall/Room 204
Boston, Massachusetts 02201
617/635-4775

Members
Richard Dennis, Sr.
Chairman

James Farmer
Secretary

Angelo Buonopane
Peter Chin
Christine Ataujo
Joseph Feaster
Anthony Pisani

BOSTON, MASSACHUSETTS

Notice is hereby given that at _____ a.m.
on Tuesday,

a public hearing will be held by the Board of Appeal of the City of Boston in Room 801,
City Hall, upon the appeal of

William Verdi

seeking with reference to the premises at

53 Hull Street, Ward 3

from the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following re-
spect: **Variance**

Article(s): **54(54-10: Floor Area Ratio Excessive & Rear Yard Insufficient)**
54(54-18)

**Erect two-story addition (existing fourth floor to be removed)
to three-family dwelling.**

If you wish to express an opinion in regards to the above proposal either in favor or in op-
position, please detach the lower portion of this announcement and mail to:

Board of Appeal, Room 204
Boston City Hall
Boston, MA 02201

Please feel free to call the Board of Appeal at 635-4775 if there is a question or concern
you might have regarding this matter.

Name _____

Address _____

Board of Appeal

RE: 53 Hull Street, Ward 3

Remarks

BZC- 20191

~~ABANDONED~~

CITY OF BOSTON



BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

April 20, 1999

DATE

SECTION OF SERVICES DEPARTMENT

271 199 03

ALL BOSTON PERMITTING

Decision of the Board of Appeal on the Appeal of
William Verdi

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8, at premises:

53 Hull Street, Ward 3

in the following respect: Variance

Article(s): 54(54-10: Floor Area Ratio Excessive & Rear Yard Insufficient) 54(54-18)

Erect two-story addition (existing fourth floor to be removed) to three-family dwelling.

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 BZC-20191 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, March 30, 1999

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

The Boston Redevelopment Authority was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BRA 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, April 20, 1999 in accordance with notice and advertisement aforementioned, 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 #2177/99 dated December 2, 1998 and plans submitted to the Board at its hearing and now on file in the Building Department.

da



CITY OF BOSTON

BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

53 Hull Street, Ward 3

BZC No.: 20191

Date of Hearing: 4/20/99

Permit No: 2177/99

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Decision of the Board of Appeal on the Appeal of William Verdi

The appellant seeks relief from the provisions of the Zoning Code pertaining to floor area ratio, rear yard setback, and roof structure and building height restrictions in order to remove an existing fourth floor and to erect a two-story addition to a three-family dwelling.

There is a critical need for additional housing space in the area of the premises. The proposed two-story addition with removal of the present fourth floor will not adversely affect the surrounding neighborhood and will be a benefit to the area by creating additional living space. The erection of an additional floor will not detract from the flavor of the neighborhood due to the fact that this additional floor will be of the same shape and size as the current fourth floor.

The current floor area ratio of the premises is excessive and the current rear yard set back is insufficient. The proposed addition will not create a greater intrusion into the rear yard. Although the floor area ratio will increase, the occupancy of the building will remain as a three family. The present nonconformities are attributed to the unusual shape of the lot and the fact that the structure covers nearly the entire lot. The addition of well-needed residential space is an allowed use within the zoning for the premises.

The conditions which uniquely affect the premises include its odd shape, limited land area, its location and the style of construction. The irregular trapezoidal shape of the lot limits its usable space and makes construction of facilities and egress difficult. The lot contains 581 square feet of which the building foot print is approximately 530 square feet. The legal occupancy of the premises is three residential units. Due to the limited useable space the basement and attic levels are fully occupied. The premises is located upon one of, if not the most, sloped areas of the North End. The front of the building has a grade change of two and a half feet over the distance of twenty feet. The building was constructed with a highly pitched fourth floor and roof. This design results in extremely limited useable space on this floor. The largest of the three units contains approximately 640 square feet on two floors of the property. The smallest of the three units is approximately 460 square feet. The proposed relief would increase the total square footage in order to create more reasonably sized residential units. These circumstances are peculiar to this land and structure as compared to neighboring properties and the zoning district as a whole. The height of the building after the proposed addition is constructed, would be less than the allowed height for the district of fifty-five (55) feet. The size, height, location and design of the proposed addition would not significantly



CITY OF BOSTON

BOARD OF APPEAL

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53 Hull Street, Ward 3
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restrict light and/or air flow to adjacent structures nor significantly restrict views from the roof, windows, doors and balconies.

