

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.: 25-2975

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STEPHEN MARSH, WILLIAM LOCKE, )  
MICHAEL SHEARNS, ONUR INANOGLU, )  
HELEN LAPORE, GIL RUDGE and )  
1732 WEST CENTRE INC., )  
)  
)  
)  
Plaintiffs )  
v. )  
)  
BOARD OF APPEALS OF THE CITY OF BOSTON, )  
BOSTON INSPECTIONAL SERVICES DEPARTMENT )  
and )  
BERKSHIRE INVESTMENTS, L.L.C. )  
BLUE ROCK INVESTMENTS, LLC )  
)  
Defendants. )

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AFFIDAVIT OF JAMES BURKE, PE

I, James W. Burke, PE, hereby say and depose as follows:

1. I am a registered Professional Engineer in the Commonwealth of Massachusetts. I have been licensed since 1996. I am the principal of Burke Civil-Site Engineering, Inc. in Quincy, Massachusetts.

2. I have reviewed the approved plans for 5 Redlands Road, West Roxbury, Massachusetts, the Exhibits to the Plaintiffs' Complaint and Amended Complaint, the documents Produced by Peter Hoyt Land Surveying, the Boston Zoning Code, and photographs of the site and conditions on Redlands Road. It is my opinion to a reasonable degree of engineering

certainty that the plans fail to comply with the Boston Zoning Code in multiple respects and result in harms to the Plaintiffs with respect to safety, traffic, and parking as explained herein.

3. Since the approved plans do not comply with the Zoning Code, it is my opinion that ISD should not have issued a building permit and the Board should not have rejected Mr. Marsh's appeal.

4. As an initial matter, it is my opinion that the developer has not submitted plans that comply with the City's requirements. Indeed, the developer has never submitted any plans that have been prepared or stamped by a Professional Engineer.

5. The City of Boston Off-Street Loading Guidelines which are to "ensure safe and efficient loading access, minimize adverse impacts on traffic-flow and pedestrian safety, and provide consistent guidelines for developers" required the submission of "a site plan with truck turn path plotted on a 1:20 scale site plan for design vehicle approval by BTM (as required in Section 3 of the Transportation Access Plan Agreement). Plans shall be signed and stamped by a P.E." (emphasis added). This was not done – the City approved a plan without a compliant plan.

6. The site plan submitted by the developer to ISD that was approved by ISD and upheld by the Board is not signed or stamped by a P.E. It is signed and stamped by a land surveyor, Peter Hoyt. The plan lacks details – the plan does not state what is existing or proposed. ISD should have rejected the developer's application based on the fact that the site plan was not signed and stamped by a P.E. Also, the approved plans do not include a site plan with a truck turn or emergency vehicle path plotted on it.

7. Pursuant to BTM Guidelines and Article 39-40.6 of the Zoning Code, the minimum width of a driveway must be 10 feet. Also, I note the July 31, 2025 Refusal Letter issued by ISD to the developer identified the proposed 9 foot driveway width as a violation of

Article 56-39.5 as a violation of the off-street parking requirements with the comment “5.

Design: width of an unobstructed 10’ driveway and clear maneuvering areas.” I have reviewed six plans for the Property and none of the plans specifically identify the width of the existing driveway; however, the plans prepared by A.S. Elliott dated 2/1/22 indicate a dimension in that area of the southwest corner of the building of 9ft 1inch and the plans stamped by Peter Hoyt dated July 7, 2025 and August 28, 2025 show a dimension in the same general area as the 2022 plan of 9 ft. It is unclear what this dimension represents – there is no “proposed” or “existing” text, nor is there a note that states the line measures the distance from building corner to an object (e.g., property line, face of retaining wall). Since the ISD plans examiner cited the developer for insufficient driveway width in his July 31, 2025 rejection letter, it is reasonable to infer that ISD interpreted Mr. Hoyt’s stamped plans as depicting an existing driveway that is 9 feet wide. This width is consistent with Mr. Elliot’s 2022 survey where the dimension in that same area was measured at 9ft 1inch. However, in Mr. Hoyt’s September 3, 2025 stamped plan the width of that same dimension increased by almost one foot, resulting in a width of 10 feet.

