



## CAMBRIDGE HISTORICAL COMMISSION

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August 1, 2023

To: Yi-An Huang, City Manager

From: Charles Sullivan, Executive Director  
Cambridge Historical Commission

Re: Policy Order #1 06.26.2023

Policy Order #1 06.26.2023 requests "... an explanation of the legal standard that is used to compel changes or deny projects reviewed by the Historical Commission or Neighborhood Conservation District Commissions."

The basic historic preservation law in Massachusetts is the Historic Districts Act, M.G.L. Ch. 40C, which was adopted in 1960 to enable municipalities to establish historic districts within which the issuance of building permits for publicly visible exterior construction or alterations is regulated by local historic district commissions. Historic preservation laws have been upheld as permissible under the inherent authority of the state to regulate, protect, and promote public health, safety, morals, or general welfare.

The intent of the Historic Districts Act is described in Section 2:

The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

Section 6 of Ch. 40C establishes regulatory procedures for historic districts:

Except as the ordinance or by-law may otherwise provide in accordance with section eight or said section eight or nine, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

**Section 7 specifies the criteria historic district commissions are to employ in evaluating applications for certificates of appropriateness:**

In passing upon matters before it the commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider interior arrangements or architectural features not subject to public view.

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

The City Council established the Cambridge Historical Commission in 1963 as both an historic district commission under M.G.L. Ch. 40C and an historical commission under M.G.L. Ch. 40, Section 8D. The Council designated four historic districts (consolidated into the Old Cambridge Historic District in 1976) and assigned the commission several additional duties, including historical research and publications, establishment of additional districts, providing advice to other city boards and departments, and preparation of nominations to the National Register of Historic Places.

Twenty years later, the City Council enacted Ch. 2.78, Article III of the Cambridge Municipal Code to enable the Historical Commission to initiate studies for designation of neighborhood conservation districts and individual buildings as landmarks.

Section 2.78.140 states the purpose of the neighborhood conservation district and landmarks ordinance:

The City Council finds it necessary to enact this article under Section 6 of the Home Rule Amendment in order to preserve, conserve and protect the beauty and heritage of the City and to improve the quality of its environment through identification, conservation and maintenance of neighborhoods, areas, sites and structures which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the City; to resist and restrain environmental influences adverse to this purpose; to foster appropriate use and wider public knowledge and appreciation of such neighborhoods, areas or structures; and by furthering these purposes to promote the public welfare by making the City a more attractive and desirable place in which to live and work. To achieve these purposes, the City may designate neighborhood conservation districts and landmarks to be administered as set forth in this article.

For administrative convenience, Article III incorporated by reference several sections of the Historic Districts Act, M.G.L. Ch. 40C. Section 2.78.170 enumerates these:

The Historical Commission and each neighborhood conservation district commission shall have like powers, functions and duties with respect to each landmark and neighborhood conservation district over which it has jurisdiction as is provided Historic District Commissions under clauses (a) through (g) under Section 10 of Chapter 40C of the General Laws with respect to historic districts, including without limitation with respect to the approval and disapproval of certificates of appropriateness, nonapplicability and hardship, the dating and signing of such certificates, the keeping of records and adoption of rules and regulations, the filing with the City Clerk and Building Department of certificates and determinations of disapproval by it, and the determination of designs of appurtenances (excluding colors) which will meet the requirements of the landmark or neighborhood conservation district.

Section 2.78.220 of the Cambridge Municipal Code describes the criteria and factors to be considered by commissions when evaluating applications for certificates of appropriateness in neighborhood conservation districts and landmarks:

A. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall consider, among other things, the historic and architectural value and significance of the site or structure, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features of structures in the surrounding area. In the case of new construction or additions to existing structures a commission shall consider the appropriateness of the size and shape of the structure both in relation to the land area upon which the structure is situated and to structures in the vicinity, and a Commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance. A Commission shall not consider interior arrangements or architectural features not subject to public view.

B. A Commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects, architectural significance or the distinctive character of the landmark or neighborhood conservation district.

The Historical Commission (in its administration of the Harvard Square Conservation District, historic districts, and designated landmarks) and the three neighborhood conservation district commissions have issued thousands of Certificates of Appropriateness since the adoption of Ch. 2.78, Article III in 1983. While many determinations have involved negotiation and an amendment of proposed projects, outright denials are rare. No major new construction project has ever been fully blocked under the authority of this Article, but some have been modified to receive approval.

- The Cambridge Historical Commission has received 5,069 applications for properties under its jurisdiction over a 60-year period. Forty-five (0.89%) were denied. Twenty-one of the denials involved landmarks or properties in the Harvard Square Conservation District; two of these were major construction projects that were subsequently approved in a different form. All other denials involved additions, minor alterations, signs, cell phone antennas, and the like.
- The Mid Cambridge NCD Commission has processed 6,693 applications since 1985. The Commission has recorded denials of 101 applications over 37 years, but 92 of these were non-binding decisions involving siding or inappropriate window replacement and the applicants were able to proceed as they wished at the conclusion of the review. The nine binding applications that were denied involved properties listed on the National Register. Eight denied applications were for alterations and one was for demolition and replacement with a new building.
- The Avon Hill NCD Commission has processed 800 applications since 1999. Seven applications (0.88%) have been denied. Two of these cases involved garages and five inappropriate window replacement.
- The Half Crown-Marsh NCD Commission has received 589 applications since 2007. Eleven (1.9%) have been denied; three of these were modified and subsequently approved. Six denied cases involved fences.

Spreadsheets documenting denied applications are available on request.

Finally, applicants aggrieved by a finding of an NCD commission may appeal to the Cambridge Historical Commission. Cambridge Historical Commission decisions can be appealed to the Superior Court.

cc: Nancy Glowa, City Solicitor