

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

SUPERIOR COURT
CIVIL ACTION NO. []]

1548, LLC, and ALPHONSUS REALTY, LLC)
 Plaintiffs,)
 v.)
 ZONING BOARD OF APPEALS OF THE)
 CITY OF BOSTON, and SHERRY DONG,)
 NORM STEMBRIDGE, GIOVANNY)
 VALENCIA, RAHEEM SHEPARD, JEANNE)
 PINADO, HANSY BETTER BARRAZA, and)
 DAVID COLLINS, as they all are or were)
 members of the Board, and TREMONT &)
 PONTIAC, LLC,)
 Defendants.)

**COMPLAINT, PURSUANT TO
CH. 665, ACTS OF 1956**

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INTRODUCTION

This is an appeal by plaintiffs 1548, LLC and Alphonsus Realty, LLC under the Boston Zoning Enabling Act (Ch. 665, Acts of 1956) of the decision of the City of Boston Zoning Board of Appeal and its members (“Board” or “ZBA”), allowing the application of defendant Tremont & Pontiac, LLC (“the Proponent”) for zoning relief to construct a six-story building on a newly created lot, which will contain 95 residential units, a ground floor restaurant with takeout, and garage parking (“the Project”) at the property known and numbered as 100 Saint Alphonsus Street, Boston (“the Site”), located in the Neighborhood Shopping sub-district of the Mission Hill Neighborhood District of Boston. Plaintiffs own the abutting properties at 1548-1550 Tremont Street and 140-142 St. Alphonsus Street, Boston, which properties will be surrounded on three sides and overshadowed by the Project. Plaintiffs will be adversely impacted by the

Project, and are aggrieved by the Board's decision, which is not supported by the evidence, exceeds its discretion and authority, is arbitrary or capricious, and should be annulled.

FACTS

1. Plaintiff 1548, LLC, is a MA limited liability corporation with a principal place of business at 302 Shawmut Avenue, Boston, MA. 1548, LLC, which owns the abutting property at 1548-1550 Tremont Street, and is aggrieved by the Board's decision allowing the Project to be developed.

2. Plaintiff Alphonsus Realty, LLC, is a MA limited liability corporation with a principal place of business at 26 Columbia Street, Brookline, MA, which owns the abutting property at 140-142 St. Alphonsus Street, Boston, MA and is aggrieved by the Board's decision allowing the Project to be developed.

3. Defendant Board is a duly constituted municipal body with a usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118.

4. The names and addresses of the defendant members of the Board are:

Sherry Dong, Chairwoman, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118;

Norm Stenbridge, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118;

Giovanny Valencia, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118;

Raheem Shepard, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118;

Jeanne Pinado, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118;

Hansy Better Barraza, 1010 Massachusetts Avenue, 5th Floor, Boston, MA 02118.

5. Upon information and belief, defendant Tremont & Pontiac, LLC ("Proponent") is a MA limited liability company with a principal place of business c/o Atlas Group, LLC, 223

Harvard Ave., Boston, MA 02134, and owns the Site where the Project is proposed to be developed .

6. Jurisdiction and venue are proper in this Court pursuant to Chapter 665 of the Acts of 1956, § 11.

7. The Proponent seeks approval from the Board to develop at the Site a six-story building with 95 units, ground floor restaurant and parking, which requires significant relief from zoning requirements. Presently there is a vacant three-family residential structure located at the Site.

8. The Proponent filed an application with the Board (BOA1570022; Permit #ERT1559532) for the required zoning relief, including but not limited to variances due to insufficient front and side yard space, insufficient usable open space, excessive floor area ratio (“FAR”), and excessive building height, as well as conditional use permits for the restaurant use and ancillary parking, and other relief to develop the proposed Project.

9. As for the substantial number of variances needed for the Project, there is no evidence to show that the Site differs in any substantive and relevant way from other properties in the vicinity in terms of shape, topography or slope, nor is there evidence that there is no other reasonable use of the Site such that substantial hardship will result to the Proponent without the requested variances.

10. Plaintiffs’ properties directly abut and will be surrounded on three sides by the proposed Project, and their property rights and legal interests will be harmed by the approval of the Project in ways different from the general public, including but not limited to harm from insufficient setbacks and excessive height, and impacts from the excessive traffic and parking.

11. The Board held a public hearing on April 30, 2024, at the conclusion of which hearing it voted to approve the requested relief to develop the proposed Project. The Board issued its written decision on June 11, 2024, which decision was filed with ISD on June 14, 2024. A true and complete copy of the decision is attached at Exhibit A.

