



**City of Boston
Board of Appeal**

Inspectional Services Department
1010 Massachusetts Avenue
Boston, MA 02118
617-635-4775

Members

Christine Araujo - *Chair*
Bruce Bickerstaff
Mark Fortune - *Secretary*
Peter Chin
Mark Erlich
Anthony Pisani, AIA
Craig Galvin

NOTICE OF DECISION
CASE NO. BOA 789872
PERMIT # Enter permit number
APPEAL SUSTAINED
Choose an item.

In reference to appeal of

Linear Retail Boston #19, LLC and Linear Retail Boston #21, LLC

concerning premises

144-146 Maverick Street, Ward 1

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 6/12/2018.

FOR THE BOARD OF APPEAL

Matthew Fitzgerald, Esq
Assistant Corporation Counsel



CITY OF BOSTON
BOARD OF APPEAL
OFFICE OF THE BOARD OF APPEAL

May 22, 2018

DATE

Decision of the Board of Appeal on the Appeal of

Linear Retail Boston #19, LLC and Linear Retail Boston#21, LLC

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

144-146 Maverick Street, Ward 1

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

The petitioner's seeks that Landmarks Commission erred in its determination to impose a 2 year moratorium under Article 85 with respect to those properties.

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 789872 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 Wednesday January 10, 2018

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, January 30, 2018 and again on Tuesday March 6, 2018 and again on Tuesday March 27, 2018 and again on Tuesday May 22, 2018 in accordance with notice and advertisement aforementioned, the Board finds as follows:



CITY OF BOSTON
BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

144-146 Maverick Street, Ward 1
BOA789872

Date of Hearing: April 24, 2018

Page: # 2

The Petition came before the Board of Appeal on a request for interpretation. The Petition seeks the reversal of a November 14, 2017 decision of the Boston Landmarks Commission (“BLC” or “Commission”) finding that owner of the properties located at 144-146 Maverick Street, East Boston, Ward 1 (the “Premises”), violated the provisions of Article 85 of the Boston Zoning Code (the “Code”) resulting in the imposition of a two (2) year development moratorium (the “Decision”) with respect to the Premises. The Petitioner contends that it is aggrieved by the Decision of the BLC and/or its Staff Architect as it relates to Article 85 of the Code.

Background

On January 29, 2015 and October 9, 2015, Linear Retail Boston #19 LLC and Linear Retail Boston #21 LLC (“Linear”) acquired the Premises as evidenced by deeds recorded with the Suffolk Registry of Deeds. In addition to the Premises, Linear owns adjoining and contiguous properties located at 9 Chelsea Street and 148 Maverick Street. Linear acquired the Premises with the intention of constructing a commercial retail structure. The Premises are located in the Maverick Square Neighborhood Shopping District as defined by Article 53-10 of the Code.

At no time prior to November 14, 2017 were the Premises included in either the Boston Landmarks Commission’s comprehensive survey of significant properties, or as a historic resource in either the Massachusetts Historic Commission’s inventory of historic resources, or in the National Register of Historic Places.

Procedure

On or about July 18, 2017, Linear filed an “Application for Early Review” with the BLC pursuant to Article 85¹ of the Code expressing its intention to demolish the Premises and the

¹ Article 85-5(1)(b) of the Code provides that “[a]t any time prior to filing an application for a demolition permit, the Applicant may apply for review under this Article by submitting a request in writing to the Landmarks Commission. Such request shall indicate that review is sought under this Article for the demolition of a building and shall specify the building’s address and its ward and parcel number.



CITY OF BOSTON
BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

144-146 Maverick Street, Ward 1
 BOA789872

Date of Hearing: April 24, 2018

Page: # 3

adjoining properties. In response, on July 28, 2017, the BLC notified Linear of its preliminary determination of significance under Article 85, requiring a Demolition Delay Hearing before the BLC for the properties at 144-146 Maverick Street. At that time, the BLC had also determined that the remaining properties at 9 Chelsea Street and 148 Maverick Street were “not significant” and therefore no Demolition Delay would be imposed with respect to those properties.

On August 22, 2017, the BLC held a public hearing pursuant to Article 85, at which time the Commission voted to invoke a 90 day Demolition Delay, instructing the Commissioner of Inspectional Services to refrain from issuing a demolition permit for the Premises until November 20, 2017 (the “Demolition Delay”).

On Friday, November 3, 2017 – a notice was sent via email by BLC Staff to Linear and their counsel. The notice stated that it had been determined that Linear had violated Article 85 by demolishing the Premises and that Linear would be required to appear at a hearing before the Commission on November 14, 2017 (the “Notice of Violation”). Linear alleges that it was not provided with any further information concerning the allegations or the Notice despite Linear’s request.

On Tuesday, November 14, 2017, the BLC held a Public Hearing where the BLC considered the November 3, 2017 Notice of Violation (the “Violation Hearing”). During the hearing, at which Linear was present, BLC Staff presented information to the Commission in support of the Notice of Violation and in support of imposing the Moratorium.

At the conclusion of the Violation Hearing, the Commission voted that Linear voluntarily demolished the Premises and therefore imposed a two (2) year moratorium with respect to the Premises at 144-146 Maverick Street, East Boston, instructing the Commissioner of Inspectional Services not to issue any building or occupancy permits for the premises until November 15, 2019 (the “Violation Determination”). A written notice of the Violation Determination was provided to Linear after the Violation Hearing. The Violation Determination contained no written findings of fact upon which the Commission’s decision was based.