The relief sought is minimal and strict application of the code would deprive the owner of the reasonable use of the property. The requested relief will be in harmony with the general purpose and intent

of the Zoning Code. The appeal was supported by both the local civic residents organizations after public meetings in the community. Individual abutters in the area of the premises as well as elected officials testified in favor of the petitioner before the Board of Appeal and a petition in support of the proposal signed by numerous surrounding landowners, including all but one abutter, was submitted to the Board at the hearing. One abutter testified in opposition at the Board's hearing and the Board considered all written and oral testimony in its deliberations.

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



CITY OF BOSTON

BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

53 Hull Street, Ward 3
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- (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.

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 of Appeal also 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.

CITY OF BOSTON



BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

53 Hull Street, Ward 3
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Decision of the Board of Appeal on the Appeal of William Verdi

The Board is of the opinion that all conditions required for the granting of a Variance under Article 7, Section 7-3 and a Conditional Use Permit under Article 6, Section 6-3 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. 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 and Conditional Use Permit 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:

PROVISO: Subject to design review by BRA

David C. Valle 6/4/99
Assistant Corporation Counsel

A True Copy,
Attest
Carol A. McDonough
CAROL A. MC DONOUGH
Principal Administrative Asst.

SIGNED JUN 15 1999
Richard J. Dennis
RICHARD J. DENNIS CHAIRMAN
James Farmer
* BENITO TAUBS - SDA
JAMES FARMER SECRETARY, ABSENT
Angelo Buonopane
ANGELO BUONOPANE
Peter Chin
PETER CHIN
Christine Araujo
CHRISTINE ARAUJO
Joseph Feaster
JOSEPH FEASTER - ACTING SECRETARY
Anthony Pisani
ANTHONY PISANI

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 99-3395 C

MARY McGEE & another¹

vs.

SECTION OF SERVICES WITH DEPARTMENT

RICHARD DENNIS and others²

27 11 03

MEMORANDUM OF DECISION AND ORDER

CITY OF BOSTON
P. TAYLOR

This action is an appeal by the plaintiffs, Mary McGee and Thomas F. Schiavoni (collectively "McGee/Schiavoni"), pursuant to Chapter 665 of the Enabling Acts of 1956 as amended by Chapter 461 of 1993, from a decision of the City of Boston Board of Appeal ("Board") granting a variance to defendant William J. Verdi ("Verdi"). A trial de novo was held on October 15 and 16, 2001 during which there was testimony from witnesses, a view taken by the Court, and multiple exhibits admitted. For the reasons set forth below, the Board's decision is affirmed.

M. McGee
S. Schiavoni
2-12-03
M.W.W.
W.P.W.
M.A.H.
S.F.R.
A.P.C.
A.V.M.
W.D.B.L.
M.D.B.
+ M.
M.W.F.
W.H.
M.S.R.
S + R
(.net)

FINDINGS OF FACT

Based on all the credible evidence and reasonable inferences drawn from that evidence, this Court finds the following facts:

Defendant, Verdi, owns the land and building at 53 Hull Street in the North End District of Boston. The building at 53 Hull Street consists of an occupied basement and three and one-half stories, and contains three residential apartments. Verdi occupies two of the apartments

¹Thomas F. Schiavoni

²Angelo Buonopane, Peter Chin, Christine Araujo, Joseph Feaster, Anthony Pisani and Benito Tauro, as they are Members of the Zoning Board of Appeal of the City of Boston, and William J. Verdi

which consist of the second, third and half-fourth floors. Verdi rents out one apartment comprised of the basement and first floor. The building occupies nearly all of a trapezoidal lot, with the exception of a small triangular section at the rear of the lot that can not be built upon because it is not accessible by construction equipment. The lot contains 581 square feet of which the building footprint is approximately 530 square feet. The legal occupancy of the premises is three residential units. The front of the building has a grade change of two and half feet over a distance of twenty feet. The building was constructed with a highly pitched fourth floor and roof which resulted in limited space on this floor. The largest of the three units contains approximately 640 square feet on two floors of the property. The smallest of the units is approximately 460 square feet. The proposed relief would increase the total square footage in order for Verdi to have a bigger unit for himself.