12. The Board erred in finding that there are special circumstances or conditions existing at the Site applying to the land or structure that justify the granting of multiple variances for the Project. There was no evidence that variances are necessary for any reasonable use of the Property, which is already developed with a three-family structure. The Board further erred in finding that the granting of multiple variances, which are to be granted sparingly, are in harmony with the general purpose and intent of the Zoning Code and not injurious or otherwise detrimental to the neighborhood or public in general.

13. There is no evidence to support the Board's granting of multiple variances for the Project.

14. The Board further erred in failing to give sufficient consideration to the traffic impacts from the proposed Project, which will create 95 residential units where three vacant units presently exist. Collectively, the Project will contain 74,596 of gross floor area, an astronomic increase over existing conditions. While a traffic impact assessment may have been conducted, it did not assess the impacts to plaintiffs' properties.

15. The addition of a six-story building with 95 residential units and ground floor restaurant with takeout will create excessive vehicular traffic and congestion in the neighborhood. These conditions will create parking issues in spite of the parking garage, with 44 parking spaces dedicated for use by an adjacent church and thus not available for residents or patrons of the restaurant. This congestion will only be increased during construction, which will

bring more large vehicles and more than 100 construction workers to the Site, with no construction management plan proposed.

16. Additional impacts to plaintiffs' properties include wind impacts and degradation of wind conditions at the Site. No wind studies were conducted, nor was there a sufficient solar glare analysis.

17. Shadows created by the Project will be cast primarily over plaintiffs' properties during nearly every season and at all hours of the day.

18. The Project is expected to generate significant noise over existing conditions, yet no study was conducted on the impacts to plaintiffs' abutting properties.

19. No construction management plan has been proposed for this multi-year construction project and its expected impacts from construction vehicles on traffic and parking, with no provisions for loading, offloading or site circulation.

20. Plaintiffs are aggrieved by the Board's decision, which harms its property rights and legal interests, including but not limited to the impacts from excessive height and density, causing impacts to light, air and privacy, in addition to increased traffic and congestion, decreased parking availability, and other adverse impacts from the Project, which is too large for the Site.

21. The Board's decision approving the Project exceeds its authority and/or discretion under Chapter 665 of the Acts of 1956, § 17, is not supported by evidence, is arbitrary or capricious, and/or is otherwise not in accordance with the law, and should be annulled.

PRAYER FOR RELIEF

Plaintiffs request that this Court find that the Board's decision exceeds its authority and discretion, is not supported by the evidence, or is arbitrary or capricious, annul the Board's decision, and issue such other and further relief as this Court deems just and proper.

1548, LLC and ALPHONSUS REALTY, LLC,

By their attorneys,

/s/ Julie Pruitt Barry

Julie Pruitt Barry (BBO #563018)

Prince Lobel Tye, LLP

One International Place, Suite 3700

Boston, MA 02110

(617) 456-8090

Dated: July 1, 2024

EXHIBIT A



City of Boston
Board of Appeal

NOTICE OF DECISION
CASE NO. BOA1570022
PERMIT # ERT1559532
APPEAL SUSTAINED
WITH PROVISOS

In reference to the appeal of

John Pulgini

Concerning the premises located at

100 Saint Alphonsus Street, Ward 10

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

The Board's decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, Fourth Floor, Boston, MA 02118, and is open for public inspection. A copy of the decision is available on the Board's website at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal-decisions>. The decisions are organized by filing date.

Date of filing of this decision with the Inspectional Services Department was June 14, 2024. The relief granted by this decision expires on June 14, 2026, and must be exercised or extended for good cause only on or before this date. Requests for extensions must be submitted, in writing before the expiration date.

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

FOR THE BOARD OF APPEAL

/s/Edward Coburn, Esq.

Edward Coburn, Esq.

General Counsel



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

April 30, 2024
DATE

John Pulgini

to provide relief from the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8, at premises: **100 Saint Alphonsus Street, Ward – 10**

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

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Art. 59, Section 7	Use: Conditional	Ancillary Parking - Conditional
Article 59, Section 8	Front Yard Insufficient	Through-Lot (Pontiac St)
Article 59, Section 8	Add'l Lot Area Insufficient	
Article 59, Section 8	Bldg Height Excessive (Feet)	
Article 59, Section 8	Side Yard Insufficient	
Article 59, Section 8	Bldg Height Excessive (Stories)	
Article 59, Section 8	Usable Open Space Insufficient	
Article 59, Section 8	Floor Area Ratio Excessive	
Art. 59, Section 15	Use: Conditional	Large Restaurant with Take-out (Basement & First Story) - Conditional
Article 59, Section 16	Dimensional Regulations	Floor Area Ratio Excessive
Article 59, Section 16	Dimensional Regulations	Building Height Excessive
Article 59, Section 16	Dimensional Regulations	Usable Open Space Insufficient
Article 59, Section 16	Dimensional Regulations	Side Yard abutting Residential district

