

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

NORFOLK SUPERIOR COURT
CIVIL ACTION NO.

_____)
Daniel E. Williams, et al)
)
Plaintiffs,)
v.)
)
Zoning Board of Appeals, Town of)
Brookline; Harvard Limited Partnership,)
Harvard 111, Inc., Women's Health)
Service, Laurent C. Delli-Bovi, MA,)
Michael W. Sheppard, Building)
Commissioner, Town of)
Brookline)
)
Defendants)
_____)

COMPLAINT

JURISDICTION

1. The Court has jurisdiction to hear this matter pursuant to M.G.L.C. 40A§ 17.

PARTIES

2. PLAINTIFFS, are neighbors and abutters of 111 Harvard Street, Brookline, Massachusetts. Their names and addresses are as follows:
 - a. Ina Brother, 110 Harvard Street, Brookline, MA
 - b. Sylvia Clancy, 21 Harvard Avenue, Brookline, MA
 - c. Kenneth Kaplan, 116 Harvard Street, Brookline, MA
 - d. Cathy Kaplan, 116 Harvard Street, Brookline, MA
 - e. Lauren McBurney, 102 Harvard Street, Brookline, MA
 - f. Susan Ritter, 104 Harvard Street, Brookline, MA
 - g. Steven Ritter, 104 Harvard Street, Brookline, MA

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- h. Steven Ritter, 104 Harvard Street, Brookline, MA
- i. Daniel Williams 123 Harvard Street, Brookline, MA

DEFENDANTS

- 3. The DEFENDANTS are members of the Brookline Zoning Board of Appeals (the "Board") are the current and duly appointed members of the Board. Their names and addresses are as follows:
 - a. Enid Start, 102 Fernard Road, Brookline, MA
 - b. Jesse Geller, 1514 Beacon Street, Brookline, MA
 - c. Robert DeVeres, 18 Acron Road, Brookline, MA
 - d. Kathryn R. Ham, 37 Gorham Ave, Brookline, MA
 - e. Anne Christina Wolfe, 26 Searle Ave, Brookline, MA
 - f. Jonathan Book, 215 Pond Ave, Brookline, MA
 - g. Mark Allen154, University Road, Brookline, MA
- 4. Harvard III Limited Partnership, is a Massachusetts Limited Partnership with a usual place of business at 1270 Soldiers Field Road, Boston, MA., ("the owner") of the premises at 111 Harvard Street, Brookline, MA
- 5. Peter Polandjian, President of Harvard III, Inc., a Massachusetts Corporation is the General Partner of Harvard III Limited Partnership having a last and usual business address at 1270 Soldiers Field Road, Boston, MA.

6. Women's Health Services, P.C, a Massachusetts Professional Corporation and Laurent Delli-Bovi it's President and owner having a usual place of business at 822 Boylston Street, Brookline, MA ("WHS").
7. Michael W. Sheppard, Building Commissioner, Town of Brookline, MA 02446.

PRIOR PROCEEDING

8. The owners of the 111 Harvard Street, Brookline, MA and the proposed lessee, WHS, made application to the Board for a variance and/or special permits. WHS proposes to use the site for office use and medical treatment for issues related to women health, including gynecological services, minor out-patient surgical procedures, family planning services, abortions contraception and counseling services. " WHS consistently provides 3000-4000 abortion procedures yearly, 2500-3500 first term abortions and 350-500 second trimester procedures. WHS provides more abortion procedures than all abortion procedures combined for all of the hospitals in Massachusetts."
9. The Board sent out Notice of Hearing to the owners of the properties deemed by the Board to be affected by its decision, (including all of the plaintiffs) but nowhere in the Notice does it mention the proposed use of the site. (Exhibit "A")
10. The site is located in the heart of a school zone where as many as nine hundred children, pre Kindergarten and Kindergarten-8, attend classes. The site is a mixture of residences and small business on one of the busiest north-south arteries in Brookline. (Exhibit "B", showing distances from schools to site).

11. After hearing, at which the majority of those attending, who live in the neighborhood, opposed the Board's grant of any variance or special permits. At the conclusion of the hearings the Board granted the requested relief and issued its report and filed it with the Town Clerk on July 16, 2009. (a certified copy is attached hereto and marked Exhibit "C").

12. Specifically, pursuant to Section 9.05 of the Brookline Zoning By-Law, the Board made the following findings:

- a. the specific site is an appropriate location for such a use, structure, or condition.
- b. the use as developed will not affect the neighborhood.
- c. there will be no nuisance or serious hazard to vehicles or pedestrians.

(Exhibit "C", p.24)

13. The findings of the Board are in violation of Brookline Zoning By-Laws, Article I, Purpose and Scope. § 1 "The purpose of this By-Law is declared to be the promotion of the public health, safety, convenience, and welfare."