CITY OF BOSTON BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

144-146 Maverick Street, Ward 1
BOA789872

Date of Hearing: April 24, 2018

Page: # 4

Jurisdiction of the Board of Appeal

Boston's Zoning Enabling Act (Chapter 665 of the Acts of 1956, as amended hereinafter the "Zoning Enabling Act") provides that "...any person aggrieved... by reason of any order or decision of the building commissioner or other administrative official in violation of any provision of ...any zoning regulation or amendment ... may appeal to said board of appeal within forty-five days after such...order or decision..." See Section 8. Furthermore, "[i]n acting upon such appeal, said board of appeal may, in conformity with the provisions of this act, reverse or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the board or officers from who the appeal is taken and may direct the issue of a permit." See Section 8.

On December 29, 2017, Linear filed an appeal of the Article 85 Violation Determination with the ZBA.

Findings

The Board held a Public Hearing on April 24, 2018, at which time the Petitioner submitted to the Board a "Statement in Support of Petition" with accompanying exhibits. The Petitioner was afforded the opportunity to present an oral summary of the evidence and the reasons why reversal was appropriate. Roseanne Foley, Executive Director of the Boston Landmarks Commission was also present and provided an opportunity to present information to the Board relevant to the Petition.

After considering the Petition, the oral testimony taken at the Public Hearing, and the evidence submitted, the Board makes the following findings based on the information and evidence presented:

- a. The Violation Determination of the BLC constitutes an order or decision under Article 85 of the Boston Zoning Code;



CITY OF BOSTON
BOARD OF APPEAL
 OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

144-146 Maverick Street, Ward 1
 BOA789872
 Date of Hearing: April 24, 2018
 Page: # 5

- b. Under Section 8 of the Zoning Enabling Act, the Board maintains jurisdiction to hear the appeal of persons aggrieved by any order or decision made under the Code;
- c. The Board maintains the authority under Section 8 of the Zoning Enabling Act to reverse or affirm in whole or in part, or to modify, any order or decision, and make such order or decision as ought to be made, and to that end shall have all the powers of the board or officers from who the appeal is taken and may direct the issue of a permit;
- d. The Petitioner filed a timely appeal of the November 14, 2017 Violation Determination with the Board;
- e. During the Public Hearing, the Petitioner presented credible information and evidence to the Board during supporting its position that the BLC erred in finding a Violation of Article 85 and imposing a two (2) year moratorium;
- f. The information and evidence presented to the Board was sufficient for the Board to exercise its discretion under Section 8 of the Zoning Enabling Act and to specifically reverse the November 14, 2017 decision of the BLC to find a Violation of Article 85 and to impose a two (2) year moratorium;
- g. Specifically, and based upon the information provided at the Board's Public Hearing, the Board finds that:
 - i. The Notice of the Violation and Hearing forwarded on November 3, 2017 was not directed to the owner of record or sent via certified mail;
 - ii. The Notice of Violation and Hearing failed to specifically describe the basis of the allegations leading to the conclusion that a Violation of Article 85 occurred;



CITY OF BOSTON
BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

144-146 Maverick Street, Ward 1
BOA789872

Date of Hearing: April 24, 2018

Page: # 6

- iii. Despite Linear's requests, evidence supporting the allegations leading to the conclusion that Violation of Article 85 occurred was not disclosed to the Petitioner until the hearing on November 14, 2017;
- iv. The Petitioner was otherwise deprived of its right to a meaningful hearing on November 14, 2017;
- v. The information that appeared to be available to the BLC staff at the time the Notice of Violation issued on November 3, 2017 was insufficient to conclude that a violation of Article 85 had occurred;
- vi. During the Demolition Delay period, the City of Boston Inspectional Services Department (ISD) issued no Building Code violation notices for engaging in work at the Premises without appropriate permits;
- vii. Inaccurate and unreliable information was presented to the Commission in support of the allegations contained in the Notice of Violation including information and depictions of work being performed at properties not subject to Demolition Delay and not the Premises subject to Article 85 Demolition Delay;
- viii. For purposes of Article 85, interior asbestos abatement and the removal of hazardous materials did not constitute demolition in this specific case;
- ix. Any work done to the exterior of the Premises did not result in a condition that would have left the Premises unsecured and subject to demolition by neglect in this specific case; and
- x. With respect to the Premises, the Petitioner has complied with the requirements of Article 85 and that the Demolition Delay period imposed by the Boston Landmarks Commission on August 22, 2017 expired on November 20, 2017.



CITY OF BOSTON BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

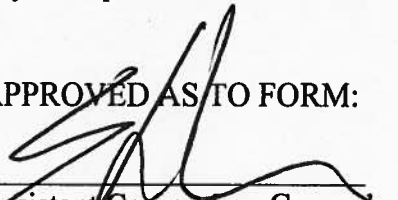
144-146 Maverick Street, Ward 1
BOA789872

Date of Hearing: April 24, 2018

Page: # 7

Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) unanimously voted to reverse the November 14, 2017 Decision of the Boston Landmarks Commission, which found a violation of Article 85 and imposed a two (2) year moratorium with respect to the properties at 144-146 Maverick Street, East Boston, and as a result annuls such order that the Building Commissioner be prohibited from issuing any permits for building, demolition or occupancy until November 15, 2019, and orders him to grant any such permits in accordance with this decision.

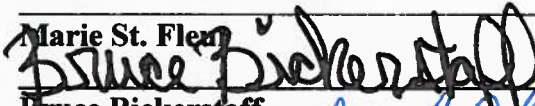

APPROVED AS TO FORM:


Assistant Corporation Counsel

Signed, June 12, 2018


Christine Araujo - Chairperson
Mark Fortune - Secretary

Marie St. Fleur


Bruce Bickerstaff
Mark Erlich
Anthony Pisani, AIA
Craig Galvin