
Headaches brew for developer

By Paul McMorrow

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FRED GORDON claims he could vanquish all his problems by writing a check with a few zeroes on it. But he doesn't think anyone in his line of work should have to write checks to his neighbors. Instead, the South Boston developer is faced with two choices that are nearly as unappetizing as paying to make a lawsuit disappear: Put his dream project on hold for a few years while battling a neighbor in a costly courtroom fight, or slash the project's size and give one abutter a veto over rulings coming from Boston's redevelopment and zoning boards. So goes the development game in Boston, where a permit to build something often marks the beginning, not the end, of battles with one's opponents.

Gordon runs the Distillery, a former rum plant that houses studios where artists live and work. The studios are surrounded by two smaller buildings that once served the Distillery's rum-making operations; now, they're underused industrial spaces in a neighborhood that's transitioning to residential use.

In these two parcels, Gordon saw the opportunity to expand his arts complex, and make a powerful environmental statement at the same time. He sought approvals to build the country's largest, greenest apartment building - a super-insulated development so environmentally advanced that it would not need a central heating system and would use 12 percent of the energy a typical home uses. The Boston Redevelopment Authority approved Gordon's 65-unit project two years ago. Then the lawsuit hit.

Every buyer in the condominium building across from the Distillery signed off on condo documents acknowledging the likelihood of future development in the neighborhood, including development that could impinge on their views of the city and make parking more difficult. Every buyer pledged not to oppose new development in the neighborhood. But John O'Connor 3d, one of the condo owners, is suing Gordon's development firm and Boston's zoning board.

O'Connor's lawsuit claims the zoning body overstepped its bounds when it gave Gordon's company permits to double the size of the Distillery. It alleges harm based on height and density, increased parking, and traffic. And it says the new six-story Distillery development would diminish views from O'Connor's fourth-floor unit.

O'Connor's attorney says the non-opposition pledge was written for the benefit of would-be developers next door, not for the Distillery, so it shouldn't be enforceable in court. The case is before a Suffolk County judge.

The Distillery lawsuit raises objections that are commonly cited in local development fights. And the case comes at an interesting time for people on both sides of those fights.

In March, the Supreme Judicial Court ruled against a homeowner who had sued to block construction at his neighbor's seaside home, saying that unless local zoning codes specifically protected individual homeowners' views, an alleged loss of view wasn't grounds for suing to block a construction project.

Three months later, a state appeals panel took a different tack, saying that regulations governing height and massing implicitly concern views, so development opponents should be free to sue over viewsheds. View-based lawsuits are dangerous to developers because nearly every contested construction project has neighbors who have a view of something. The stakes are high in Boston, where significant new buildings are common, and zoning was written to protect access to light and fresh air, but not scenery from one's window.

Whichever way the lawsuit goes, Gordon anticipates being tied up in appeals court for up to two years. Development opponents can often wreck a project just by fighting a lengthy court battle and running up developers' legal bills. Gordon isn't inclined to settle with O'Connor, saying it would only encourage anti-development lawsuits. "It perpetuates a system that's very bad for the city."

So, rather than slog through a trial and an appeal, or settle out of court, Gordon is eyeing a third option. When the BRA passes new zoning for the First Street corridor in South Boston, Gordon may re-permit his Distillery project, shedding floors to get within the neighborhood's new zoning height. The threat of protracted litigation could be enough to reshape the project in ways the BRA and zoning board never sought. "This could be done by any abutter to any project, and there aren't big projects without abutters," Gordon says. "It's been an expensive education."

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