Purpose: Construct a six (6) story building on newly created lot with ninety-five (95) residential units, ground floor restaurant with takeout (#36A/37), and garage parking. Building has approximately 3,228 SF first-floor restaurant and fifty-three (53) parking spaces (44 are church dedicated), residential on upper floors. Raze existing structure on separate SF permit. See ALT1559536; filed for subdivision to combine Parcel IDs: 1000605000 and 100609000.

In his formal appeal, Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered **BOA-1570022** and made a part of this record.

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

THE BOSTON HERALD on Tuesday April 9, 2024

The Board reviewed relevant documents, photographs, and other submissions and conducted other reviews as necessary to determine the location, layout, and other characteristics of the Appellant's land, the scope of its proposal, and the issues presented by the appeal. The Boston Planning and Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, April 30, 2024 in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned terms of the Boston Zoning Code, all as per Application for Permit#**ERT1559532** and January 04, 2024 plans submitted to the Board at its hearing and now on file in the Building Department.



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

100 Saint Alphonsus Street, Ward 10
BOA1570022
Date of Hearing: April 30, 2024
Permit: #ERT1559532
Page: #2

This appeal seeks permission to construct a six (6) story building on a newly created lot with ninety-five (95) residential units, a ground floor restaurant with takeout, and garage parking, as described in the Building Permit Application No. ERT1559532 and plans (collectively, the "Building Permit Application") on file in the Inspectional Services Department (the "ISD").

The Appellant, Tremont & Pontiac LLC (hereinafter, the "Appellant"), is the proponent of the project at the property known and numbered as 100 Saint Alphonsus Street, Mission Hill, MA (hereinafter, the "Property") in the Neighborhood Shopping ("NS") sub-district of the Mission Hill Neighborhood District of Boston.

Relief is sought for the following provisions of the Zoning Code: Art. 59, Section 15 Use: Conditional - Large Restaurant with Take-out (Basement & First Story); Art. 59, Section 7 Use: Conditional: Ancillary Parking; Article 59, Section 16 Dimensional Regulations - Floor Area Ratio Excessive; Article 59, Section 16 Dimensional Regulations - Building Height Excessive; Article 59, Section 16 Dimensional Regulations - Usable Open Space Insufficient; Article 59, Section 16 Dimensional Regulations - Side Yard abutting Residential District; Article 59, Section 8 Floor Area Ratio Excessive; Article 59, Section 8 Usable Open Space Insufficient; Article 59, Section 8 Bldg Height Excessive (Stories); Article 59, Section 8 Side Yard Insufficient; Article 59, Section 8 Bldg Height Excessive (Feet); Article 59, Section 8 Add'l Lot Area Insufficient; Article 59, Section 8 Front Yard Insufficient - Through-Lot (Pontiac St)

The Appellant submits that the development team hosted several community and abutter meetings to discuss this proposal, which allowed the community to communicate directly with the development team with their thoughts and suggestions for the development.

Additionally, the Proposed Project was subject to extensive review by the Boston Planning & Development Agency pursuant to that agency's authority under Article 80 of the Zoning Code, which is intended to provide important opportunities for community involvement in development and review activities that affect the quality of life in the city. The development review requirements set forth in Article 80 were established to protect and enhance the public realm, to mitigate the impacts of development projects on their surroundings and on city resources, to ensure compliance with the intent and purpose of the Code and to promote efficiency in its administration, and to promote the public health, safety, convenience, and welfare of the residents of the City of Boston. On October 12, 2023, the Proposed Project was presented to the Boston Planning & Development Agency Board of Directors (the "BPDA Board") for review



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

100 Saint Alphonsus Street, Ward 10
BOA1570022
Date of Hearing: April 30, 2024
Permit: #ERT1559532
Page: #3

and approval, and was approved by the BPDA Board, based upon, among other considerations, the public benefits to be produced by the Proposed Project, the reasonable need for the requested zoning relief in light of site conditions, and amount of community and other public support for the Proposed Project, as detailed in the BPDA vote.