Plaintiffs, McGee/Schiavoni, own the land and building at 46 Snow Hill Street in the North End which directly abuts 53 Hull Street. The 46 Snow Hill Street building covers nearly all of the lot, with the exception of a lightwell that partially separates it from the 53 Hull Street building. The 46 Snow Hill Street building consists of a basement and four stories, containing four apartments. The plaintiffs occupy the building as a single family residence. Each of the first three floors contains two front rooms and a rear room, bath and small hall closet. The fourth floor contains an open layout. It has windows on all four floors at the front and rear but no windows on either side. The rear of the building has three windows on each floor. On the fourth floor, all three rear windows are above the current roof line of the 53 Hull Street building.

The lots comprising 53 Hull Street and 46 Snow Hill Street have frontage on different streets and adjoin each other in the rear. The rear walls of the buildings physically adjoin one

another in their rear yards for a distance of about one foot.

Verdi applied to the Inspectional Services Department ("ISD") for a building permit to increase the fourth floor to a full story and add a partial fifth story and roof deck. On January 13, 1999, Verdi was denied a permit by the ISD. Verdi appealed that decision to the City of Boston Board of Appeal ("Board") to request a variance that would allow him to build the addition. A hearing was held on April 20, 1999 and on June 15, 1999, the Board granted the variance. The plaintiffs then filed this action in Superior Court asking that the Board's decision be annulled.

DISCUSSION

Since 1904, zoning matters in Boston have been regulated by special legislation. While the Massachusetts Zoning Act, G.L. c. 40A, provides the enabling legislation for zoning in all other cities and towns in the Commonwealth, it does not apply to Boston. Emerson College v. Boston, 393 Mass. 303 (1984). Instead, the enabling legislation for the adoption and amendment of the Boston Zoning Code is provided in 1956 Mass. Acts 665 ("the Enabling Act"). Since its adoption, the Enabling Act has been amended a number of times, most recently by 1993 Mass. Acts 461, "An Act Relative to the Zoning Commission of the City of Boston". While its title refers only to the Zoning Commission, 1993 Mass. Acts 461 also amends the Enabling Act's provisions concerning the Board of Appeal and appeals to the courts.

In reviewing a Board of Appeal decision, the Superior Court "shall hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul such decision if found to exceed the authority of such board ..." Enabling Act, § 11. Thus, the Superior Court, acting as an independent fact finder, conducts a de novo review of Board of Appeal decisions upon an appeal under the Enabling Act, § 11. Lynch v. Bd. of Appeal of Boston, 1 Mass. App.

Ct. 353, 358 (1973). The courts should sustain the Board's decision if sufficient evidence demonstrates that the statutory prerequisites for the decision have been met. Broderick v. Bd. of Appeal of Boston, 361 Mass. 472, 479 (1972).

Section 11 provides that: "Any person aggrieved by a decision of ... [the] board of appeal, whether or not previously a party to the proceeding, or any municipal board of officer, may appeal [to the courts] ..." Enabling Act, § 11. Few appellate cases have addressed the issue of standing for persons challenging Board of Appeal decisions under § 11 of the Enabling Act. However, because the language of this section is identical to that of G. L. c. 40A, § 17 in granting standing to any "person aggrieved," the Appeals Court has determined that it may look to cases outside Boston to determine the meaning of aggrieved status. Sherrill House, Inc. v. Board of Appeal of Boston, 19 Mass. App. Ct. 274, 275 (1985).

