

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTEMENT
CIVIL ACTION NO. 2384CV _____

ANTHONY PEPICELLI INDIVIDUALLY)
AND AS TRUSTEE OF THE IN-TOWN)
REALTY TRUST)

PLAINTIFF,)

v.)

HORACE DODD HOUSE, LLC; GREGORY)
MCCARTHY; ANTHONY BELLANTI;)
THE CITY OF BOSTON; MAYOR MICHELLE)
WU; BOSTON INSPECTIONAL SERVICES)
DIVISION; BOSTON ZONING BOARD OF)
APEALS; AND JOHN DOE)

DEFENDANTS.)
_____)

COMPLAINT AND JURY DEMAND

This action by the Plaintiff, Anthony Pepicelli who is the duly appointed Trustee of the In-Town Realty Trust, is against the above-named Defendants for violating various zoning ordinances of the City of Boston and to request the Court issue a mandamus to enjoin Boston Inspectional Services Division from issuing of building permits for any construction pursuant to defendants current building plans and to cancel or revoke any and all permits issued by Boston Inspectional Services Division in violation of the Boston Zoning Ordinances and Code of Massachusetts Regulations (CMR) 780.

PARTIES

1. Plaintiff Anthony Pepicelli is the duly appointed Trustee of the In-Town Realty Trust, created for the residential property located at No. 8 Michelangelo Street, Boston, MA 02113.
2. The defendant Horace Dodd House, LLC is a Massachusetts limited liability company with its offices located at 275 Main Street, Charlestown, MA 02129 and is the record title holder of 190 – 190A Salem Street and 4 Snelling Street, Boston, MA 02113.
3. The defendant Gregory McCarthy is the named Manager of the Horace Dodd House, LLC with an office located at 275 Main Street, Charlestown, MA 02129
4. The defendant Anthony Bellanti, is the architect and general contractor for the Project located at 190 – 190A Salem Street and 4 Snelling Street, Boston, MA 02113 with an address of 75 Orient Avenue, Boston, Ma 02128.
5. The defendant the City of Boston is a municipality located in the Commonwealth of Massachusetts.
6. The defendant Michelle Wu is the Mayor of the City of Boston, Massachusetts and a resident of Boston. She is sued in her official and individual capacities.
7. The defendant Boston Inspectional Services Division ("ISD") is located at 1010 Massachusetts Ave, Boston, MA 02118.
8. The Defendant Boston Zoning Board of Appeals ("BZBA") is located at 1010 Massachusetts Ave, Boston, MA 02118.
9. On information and belief, Defendant John Doe may have an ownership in the project in question.

JURISDICTION AND VENUE

10. The Massachusetts Superior Court has jurisdiction over this matter, pursuant to M.G.L. c. 258 §3. Venue in this forum is proper, pursuant to M.G.L. c. 223 § 1.

FACTS

A. Properties

11. The property located at number 8 Michelangelo Street is a certain parcel of land situated in Boston on Michelangelo Street, Phipps Place and Snelling Place.

12. The property located at number 8 Michelangelo Street is referenced as land that was determined by the Court to be located on a plan drawn by S. L. Leftovith Surveyor dated March 30, 2017, as modified, and approved by the Court, filed in the Land Registration Office Plan No. 6429-A.

13. The property located at number 4 Snelling Place is a private way on a dead end with an existing four-unit dwelling which abuts 8 Michelangelo Street and purchased by the Horace Dodd House, LLC.

14. The properties located at number 190-190A Salem Street are a residential existing four-unit dwelling which also abuts No. 8 Michelangelo Street and was purchased by the Horace Dodd House, LLC in the same deed as the 4 Snelling Place property.

15. The property located at 8 Michelangelo Street is located in a Multifamily Residential Subdistrict ("MFR") Zone District and abuts the side and rear of Horace Dodd House, LLC properties.

16. The Horace Dodd House, LLC properties, the 190-190A Salem Street and 4 Snelling Place, are also located in the Multifamily Residential Subdistrict ("MFR") Zone District.