The Proposed Project will provide the following substantial public benefits to the City of Boston and its residents:

- Of the ninety-five (95) residential units proposed, sixteen will be offered as Inclusionary Development Policy ("IDP") units
 - Three (3) of the IDP units will be offered at 60% of the Area Median Income ("AMI"), and the remaining thirteen (13) IDP units will be offered at 70% of the AMI.
- Deliver significant improvements to the public realm, by reconstructing and expanding sidewalks, installing street trees, expanding an existing bus stop, and implementing other pedestrian amenities to further improve the public realm
- Encourage alternative modes of transportation due to the proximity to public transportation.
- Comply with the 2021 Bike Parking Guidelines, creating a dedicated bike room within the building with 96 bike spaces dedicated to encourage bicycling as a mode of transportation, allowing less vehicular traffic and installing a fifteen (15) bike bikeshare station on site.
- Creation of approximately one hundred-thirty (130) construction jobs.
- The Proponent shall make a Fifteen-Thousand dollars (\$15,000.00) contribution to the City's Fund for Parks.

The Appellant proposes to construct a six (6) story mixed-use building on a newly created lot with ninety-five (95) residential units, a ground floor restaurant with takeout, and garage parking. The first-floor restaurant space will be approximately 3,228 square feet, and fifty-three (53) parking spaces will be provided, with forty-four (44) of those spaces dedicated to a nearby church. The lot is the result of a subdivision to combine two separate parcels (PID 1000605000 and PID 100609000), which is filed under a separate permit. The existing structure on the project site will be razed, also through a separate permit. The unit mix for the building's residential units will be fifty-nine (59) studio units, twenty-two (22) one-bedroom units, and fourteen (14)



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

100 Saint Alphonsus Street, Ward 10

BOA1570022

Date of Hearing: April 30, 2024

Permit: #ERT1559532

Page: #4

two-bedroom units. Collectively, the Proposed Project will contain 74,596 square feet of gross floor area. This project will add an abundance of housing opportunities in the Mission Hill area, and serve to enhance the overall streetscape in the district while keeping within the general planning guidelines for the neighborhood. Therefore, the Zoning Board of Appeal (the "Board") should grant the requested relief as it is the minimal relief necessary to allow the Appellant reasonable use of the Property without being injurious to the surrounding neighborhood or detrimental to the public welfare.

After the Appellant filed the appeal, the Board, in conformity with applicable law, mailed reasonable notice of the public hearing to the Appellant and to the owners of all property deemed by the Board to be affected thereby, as they appeared in the then most recent local tax list. The notice of a public hearing was duly advertised in a daily newspaper published in the City of Boston in accordance with applicable law. The Board held public hearings on the appeal on April 30, 2024.

At a hearing before the Board on April 30, 2024, the Mayor's Office of Neighborhood Services commented on the project's lengthy community process. A representative from the Community Alliance of Mission Hill, the executive director of Mission Hill Neighborhood Housing Services, and a legal representative for an abutter testified in opposition. A representative from the Carpenter's Union and two (2) residents of the neighborhood testified in support. The support shown, on balance, 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



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

100 Saint Alphonsus Street, Ward 10
BOA1570022
Date of Hearing: April 30, 2024
Permit: #ERT1559532
Page: #5

- 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 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.

Additionally, The Board makes the following findings:

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

The Board is of the opinion that all conditions required for the granting of 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.



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

100 Saint Alphonsus Street, Ward 10
BOA1570022
Date of Hearing: April 30, 2024
Permit: #ERT1559532
Page: #6

Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) 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(s) which, if not complied with, will render this decision null and void.

APPROVED AS TO FORM:

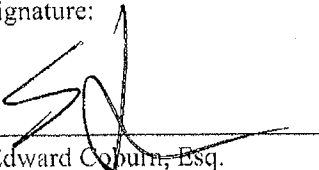
PROVISO:

Kevin P. O'Connor, Jr.
Assistant Corporation Counsel

- Appellant agrees to implement a deed restriction that will prohibit leasing units to undergraduate tenants

Signed: JUNE 11, 2024

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



Edward Coburn, Esq.
General Counsel
ISD/Board of Appeal

/s/ Sherry Dong
Sherry Dong – Chair (Voted In Favor)
/s/ Norm Stenbridge
Norm Stenbridge – Secretary (Voted In Favor)
/s/ Giovanni Valencia
Giovanni Valencia (Voted In Favor)
/s/ Hansy Better Barraza
Hansy Better Barraza (Voted In Opposition)
/s/ David Collins
David Collins (Voted In Favor)
/s/ Jeanne Pinado
Jeanne Pinado (Voted In Favor)