8. It is my understanding that no permits were issued and no work was performed to widen the driveway by the current owner, especially between August 28, 2025 and September 3, 2025. Based on my review of the stamped plans, since none of the plans specifically identify the width of the driveway in the area of the southwest corner of the building, it is my opinion that the width is less than 10 feet. This opinion is based upon my review of the A.S. Elliot stamped plan and Mr. Hoyt’s two stamped plans from July and August 2025. Additionally, I have reviewed photographs of current conditions, and the driveway width does not appear to extend to the property line, but to a retaining wall that has a top of wall width of approximately 1 foot.

9. I have significant safety concerns relating to the driveway. These concerns are exacerbated by my belief that the narrowest portion of the driveway is less than 10 feet wide. The narrowest portion of the driveway is bordered on the north side by the building and a retaining wall on the south side that is at a much higher elevation than the abutting property. The location of the driveway limits sightlines on the east side of the building for entering, exiting, and drivers using the proposed parking spaces. This creates safety concerns not only for the drivers of vehicles on the driveway but also for pedestrians walking by the Property and vehicle driving past the Property.

10. The driveway is not wide enough at its narrowest point for two vehicles to safely pass each other due to the retaining wall and building. Therefore, one vehicle will be forced to reverse down the driveway towards Redlands Road with obstructed site lines, due to the change in elevation, that creates a safety hazard for all pedestrians walking past the site. It is my opinion that the risk of a vehicle driving in reverse into a pedestrian walking by the Property is significant due to the steep grade of the driveway and obstructed sightlines in conjunction with the lack of width of the driveway.

11. Additionally, a vehicle exiting the Property, whether it is facing Redlands or in reverse, is further obstructed in exiting the Property due to on-street parking that occurs right up the limit of the left side of the driveway. This requires an exiting vehicle to pull onto a significant portion of Redlands Road before it can safely determine whether it may turn right to exit the Property. This is a safety concern.

12. It is my opinion that the plans do not comply with the Zoning Code's requirement for a loading bay. Due to size of the building at the Property, pursuant to Article 56, Table J, the

Property is required to have one “off street loading bay.” Further, Section 24-2(c) of the Zoning Code states that:

Each loading bay shall be located entirely on the lot and shall be no less than ten feet in width, twenty-five feet in length, and fourteen feet in height, exclusive of maneuvering areas and access drives. Each loading bay within fifty feet of a residential district shall be enclosed in a structure if the use regularly involves night operations.

13. The plans submitted by the developer do not include a loading bay. The Zoning Code requires that the dimensions of a loading bay to be at least 10 feet wide, 25 feet long and 14 feet high. The approved plans do not contain a loading bay but appear to show a “loading zone.” This “loading zone” is not at least 14 feet in height and therefore does not comply with the Zoning Code. Moreover, from an engineering perspective, there is a difference between a loading bay and a loading zone/space. A loading bay is generally an elevated platform that is attached to a building, and a loading zone, typical on a street, is not attached to a building and is generally not elevated.

14. Section 23-2(a) requires the Property to have “bays, maneuvering areas, and appropriate means of vehicular access to a street, and shall be so designed as not to constitute a nuisance or a hazard or unreasonable impediment to traffic.” Article 56-39.5 has similar requirements. Based upon my experience, the BTM guidelines, and Article 56-39.5, the approved plans were not only required to be stamped by a P.E., but they should have demonstrated how a delivery truck could maneuver through the site, including, how it can turn around or whether it is expected that a delivery truck will back out of the Property from the loading area all the way down to Redlands Road.

15. The approved plans do not depict the maneuverability for delivery vehicles with respect to accessing or exiting the “loading zone” and the Property. This is critical since delivery vehicles are typically wider and longer than non-commercial vehicles. It does not appear

possible that a delivery vehicle could back into the “loading zone” or turn around on the Property so that it can exit facing Redlands Road. It is a safety concern to pedestrians and vehicles traveling on Redlands Road if a delivery vehicle is required to enter Redlands Road while in reverse with impaired lines of site. It will also create a nuisance by said delivery vehicle exiting the Property onto Redlands Road in reverse as it will block and back-up traffic.

16. Since the Property does not include the required loading bay or even a safely accessible “loading zone,” delivery vehicles will idle in the street, which will block traffic on an already narrow one way street that permits street parking on both sides of the street. Exhibit 13 to the Plaintiffs’ Verified Complaint depicts this condition. All of the Plaintiffs who live on Redlands Road need to drive past the Property in order to reach their homes, and will, therefore, be stuck behind any idling trucks. In a “worst case” scenario an idling truck could block emergency vehicles from their destination.

