



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Joanne Last Name: D'Alcomo

Address: 48 Leamington Road

City: Brighton State: MA Zip Code: 02135

Phone Number: 617202922 Ext. _____

Email: jdalcomo@jagermccarron.com

Organization or Media Affiliation (if any): Jager McCarron LLP

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Board of Appeal of the City of Boston

Specific person(s), if any, you allege committed the violation: _____

Date of alleged violation: on/after 5/23/17

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

See attached text of alleged violation.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

(1) Revise the decision to reflect the vote at the May 23, 2017 hearing, (2) remove the repeat petition from the Board of Appeal docket on December 19, 2017 with a commitment not to allow the matter on the docket for one year after May 23, 2017, and (3) agree not to issue written decisions purporting to dismiss appeals without prejudice or denials without prejudice unless such a vote has been taken at a properly noticed hearing and the vote is recorded.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

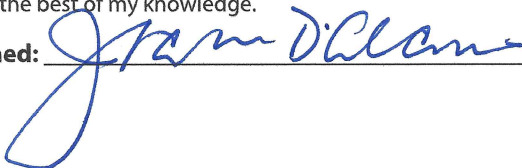
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____



Date: _____

12/6/17

Text of “alleged violation” section

On May 23, 2017, the Board of Appeal held a hearing on BOA -660491 concerning 88-94 Lincoln Street, Brighton.

The applicant sought a variance from the Zoning Code in order to be able to erect an electronic billboard on the site.

An official video of the hearing is available on the Boston.gov website, and begins at approximately 14:10 into the recording.

At the hearing there was considerable testimony in opposition to the variance request. There was limited testimony in favor of it. A motion was made to approve the variance requested and that motion was seconded. A vote was taken, and it was announced that the motion failed.

The Board of Appeal has posted Minutes of the May 23, 2017 hearing on this matter on its website at https://www.boston.gov/sites/default/files/document-file-06-2017/hearing_minutes_for_may_23_2017.pdf. According to the Minutes, which are attached as Exhibit A, three members of the Board of Appeal – Mark Fortune, Bruce Bickerstaff and Mark Erlich – voted to oppose the motion to approve the request for a variance. Section 8 of the Boston Zoning Enabling Act requires a vote of five in favor in order for a variance to be approved. As can be seen on Exhibit A, under the section of the Minutes for “decision,” a checkmark appears next to the word “denied,” consistent with the decision made at the public hearing on May 23, 2017. There was no checkmark next to the line for “denied without prejudice.”

In an undated letter called “Notice of Decision,” attached as Exhibit B, the Board’s attorney specifically stated: “I beg to advise that the petition has been **denied.**” (Emphasis added).

In a document described as the “Decision” on the Appeal, however, there was no mention of the Board’s vote at the public hearing on May 23, 2017 denying the appeal. See decision attached as Exhibit C. There was no mention of the votes of Board Members Fortune, Bickerstaff and Erlich opposing the motion to approve the petition for a variance.

Rather, the decision states the Board “**voted to dismiss the appeal without prejudice.**” (Emphasis added). Six members of the Board are identifying as signing the decision.

The Board of Appeal has now allowed the appeal to be put on the docket for its December 19, 2017 hearing even though Section 5-2 of the Boston Zoning Code provides that an appeal for a variance may not be considered on the merits within one

year after an adverse decision – and the Board of Appeal, in denying the variance, clearly decided adversely to the appellant on May 23, 2017. The only exception to the one-year limitation under Section 5-2 of the Zoning Code is “with the concurring vote of not less than five of the members of said Board.” There was no such concurring vote on May 23, 2017 nor at any other public hearing properly noticed under the Open Meeting Law.

In order to place this matter on the docket within one year of May 23, 2017, the Board of Appeal is apparently relying on the written “decision” which refers to the Board having “voted to dismiss the appeal without prejudice.” However, no such vote was taken in compliance with the Open Meeting Law and therefore the decision as written is unlawful.

There was no properly noticed meeting – indeed, there was no public meeting at all – at which the Board of Appeal voted to dismiss the appeal without prejudice. The “decision” dismissing the appeal without prejudice was apparently something done behind the scenes. Any such vote should have taken place at a public hearing for which notice was given under the Open Meeting Law. The failure of such a vote to take place at a public hearing was a violation of the Open Meeting Law.

Furthermore, if the Board did in fact -- in some manner -- take a “vote” to “dismiss the appeal without prejudice” as is stated in the “decision” attached as Exhibit C, another violation would have occurred because of the lack of recordkeeping. The Open Meeting Law, specifically Massachusetts General Laws Chapter 30, Section 22 (a) states: “A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, **the decisions made and the actions taken at each meeting**, including the **record of all votes**.” (Emphasis added). In this case, there are no Minutes of a meeting at which a vote dismissing the appeal without prejudice occurred, no record of votes on such a measure at a meeting, no record of a discussion about a proposed dismissal without prejudice. The decision declaring a dismissal without prejudice appears from nowhere, giving the public who attended the hearing on May 23, 2017 no warning whatsoever that this very same appeal for a variance could be the subject of a hearing before the Board only months later.