B. Construction Activity

17. Prior to this action, there were numerous requests to the City of Boston for meetings by the tenants of 8 Michelangelo Street. These meetings were to request formal notice and dispute for issuance of any permits that would affect the neighborhood. Actual or formal meeting were not held and proper notice was never given pertaining to any planned construction. During this time the Horace Dodd House, LLC continued to engaged in various site preparation work, including but not limited to demolition, excavation, installation, removal of debris, and installing of building materials.

18. The site preparation work resulted in excavation beyond the scope requested and granted to the Horace Dodd House, LLC including but not limited to excavation work near or on the property line between Horace Dodd House, LLC properties and No. 8 Michelangelo Street causing damage to No. 8 Michelangelo Street.

19. The work site has yet to be properly permitted or posted and as of this date the posted permit(s) on the job site are defective providing no names or dates. Further, much of the work performed was beyond the scope of work requested in the permit application and specified to in the on the posted the defective permits.

20. An inquiry for the contractor in charge on the site on numerous dates and occasions revealed that at most, if not all times, there were not a licensed individual on the site as are required for such projects.

21. Subcontractors could not answer basic questions regarding safety issues for the abutters. No one on the site could direct individuals to either the general contractor, a licensed tradesman or any owners to address the safety concerns.

22. There is no history of any Dig Safe permitting for this address prior to performing major excavation that resulted in damage to No. 8 Michelangelo Street.

23. Defendants never applied for a variance resulting in a violation of inter alia 780 CMR and BZO, §16-8. This resulted in Defendants further violating provisions of Sections 7-2, 7-3 and 7-4, of the Boston Zoning Board of Appeals requiring public notice and a hearing in order to grant a variance from the terms the code.

24. Defendants failed to provide any notice or legal notifications to abutters or residents.

25. Defendants failed to apply for or post any Hot Works permits through the City of Boston.

26. Plaintiff attempted to obtain the jacket for this job site, but the City of Boston was unable or unwilling to provide it.

27. Defendants continued to work without proper permitting through this project and continued with work before any permits were issued.

C. Violations of the CMR and BZO

28. The 3/31/2022 construction plans violate the BZO including but not limited to those ordinances relating to set-back, height, and parking.

29. The height of the proposed construction blocks number 8 Michelangelo Street views and open spaces.

30. The height of the proposed construction blocks the property located at number 8 Michelangelo Street from air and sunlight making the premises darker and colder during winter months.

31. The size of the proposed construction would increase the overcrowding of land and undue concentration of population on Michelangelo Street and its neighborhood.

32. The proposed construction would increase congestion of already over congested traffic and parking on Michelangelo and Salem Streets neighborhood.

33. The construction has and will cause trespass on and nuisance to 8 Michelangelo Street property.

COUNT ONE
VIOLATION OF GL 40A § 17

34. The plaintiffs repeat and reaver herein the above paragraphs.

35. The proposed project fails to comply with the BZO, including but not limited to the ordinances for setbacks, height limitations, and parking.

36. The proposed project requires a special permit, fails to lessen congestion in the streets; to prevent the overcrowding of land; to avoid undue concentration of population; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality in violation of inter alia 780 CMR and BZO, §16-8.

37. The Decision exceeds the authority of the ISD and the BZBA because the construction plans violate the BZO.

Wherefore, the plaintiff demands judgment and that the current construction cease immediately.

COUNT TWO
**MANDAMUS TO ENJOIN THE ISSUANCE OF BUILDING PERMIT
AND ANY CONSTRUCTION PURSUANT TO DEFENDANTS' PLANS**

38. The plaintiff repeats and reavers herein the above paragraphs.

39. The 3/31/2022 construction plans violate the BZO including but not limited to the ordinances for setbacks, height, and parking.

40. The proposed project requires a special permit, fails to lessen congestion in the streets; to prevent the overcrowding of land; to avoid undue concentration of population; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality in violation inter alia of 780 CMR and BZO, §16-8.

41. The Decision exceeds the authority of the ISD and the BZBA because the construction plans violate the BZO.

Wherefore, the plaintiff demands judgment that the ISD be enjoined from issuing a building permit and that Horace Dodd House, LLC be enjoined from engaging in construction pursuant to the 3/31/2022 construction plans or any other plans in violation of the BZO.