"Only a limited class of individuals - those whose property interests will be affected - is given the standing to challenge the board's exercise of its discretion to grant a special permit or variance." Green v. Board of Appeals of Provincetown, 26 Mass. App. Ct. 469, 479 (1988). Such individuals acquire standing by asserting "a plausible claim of a definite violation of a private right, a private property interest or a private legal interest." Harvard Square Defense Fund, Inc. v. Planning Bd. of Cambridge, 27 Mass. App. Ct. 491, 492-93, review denied, 405 Mass. 1204 (1989). An abutting landowner is presumed to be a "person aggrieved" under the Enabling Act. 1956 Mass. Acts 665, § 11. Where the plaintiff's standing is challenged, the presumption will vanish and the issue will be determined on all the evidence.

To determine whether a plaintiff is a person aggrieved under Section 11, the court must first decide whether the plaintiff plausibly claims that he or she will sustain some harm as a

proximate result of the challenged zoning decision. Boston Edison Co. v. Boston Redevelopment Auth., 374 Mass. 37, 46 (1977). Second, the court must identify the nature of the interests the zoning scheme was intended to protect. Zoning appeals may be brought only to protect those "legal rights" the zoning ordinance or bylaw was intended to create. Redstone v. Board of Appeals of Chelmsford, 11 Mass. App. Ct. 383, 385 (1981). Third, the plaintiff's property and the use of that property must be among the class of property and the class of uses the zoning scheme was intended to protect. Bedford v. Trustees of Boston Univ., 25 Mass. App. Ct. 372, 376-77 (1988).

In the instant case the plaintiffs maintain they have standing in four specific ways: (1) loss of view; (2) loss of open space and density; (3) obstruction of airflow; and (4) loss of direct sunlight. This court will address each argument in turn.

First, a change in an abutter's view may constitute a specific legal injury, only if the visual character of the neighborhood is protected in the zoning code itself. Monks v. Zoning Board of Appeal of Plymouth, 37 Mass. App. Ct. 685, 688 (1994). Zoning codes do not "protect a particular property owner's view." Federman v. Board of Appeals of Marblehead, 35 Mass. App. Ct. 727, 732 (1994). Standing may also arise where the loss of view is so extreme as to have an impact upon the value of the abutter's property. Tsagronis v. Board of Appeals of Wareham, 415 Mass. 329, 330 fn. 4 (Abrams, J., dissenting). In this case, the zoning codes do not protect a particular property owner's view. In addition, the plaintiffs have not argued, nor is this court persuaded upon viewing the location, that the loss of view is so extreme as to have an impact upon the value of the abutter's property. Accordingly, the plaintiff's cannot establish standing due to a loss of view.

Second, the Boston Zoning Code defines "open space" as "... open space in private ownership for active or passive recreational use or for conservation of natural resources." Boston Zoning Code [CITE]. Verdi's variance was sought so that he might remove a partial story and add two stories to his existing building. There is no allegation that Verdi is building on open space as defined in the Code. Accordingly, there is no legal right to "open space" effected by the proposed addition to Verdi's building.

The plaintiffs argue that the addition will cause a 33% increase in density based on the amount of floor space that will be added to Verdi's apartment. Verdi's building, as well as the immediately surrounding area, is zoned as a Multifamily Residential Subdistrict ("MFRS") within the North End Neighborhood District. This district was established to encourage medium-density multifamily areas with a variety of allowed housing types, including one-, two- and three-family Dwellings, Row Houses, Town Houses, and Multifamily Dwellings. Since Verdi's building is already a three family building, an increase in the square footage of one apartment is not going to add to the density of the neighborhood in any discernable way. Therefore, the plaintiff's cannot establish standing based on an increase in density.

The Boston Zoning Code provides that it seeks to provide "adequate light and air" in the North End. Boston Zoning Code, Article 54-1. The plaintiffs may only claim infringement of their legal rights, that is the rights stated in the applicable zoning laws. In this case, that is the right to adequate light and air. The plaintiffs gave testimony that their airflow may be affected, but did not sufficiently show that the airflow remaining would be inadequate. In addition, although the plaintiffs presented evidence to show that some direct sunlight on certain days at certain times late in the afternoon would be blocked by the addition, there was no evidence

presented to show that the addition would result in a loss of "adequate light" to their building.