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

May 23, 2017

DATE

Decision of the Board of Appeal on the Appeal of

Derric Small

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

88-94 Lincoln Street. Ward 22

In the following respect: Variance

Article(s): 11(11-7)

Purpose: To install a new 14'x48' (2) sided electronic billboard on a monopole as per plans.

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-660491 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 May 2, 2017

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 May 23, 2017 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 #ALT644208 October 6, 2016 plans submitted to the Board at its hearing and now on file in the Building Department.

EX. A

DECISION:

	Yes	No
SUSTAINED/APPROVED	_____	_____
DENIED	_____✓_____	_____
DENIED WITHOUT PREJUDICE	_____	_____

PROVISO:

BOARD MEMBERS:

	PRESENT		RECUSE
	Yes	No	
Christine Araujo, Chair	_____✓_____	_____	_____
Mark Fortune, Secretary -Opposed	_____✓_____	_____	_____
Anthony Pisani	_____✓_____	_____	_____
Mark Erlich -Opposed	_____✓_____	_____	_____
Bruce Bickerstaff -Opposed	_____✓_____	_____	_____
Peter Chin	_____✓_____	_____	_____
Craig Galvin	_____✓_____	_____	_____
Eugene Kelly	_____	_____✓_____	_____

SUMMARY: At the request of the Board, Counsel described the proposed use in detail, stating to Installing a electronic billboard which is parallel to Mass Pike. Properties between, two district residential and commercial. Currently being use as a commercial cleaning company. The Board then requested testimony in opposition and in support from neighbors and elected officials and their representatives. The Mayor's office support, Sheriff Tompkins support, Ciommo's office opposed, Annissa Essaibi George's office opposed, ACA opposed, Allston Brighton CDC opposed, Brighton Allston Improvement Association opposed, Several abutters opposed. Board member Galvin moved to approve the motion was seconded, Board member Fortune, Bickerstaff & Erlich opposed to vote therefore the motion to approve does not carry and the project was Denied.

A true copy of resolution adopted by the Board of Appeals, copies forwarded to the applicant and Board of Appeal file.



**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 Ehrlich
Anthony Pisani, AIA
Craig Galsom

**NOTICE OF DECISION
CASE NO. BOA660491
PERMIT #ALT644208
APPEAL DISMISSED
WITHOUT PREJUDICE**

In reference to appeal of

Derric Small

concerning premises

88-94 Lincoln Street, Ward 22

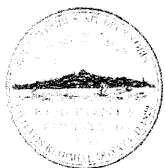
to vary the application of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been denied.

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 11/3/2017.

FOR THE BOARD OF APPEAL

**Matthew Fitzgerald, Esq
Assistant Corporation Counsel**

EX. B



CITY OF BOSTON
BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

88-94 Lincoln Street, Ward 22

BOA-660491

Date of Hearing: May 23, 2017

Permit: ALT644208

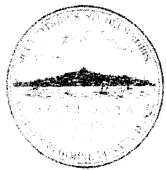
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The premises in question are located in the Allston/Brighton section of the City of Boston in a zoning area designated NS-1. Appellant's application for building permit was denied by the Building Commissioner for violation of Statute 1956, Chapter 665, Article: 11, Section 7.

The Board is of the opinion that the Appellant did not advance sufficient reasons to satisfy the Board that all the conditions under which the Board may grant a Variance as specified in Article 7, Section 7-3 of the Zoning Code have been met, nor to cause the Board to come to a conclusion that this is a specific case where a literal enforcement of the Act involves a substantial hardship upon the Appellant as well as upon the premises, nor where the described relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the Zoning Act.

This appeal is hereby dismissed without prejudice. In the event a new application for this site is filed and refused by the Building Commissioner, the provisions of Article 5, Section 5-3 are hereby waived. However, the Board is of the opinion that if another hearing on these premises must be held before the Board of Appeal, it will not be necessary for the Appellant to wait the required year, but may file a petition at the convenience of the Appellant.

EX. C.



CITY OF BOSTON BOARD OF APPEAL

OFFICE OF THE BOARD OF APPEAL

Decision of the Board of Appeal on the Appeal of

88-94 Lincoln Street, Ward 22
BOA-660491
Date of Hearing: May 23, 2017
Permit: ALT644208
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Therefore, the Board (the members and substitute member/members sitting on this appeal) voted to dismiss the appeal without prejudice.

APPEAL DISMISSED WITHOUT PREJUDICE

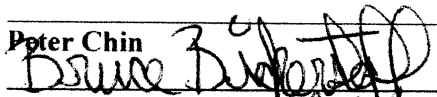
Signed, October 31, 2017



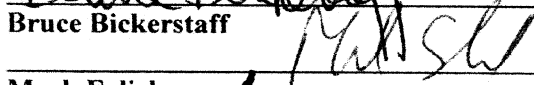
Christine Araujo - Chairperson

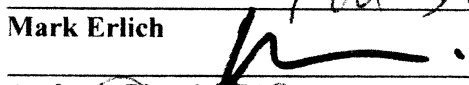


Mark Fortune - Secretary

Peter Chin


Bruce Bickerstaff

Mark Erlich


Anthony Pisani, AIA


Craig Galvin