(Copy of By-law Article I and Section 9:05 Exhibit "D")

14. The finding pursuant to Section 9.05(a) of the Zoning By-law is clearly erroneous because use of the site as an abortion clinic is in the heart of a school zone (see Exhibit "C".) where approximately nine hundred children ages pre Kindergarten through Kindergarten-8 attend school renders the site totally inappropriate. The Board's finding is against the weight of the evidence, clearly erroneous, in violation of the foundational purposes of

zoning by-laws, an abuse of discretion, arbitrary, capricious and contrary to G.L. c40A.

15. The finding pursuant to Section 9.05(b) of the Zoning By-Law is clearly erroneous because the site will attract protestors. This proposition is so self-evident the Commonwealth enacted the so called "Buffer Zone Law", G.L.c 266§12 E ½. The establishment of the buffer zone will force protestors into the driveways and entrances of adjacent sites. The signage displayed by the protestors and the nature of their chants and slogans will adversely affect the neighborhood and diminish the property and business values in the neighborhood but also adversely impact the emotional health and well being of the children. The finding pursuant to 9.05(b) is against the weight of the evidence; clearly erroneous, in violation of the foundational purpose of the Brookline Zoning By-law and G.L. c40A; constitutes an abuse of discretion and is arbitrary and capricious.
16. The finding pursuant to Section 9.05(c) is clearly erroneous because prior to the Board's decision, protestors have gathered at the site carrying large statues of the Virgin Mary, costumed as the Grim Reaper and displaying offensive signage. Such conduct is disturbing, even terrifying to the hundreds of young children who pass by this site on their way to and from school. The nuisance attracts the attention of the drivers of motor vehicles on this busy street who slow down to "stop and gawk" thereby increasing the likelihood of serious motor vehicle accidents. The sidewalk adjacent to the site will be crowded with protestors, children, and pedestrians who use the route to do their shopping at the near-by Stop and Shop and Walgreens. The site has already attracted vandals who have broken windows and damaged doors. The Board's

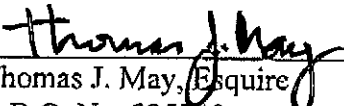
findings are against the weight of the evidence, clearly erroneous, in violation of the Brookline Zoning By-laws, contrary to G.L. c40A, and constitute an abuse of discretion and are capricious.

17. The Plaintiffs further allege they have been denied the equal protection of the law and the value of their homes and business have been taken without just compensation all in violation of the United States Constitution, Amendment V and XIV, Massachusetts Declaration of Rights, Part I Article 10.

18. WHEREFOR, the plaintiffs respectfully request this Honorable Court.

1. Hear the matters described herein de novo, make findings of fact and annul the decision of the Brookline Board of Appeals entered on July 16, 2009.
2. Pending judgment on the hearing of this matter enter an order enjoining the Brookline Building Commissioner from issuing a Certificate of Occupancy for 111 Harvard Street, Brookline, MA.
3. Enter a judgment declaring the site of 111 Harvard Street an inappropriate site for the conduct of an abortion clinic because of its location in a school zone; it will adversely affect the neighborhood and it will create a nuisance or serious hazard to vehicles and pedestrians.
4. Award such other and further legal and equitable relief as warranted by the ends of justice.

Plaintiffs,
By their attorney,


Thomas J. May, Esquire
B.B.O. No. 325740
300 Washington Street, 2nd Floor
Brookline, MA 02445
(617) 383-6000

Dated: July 31, 2009

CERTIFICATE OF SERVICE

I, Thomas J. May., counsel for the Plaintiff's, hereby certify that a true and accurate copy of the document attached hereto, has been served upon Defendant's by hand filing a copy of the within complaint in the office of Brookline Town Clerk, 333 Washington Street, Brookline, MA and by certified mail, return receipt requested postage pre-paid, on July 31, 2009 to the following:

Enid Start, 102 Fernard Road, Brookline, MA

Jesse Geller, 1514 Beacon Street, Brookline, MA

Robert DeVeres, 18 Acron Road, Brookline, MA

Kathryn R. Ham, 37 Gorham Ave, Brookline, MA

Anne Christina Wolfe, 26 Searle Ave, Brookline, MA

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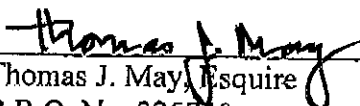
Harvard III Limited Partnership, 1270 Soldiers Field Road, Boston, MA

Peter Polandjian, President of Harvard III, Inc. 1270 Soldiers Field Rd,
Boston, MA

Women's Health Services, P.C., 822 Boylston Street, Brookline, MA

Michael W. Sheppard, Building Commission, Town of Brookline, 333
Washington Street, Brookline, MA

Plaintiffs,
By their attorney,


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