17. It is my opinion that the approved plans do not comply with the parking requirements set forth in the Zoning Code. As an initial matter, the approved plans do not account for any parking required for the accessory office use on the lowest floor of the building. Pursuant to Article 56-39.3 and Article 56, Table I, the accessory office use has a parking requirement of 2.0 spaces per 1000 square feet. Since the proposed office space is 6,478 square feet the required number of parking spaces just for the accessory office use is 12.96 and rounded up to 13 parking spaces. Without even calculating the parking spaces required to accommodate the number of dwelling units based on the number of beds, the approved plans do not comply with the parking requirements set forth in Article 56 of the Zoning Code. Several additional parking spaces are required to support the 120 beds specified in the CO for the residents and visitors of said residents.

18. In addition to not complying with the number of required off-street parking spaces, the design of the parking area does not allow for required access and maneuverability to each of the 11 parking spaces and throughout the site as set forth in Article 56-39.5 and BTG Guidelines. Specifically, the approved plans do not identify any areas for a vehicle to turn around; thus requiring a driver to reverse to exit the site creating a significant safety hazard to pedestrians walking past the Property and vehicles on Redlands Road. Further, parking space no. 11 is not safely accessible if there is a vehicle parked in space no. 10. Similarly, if a vehicle parked in space no. 11 and a subsequent vehicle parking in spaces nos. 9 or 10, then the vehicle in space 11 could not safely exit space 11. Similarly, a vehicle cannot safely exit from space no. 3 if vehicles are parked in spaces nos. 2 and 4. The plans must show maneuverability for all parking spaces to ensure that all are practically usable.

19. Also, the approved plans do not show the access and maneuverability with respect to the lone handicap spot, space no. 1. It is not clear to me how a driver would actually park or exit the handicap parking space. Further, handicap parking spaces are typically located closest to the nearest accessible entrance. The nearest accessible entrance is not depicted on the approved plans and if the handicap space needed to be re-located it may result in the loss of parking spaces.

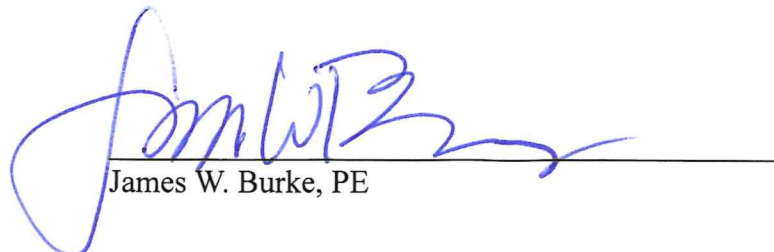
20. Due to the limited parking spaces and maneuverability of the parking lot it can be expected the staff working at the Property, guests of the Property and Residents of the Property will not use the parking area provided at the Property and instead park on the street, which will increase the number of vehicles competing to park on Redlands Road in the area around the Property and the Plaintiffs' Properties.

21. Indeed, abutter Ms. Lepore exclusively relies upon street parking. It is my understanding that Ms. Lepore's daughter and her two young children live with her.

Additionally, other Plaintiffs rely upon street parking for visitors and guests and the on street parking is already limited. As a result, based on my education, training, experience, and review of the approved plans and site conditions, it is my opinion that the loss of street parking will harm all of the Plaintiffs, but will undoubtedly harm Ms. Lepore who exclusively relies upon street parking for herself and other residents of her home. This harm and loss of on-street parking spaces would be significantly reduced if the Property was required to comply with the Zoning Code with respect to the number of required parking spaces and the required safe design and maneuverability requirements.

22. For the reasons described above, it is my opinion to a reasonable degree of engineering certainty that the approved plans do not comply with the Zoning Code in the following respects (a) minimum driveway width; (b) required loading bay; (c) required number of off-street parking spaces; and (d) parking and loading has not been designed to allow for safe maneuvering. These failures to comply with the Zoning Code, in my professional opinion to a reasonable degree of engineering certainty result in harms to each of the Plaintiffs concerning (i) enhanced safety concerns due to the design of the parking and driveway, loading zone, and lack of width of the driveway which make it less safe to walk past the building or drive on Redlands Road; (ii) increased traffic delays due to the lack of loading area and delivery vehicles idling on Redlands Road blocking traffic on a one way street with street parking on both sides; and (iii) loss of street parking spaces since the residents, staff, and guests of the Property will not use the parking area due to the dangerous and improper design.