Accordingly, the plaintiffs cannot establish standing based on a loss of light and air.

Although this Court can now comfortably say that the plaintiffs are not "aggrieved persons" which would give them standing to challenge the Board's decision, since this Court did hear all the evidence in this de novo case regarding the granting of the variance, in an abundance of caution, the Court will review the decision of the Board of Appeal.

Section 9 of the Enabling Act authorizes the Board to grant a variance for a parcel or building where: "... 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 code 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 regulations, but not otherwise." Enabling Act, § 9.

The Board shall grant a variance only if 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; [and]
- (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 ...

In determining the 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.

Enabling Act. § 7-3.

"The granting of a variance is proper only when there are findings with respect to all of these requirements." Warren v. Zoning Board of Appeals of Amherst, 383 Mass. 1, 9-10 (1981).

"No person has a legal right to a variance and they are to be granted sparingly." Broderick v.

Board of Appeal of Boston, 361 Mass. 472, 479 (1972). In reviewing the Board's decision

granting a variance, the judge "is required to hear the matter de novo and determine the legal

validity of the decision of the board upon the facts found by him." Jones v. Board of Appeals of

Brookline, 362 Mass. 290, 295 (1972). "The burden in such an appeal is on the person seeking

the variance." The 39 Joy Street Condominium Association v. Board of Appeal of Boston, 426

Mass. 485, 488 (1998).

In this case, the Board's decision contains detailed findings. It is clear to this Court that the Board's findings are proper with respect to all of the legal requirements. The conditions which affect this building are unique to this particular building including, its odd shape, limited land area, location and style of construction. The Board noted the irregular trapezoidal shape of the lot limits its usable space and makes construction of facilities and egress difficult. The findings go on to say, "these circumstance are peculiar to this land and structure as compared to neighboring properties and the zoning district as a whole." In addition, the Board also made the

following findings:

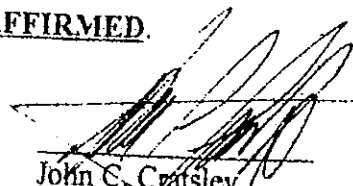
- (a) the specific site is an appropriate location for such use;
- (b) the use will not adversely affect the neighborhood;
- (c) there will be no serious hazard to vehicles or pedestrians from the use;
- (d) no nuisance will be created by the use; and
- (e) adequate and appropriate facilities will be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

My de novo review of Verdi's request for a variance confirms all the findings, as well as the decision of the Board. The subject property is unique, the proposed use of the property is reasonable and proper, the proposed increase in height will not adversely effect any protected right of the plaintiffs, and the proposed use is consistent with the neighborhood. In fact, my view of the neighborhood and the two units involved in this case, 53 Hull Street and 46 Snow Hill Street, establishes (1) how logical Verdi's proposal is for the reasonable use of his premises and (2) how no injury will occur to the legally recognized interests of the plaintiff abutters or the neighborhood. In this Court's opinion, Verdi's proposal will not adversely impact the plaintiffs' sources of light or air or restrict their view in any way substantially different than occurs at the present time without the addition.

Accordingly, the defendant has met his burden is showing that the granting of the variance was proper. Therefore, the decision of the Board is affirmed.

ORDER

It is therefore **ORDERED** that the Board's decision is **AFFIRMED**.


John C. Cratsley
Justice of the Superior Court

DATED: February 11, 2002

PROPOSED HEARING DATE: 4/20/99

BZC- 20191

PROPERTY LOCATION: 53 Hull Street, Ward 3

ARTICLES & PURPOSE: **SEE ATTACHED.**

REVIEW BY: *[Signature]*: DATE: 10 MAR 99 .

ADDITIONAL INFORMATION/COMMENTS:

- Need site plan
- Need floor plans
- Need elevations
- Need detailed & specific plans
- Nothing else required

COMMENTS:

CONTACT PROPONENT: Initial Contact

BOA STAFF: Diane

DATE:

3/16/99

MESSAGE MACHINE:

INDIVIDUAL CONTACTED:

COMMENTS: