

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

827-829 BOYLSTON STREET LLC, and  
SIRA NATURALS, INC.,

Plaintiffs,

v.

CITY OF BOSTON BOARD OF APPEAL;  
SHERRY DONG, NORM STEMBRIDGE,  
HANSY BETTER BARRAZA, ALAN E.  
LANGHAM, RAHEEM SHEPARD,  
GIOVANNY VALENCIA, and KATIE  
WHEWELL in their capacity as members of  
the Board of Appeal; and JOSH ZAKIM and  
THE COPLEY CONNECTION, INC.,

Defendants.

CIVIL ACTION NO. 23-1820F

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2023 AUG -9 P 3:20  
JAMES J. ROBERTS, III  
ACTING CLERK OF COURT

**COMPLAINT**

Plaintiffs 827-829 Boylston Street LLC, and Sira Naturals, Inc., bring this action pursuant to Section 11 of the City of Boston Zoning Enabling Act to appeal a decision by the City of Boston Board of Appeal granting zoning relief to Josh Zakim and The Copley Connection, Inc., which seek to operate a cannabis dispensary at 551 Boylston Street in Boston. The zoning relief granted by the Board of Appeal takes the form of (1) a variance from provisions of the Boston Zoning Code requiring that no cannabis dispensary be located within half a mile of an existing cannabis establishment and (2) a conditional use permit to operate the cannabis dispensary. The grant of the variance exceeds the Board's authority.

**Parties**

1. Plaintiff 827-829 Boylston Street LLC ("827-29 Boylston") is a Massachusetts limited liability company with a principal business address of 300 TradeCenter, Suite 7700, Woburn, MA 01801.

2. Plaintiff Sira Naturals, Inc. (“Sira Naturals”), is a Massachusetts corporation with a principal business address of 13 Commercial Way, Milford, MA 01757.

3. Defendant City of Boston Board of Appeal (the “Board”) is a duly constituted municipal body established pursuant to Section 8 of the City of Boston Zoning Enabling Act, St. 1956, c. 665, as amended (the “Zoning Enabling Act”), to hear appeals from, among other things, refusals by the Boston building commissioner or other administrative officials to issue permits under the Zoning Act or under zoning regulations adopted thereunder. The Board’s offices are located at 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

4. Defendant Sherry Dong is the Chair of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

5. Defendant Norm Stembridge is the Secretary of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

6. Defendant Hansy Better Barraza is the secretary of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

7. Defendant Alan E. Langham is a member of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

8. Defendant Raheem Shepard is a member of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

9. Defendant Giovanni Valencia is a member of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

10. Defendant Katie Whewell is a member of the Board and has a business address of 1010 Massachusetts Avenue, 4<sup>th</sup> Floor, Boston, MA 02118.

11. Defendant The Copley Connection, Inc. (“TCC”), is a Massachusetts corporation with a principal business address of 10 Tremont Street, Suite 313, Boston, MA 02108. TCC proposes to operate a retail cannabis dispensary at 551 Boylston Street.

12. Defendant Josh Zakim (“Zakim”), who is misnamed as “John” Zakim in the decision at issue in this appeal, is an individual with a residential address of 177 Commonwealth Avenue, Apt. 2, Boston, MA 02116.

### **Jurisdiction**

13. This Court has jurisdiction over this action under Section 11 of the Zoning Enabling Act.

### **Facts**

14. 827-29 Boylston owns the real property located at 827-829 Boylston Street in Boston. It has entered into a long-term commercial lease with Sira Naturals, which operates a cannabis dispensary at this location.

15. TCC and Zakim seek to operate a retail cannabis dispensary at 551 Boylston Street in Boston (the “Site”), which was formerly the site of a Wendy’s restaurant. The Site is directly across from Copley Square.

16. TCC is not an equity applicant pursuant to City of Boston Code, Ordinances, § 8-

13.

17. The Boston Zoning Code allows for cannabis establishments subject to certain conditions, including a half-mile buffer-zone requirement intended to prevent the concentration of such establishments (the “Buffer Zone Requirement”). Under this requirement, a proposed cannabis establishment must be “sited at least one-half mile or 2640 feet from another existing

cannabis establishment,” as measured “from the nearest lot line of the proposed establishment to the nearest lot line of an existing establishment.”

18. The Buffer Zone Requirement also requires that cannabis establishments be “at least 500 feet from a pre-existing public or private school providing education in kindergarten or any grades of 1 through 12.”

19. On or about October 11, 2022, Zakim and TCC submitted an application, filed as Application No. ALT1400229, to the Boston Inspectional Services Department (“ISD”) seeking a change of occupancy for the Site from a restaurant to a cannabis dispensary.

20. By letter dated November 1, 2022, an updated version of which was issued on January 26, 2023 (the “Zoning Code Refusal Letter”), ISD denied the application, stating in part that the Boston Zoning Code requires “that any cannabis establishment must be sited at least one-half mile or 2640 feet from another existing cannabis establishment and at least 500 feet from a pre-existing public or private school providing education in kindergarten or any grades of 1 through 12.” A true and accurate copy of the Zoning Code Refusal letter is attached hereto as

**Exhibit A.**

21. The Site is less than half a mile from at least one other existing cannabis establishment, namely, the cannabis dispensary operated by Sira Naturals at 827-829 Boylston Street.

22. The Site may also be less than 500 feet from the Muriel Sutherland Snowden International School at Copley, which is a public high school located at 150 Newbury Street in Boston.

23. Zakim and TCC filed an appeal of the ISD denial to the Board, seeking a variance from the Buffer Zone Requirement as well as a conditional use permit to operate a cannabis dispensary at the Site.

24. Pursuant to Section 9 of the Zoning Enabling Act, the Board may grant variances from regulations within the Boston Zoning Code “with respect to a particular parcel of land or to an existing building” only 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 regulation would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such zoning regulation....”

25. Pursuant to Article 7, § 3, of the Zoning Code, the Board may grant a variance for a parcel of land only if and 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;” 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.”

26. After public notice, the Board held a hearing on Copley Connection’s appeal on April 11, 2023.

27. By decision dated July 18, 2023 (the “Decision”), the Board sustained TCC’s appeal of the ISD denial and granted the zoning relief TCC and Zakim sought. A certified copy of the Decision is attached hereto as **Exhibit B**.

28. The Decision was filed with ISD on July 21, 2023.

29. This complaint is being filed in this court within twenty (20) days of the filing of the Decision at ISD and is therefore filed timely in accordance with Section 11 of the Zoning Enabling Act.

30. TCC and Zakim failed to present to the Board specific facts to support a finding that the condition for a variance required by Article 7, § 3.a, of the Zoning Code, exists.

31. There are no “special circumstances or conditions” applying to the Site, let alone special circumstances or conditions “fully described in the findings,” that are “peculiar to [the Site] but not the neighborhood” and are such that the application of the provisions of the Zoning Code to the Site would deprive TCC and Zakim of the “reasonable use” of the Site.

32. Nothing in the Decision’s recitation of the purported attributes of the “founders of TCC,” of purportedly “significant foot traffic and retail activity” in the area surrounding the Site, and of the purportedly “large potential demand from residents, commuters and visitors to support the siting” of a cannabis dispensary at the Site remotely indicates that unless the variance is granted, TCC and Zakim will be deprived of the reasonable use of the Site.

33. TCC and Zakim failed to present to the Board specific facts to support a finding that the condition for a variance required by Article 7, § 3.b, of the Zoning Code, exists.

34. There do not exist reasons of practical difficulty and demonstrable and substantial hardship, let alone reasons “fully described in the findings,” that make the granting of a variance from the Buffer Zone Requirement necessary for the reasonable use of the Site.