COUNT III
COMPLAINT FOR NEGLIGENCE

42. The plaintiff repeats and reavers herein the above paragraphs.

43. the Defendants did negligently and carelessly erect two structures that have wrongly caused undue burdens upon the Plaintiff's premises. The wrongful elevation is creating a loss of light, air, and solar heat. Moreover, by wrongfully constructing the subject premises, including the unnecessary excavation and negligently and carelessly removing earth and stones thereon, the Defendants did cause damage to the Plaintiffs property.

44. The excavation activity by Horace Dodd House, LLC and the continued construction of properties abutting the Plaintiff's property has resulted in disturbance of the land beyond the property line and caused plaintiff damages.

45. It appears that under the 3/31/2022 construction plans, Horace Dodd House, LLC intends to enter onto the property between Horace Dodd House, LLC properties and 8 Michelangelo Street to create or develop the egress and to add an additional level to the four-story structure located on Salem Street under the plans taking away views and sunlight from 8 Michelangelo Street.

46. In consequence of the foregoing negligence by the Defendants, the Plaintiff has suffered damages and losses.

Wherefore, the Trustees request that Judgment be entered decreeing that Horace Dodd House, LLC be enjoined from further trespass to the land between their property and be ordered to pay damages for and repair the injury to the plaintiff's property caused by their activities.

COUNT IV
COMPLAINT FOR BREACH OF THE COVENANT OF QUIET ENJOYMENT

47. The plaintiff repeats and reavers herein the above paragraphs.

48. The actions of the Defendants that have caused this breach of the Plaintiffs Quiet Enjoyment including , but are not limited to, the Defendants constructing properties that are not within proper set-backs; wrongly causing and creating a loss of light and air; installing the unnecessary fill and carelessly removing earth and stone thereon, causing the drainage issues to the Plaintiff's residence, and rendering it susceptible to flooding and infiltration.

49. As a direct and proximate result of the foregoing actions of the Defendants, the Plaintiff has been denied the full use and quiet enjoyment of its property, and has otherwise suffered damages and losses.

Wherefore, the Trustees request that Judgment be entered decreeing that Horace Dodd House, LLC be enjoined from further trespass to the land between their property and be ordered to pay damages for and repair the injury to the plaintiff's property caused by their activities.

COUNT V
PRIVATE NUISANCE

50. The plaintiff repeats and reavers herein the above paragraphs.

51. The Defendants intentionally, negligently, or recklessly engaged in a use of property or course of conduct that substantially and unreasonably interferes with the legal rights of the Plaintiff by causing damage, annoyance, or inconvenience, interferes with the Plaintiffs use and enjoyment of their land, and continued to so interfere with the plaintiffs use and enjoyment even after learning of actual harm or substantial risk of future harm to the Plaintiffs interests.

52. Said actions of the Defendants include, but are not limited to, constructing properties and dees that are not within proper set-backs; wrongly causing and creating a loss of light, air, and solar heat; installing the unnecessary fill and carelessly removing earth and stone thereon, causing the damage.

53. As a result of the nuisance created by the Defendants, the Plaintiff has suffered injuries, damages and losses.

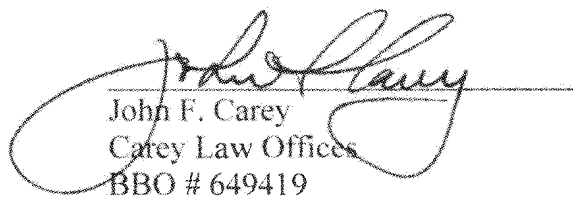
Wherefore, the Trustees request that Judgment be entered decreeing that Horace Dodd House, LLC be enjoined from further trespass to the land between their property and be ordered to pay damages for and repair the injury to the plaintiff's property caused by their activities.

The Plaintiff requests trial by jury of all issues so triable.

Respectfully submitted,

The Plaintiff,

By his attorney



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Dated: July 24, 2023