**STATED UNDER THE PENALTIES OF PREJURY THIS 21<sup>TH</sup> DAY OF MARCH 2026**

  
James W. Burke, PE

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
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STEPHEN MARSH, WILLIAM LOCKE,  
MICHAEL SHEARNS, ONUR INANOGLU,  
HELEN LAPORE, GIL RUDGE and  
1732 WEST CENTRE INC.,

Plaintiffs

v.

BOARD OF APPEALS OF THE CITY OF BOSTON,  
BOSTON INSPECTIONAL SERVICES DEPARTMENT  
and  
BERKSHIRE INVESTMENTS, L.L.C.  
BLUE ROCK INVESTMENTS, LLC

Defendants.

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AFFIDAVIT OF CLAUDIO SALA, REGISTERED LAND SURVEYOR

I, Claudio Sala, hereby say and depose the following:

1. I am a registered land surveyor in the Commonwealth of Massachusetts. I have been registered since 1995. My professional registration number is 38391.
2. I have reviewed the survey documents provided by the developer of 5 Redlands Road, West Roxbury, Massachusetts by Neponset Valley Survey Associates and stamped by Peter Hoyt, Land Surveyor (Hoyt Survey) along with the grade calculation that appears on the survey plan dated July 7, 2025, which is attached hereto as Exhibit 1.
3. Based upon the information provided on the survey plan, I have calculated that the "Finished Floor" of the building is 41% below grade as shown hereafter.

4. Article 2-1 of the Boston Zoning Code defines a basement as follows: “Basement. A building story where more than thirty-five percent (35%) of the story’s height is below grade. Where this Code specifies a maximum number of stories, that number of stories shall not include a basement.”

5. Further, pursuant to Article 2-1 of the Boston Zoning defines grade as follows:

General Rule. Except as otherwise provided in this Code, the average elevation of the nearest sidewalk at the line of the street or streets on which the building abuts.

1. Building Not Abutting a Street. In the case of a building not abutting a street, grade shall be the average elevation of the ground between the building and: (i) the Lot line, or (ii) a line twenty (20) feet from the building, whichever is nearer; but in no event shall the average elevation of such ground be taken to be more than five (5) feet above or below the average elevation of the ground immediately contiguous to the building.

6. Based upon these definitions and the information provided in the Hoyt Survey and Grade Calculation dated July 7, 2025, I have calculated that **41%** of the lowest floor is below grade and in my opinion considered a basement pursuant to the Boston Zoning Code articles above. The calculation is as follows:

177.2 (Finished Floor Elevation of First Floor according to Hoyt Survey) – 168.77 (Finished Floor Elevation of Basement according to Grade Calculation Chart) =  
 $177.2 - 168.77 = 8.43$  Feet.

This establishes the height of the basement story at 8.43 Feet.

172.25 (Average Grade around the building according to Grade Calculation Chart) – 168.77 (Finished Floor Elevation of Basement according to Grade Calculation Chart) =  
 $172.25 - 168.77 = 3.48$

This establishes that 3.48 feet of the height of the basement story is below grade.

3.48 Feet (difference between average grade around the building and finished floor elevation)/ 8.43 Feet (height of the basement story) =  $3.48/8.43 = .41 = \mathbf{41\% \text{ below grade.}}$

7. While the information that appears on the Hoyt Survey dated July 7, 2025, does not show the calculation that was performed to reach the conclusion of 34.82% it appears that it was reached by dividing the difference between the Average Grade around the building minus the finished floor elevation of the basement which equals 3.48 Feet and then dividing by 9.995 or approximately 10. In order for the denominator in that calculation to be 10 (3.48/10), the height of the basement story must be approximately 10 feet. However, based upon the survey data contained in the Hoyt Survey and the grade calculation on the July 7, 2025, the height of the basement story is not 10 feet. It is 8.43 feet.

8. Accordingly, based upon the Hoyt Survey dated July 7, 2025 and grade calculation, it is my opinion that 41% of the first floor is below grade and is a basement and not a story pursuant to my personal interpretation of the Boston Zoning Code articles noted above.

**STATED UNDER THE PENALTIES OF PERJURY THIS 11<sup>TH</sup> DAY OF MARCH 2026**



Claudio Sala, Registered Land Surveyor