35. The assertion in the Decision that the failure to grant a variance to TCC will “critically harm” the purported “public policy goal of having local, majority minority owned dispensaries” does not remotely indicate, with respect to the Site, the presence of “practical difficulties” and “demonstrable and substantial hardships” making the granting of a variance from the Buffer Zone Requirement necessary for the reasonable use of the Site.

36. In addition, while the City of Boston has established an “Equity Program,” codified at City of Boston Code, Ordinances, § 8-13, pursuant to which applicants for cannabis licenses who meet certain ownership criteria qualify for municipal assistance in support of their applications, the City of Boston does not have a “public policy goal of having local, majority minority owned dispensaries.”

37. 827-829 Boylston and Sira Naturals are aggrieved by the Decision within the meaning of Section 11 of the Zoning Enabling Act because the zoning relief granted by the Board will result in harm to private legal rights and interests belonging to them that are protected by the Zoning Enabling Act and by the Boston Zoning Code. Among other things:

a. As set forth in Article 1, § 1-2, of the Boston Zoning Code, the Code’s purposes include the conservation of the value of land and buildings.

b. The Buffer Zone Requirement prohibits operation of a cannabis dispensary within a half-mile of another cannabis dispensary.

c. The variance granted by the Board allowing TCC to operate a cannabis dispensary within a half-mile of Sira Naturals diminishes the values of 827-829 Boylston’s fee interest and of Sira Naturals’ leasehold interest.

d. The injuries suffered by 827-829 Boylston and Sira Naturals are special and different from the concerns of the rest of the community.

**Count I**  
**(Annulment of Decision)**

38. Plaintiffs repeat and re-aver the allegations contained in paragraphs 1-37 above as if fully re-stated herein.

39. The conditions required for a variance pursuant to Section 9 of the Zoning Enabling Act and Article 7 of the Boston Zoning Code do not exist in this case.

40. The Board did not make findings, fully described in the Decision as required by Article 7 of the Boston Zoning Code, showing the existence of special circumstances or conditions that apply peculiarly to the Site and that are such that the application of the Buffer Zone Requirement would deprive TCC and Zakim of the reasonable use of the Site.

41. The evidence presented to the Board was not sufficient to demonstrate the existence of such special circumstances or conditions, and they do not exist.

42. The Board did not make findings, fully described in the Decision as required by Article 7 of the Boston Zoning Code, showing that, for reasons of practical difficulty and demonstrable and substantial hardship, the granting of the variance from the Buffer Zone Requirement is necessary for the reasonable use of the Site and that the variance is the minimum variance that will accompany this purpose.

43. The evidence presented to the Board was not sufficient to demonstrate the existence of such reasons, and they do not exist.

44. The Board exceeded its authority in granting a variance to TCC and Zakim.

45. The Board's grant of a variance was based on legally untenable grounds.

46. The Board's grant of a variance was an abuse of the Board's discretion as well as arbitrary and capricious.



47. The Board's grant of a variance was contrary to the Boston Zoning Code and the Zoning Enabling Act.

**Relief Requested**

**WHEREFORE**, Plaintiffs respectfully request that this Court, after hearing all pertinent evidence and determining the facts pursuant to Section 11 of the Zoning Enabling Act, find that the Decision exceeded the Board's authority and annul it, and award any other relief that the court determines to be equitable, just, and proper.

**PLAINTIFFS,**

By their attorneys,

/s/ Michael S. Rabieh

J. Mark Dickison (BBO #629170)

Donald Gentile (BBO #672657)

Michael S. Rabieh (BBO # 654737)

LAWSON & WEITZEN, LLP

88 Black Falcon Avenue, Suite 345

Boston, MA 02210

[mdickison@lawson-weitzen.com](mailto:mdickison@lawson-weitzen.com)

[dgentile@lawson-weitzen.com](mailto:dgentile@lawson-weitzen.com)

[mrabieh@lawson-weitzen.com](mailto:mrabieh@lawson-weitzen.com)

617.439.3990 (T)

617.439.3987 (F)

August 9, 2023