ORDINANCE COMMITTEE

COMMITTEE MEETING

~ MINUTES ~

Tuesday, March 7, 2023	**12:30 PM**	**Sullivan Chamber** **795 Massachusetts Avenue** **Cambridge, MA 02139**

The Ordinance Committee will hold a public hearing on Tuesday, March 7, 2023, from 12:30p.m. - 2:30p.m., on potential changes to Chapter 2.78 Historical Buildings and Landmarks, Proposed Ordinance #2022-11.

Attendee Name	Present	Absent	Late	Arrived
Burhan Azeem	☐Remote	☐	☐	
Dennis J. Carlone	☑	☐	☐	
Alanna Mallon	☑	☐	☐	
Marc C. McGovern	☑	☐	☐	
Patricia Nolan	☐Remote	☐	☐	
E. Denise Simmons	☐	☑	☐	
Paul F. Toner	☐Remote	☐	☐	
Quinton Zondervan	☐Remote	☐	☐	
Sumbul Siddiqui	☐Remote	☐	☐	

A public meeting of the Cambridge City Council's Ordinance Committee was held on Tuesday, March 7, 2023. The meeting was Called to Order at 12:30 p.m. by the Chair, Councillor McGovern. Pursuant to Chapter 20 of the Acts of 2022 adopted by Massachusetts General Assembly and approved by the Governor, this public meeting was hybrid, allowing participation in person, in the Sullivan Chamber, 2nd Floor, City Hall, 795 Massachusetts Avenue, Cambridge, MA and by remote participation via Zoom.

The Chair, Councillor McGovern asked the Clerk to call the roll.

City Clerk LeBlanc called the roll.
Councillor Azeem – Present/Remote
Councillor Carlone – Present/In Sullivan Chamber
Vice Mayor Mallon – Present/In Sullivan Chamber
Councillor McGovern – Present/In Sullivan Chamber
Councillor Nolan – Present/Remote
Councillor Simmons – Absent
Councillor Toner – Present/Remote
Councillor Zondervan – Present/Remote
Mayor Siddiqui – Present/Remote
Present – 8, Absent – 1. Quorum established.

The Chair, Councillor McGovern noted that the call of the meeting was to hold a public hearing on potential changes to Chapter 2.78 Historical Buildings and Landmarks, Proposed Ordinance #2022-11.

The Chair, Councillor McGovern provided a brief history of the proposed legislation. Chair McGovern noted that in May of 2021 there was a citizens petition from Loren Crowe et al. to amend the ordinance relative to Neighborhood Conservation Districts. This citizen's petition expired; no action was taken. Council McGovern noted that he, Councillor Simmons and Vice Mayor Mallon put forth the language currently before the Committee via POR 2022 #35, on February 28, 2022. Councillor McGovern further noted that Loren Crowe and Maryellen Dorn, two of the original Petitioners provided him with revised language that he submitted to the Clerk for consideration at this meeting.

The Chair, Councillor McGovern introduced Loren Crowe and Maryellen Dorn, who gave a presentation titled "NCD Reform Petition" (Attachment A).

The Chair, Councillor McGovern recognized Charles Sullivan, Executive Director for the Cambridge Historical Commission, who noted several concerns with the proposed language and noted that he brought with him a memo detailing his response. (Attachment B).

The Chair, Councillor McGovern, opened public comment. The following individuals were allowed up to 3 minutes to speak.

Roy Russell, 40 Cottage Street, Cambridge, MA, commented on some of the language for changes for Code 2.78.220, changes suggested by Charles Sullivan, and changes he was suggesting himself.

Justin Saif, 259 Hurley Street, Cambridge, MA, spoke in favor of the proposed ordinance and noted how the latest version of the proposal incorporates important points of agreement between the original petitioners and the Historical Commission.

Suzanne Blier, 5 Fuller Place, Cambridge, MA, shared her thoughts on NCD, noting that one thing an NCD does is promote local businesses and tourism.

Helen Walker, 43 Linnaean Street, Cambridge, MA, spoke against the proposed Ordinance and shared that the petition does not recognize the positive contribution that can be made by competent NCD commissions.

Marilee Meyer, 10 Dana Street, Cambridge, MA, spoke against the proposed Ordinance and shared she was speaking in support of the conservation district and Charles Sullivan rebuttal comments.

James Williamson, Churchill Avenue, Cambridge, MA, spoke against the proposed Ordinance and believes that historic preservation should be strengthened in the City in certain areas in and in certain ways.

Marie Saccoccio, 55 Otis Street, Cambridge, MA, spoke against the proposed Ordinance and shared she initiated the East Cambridge NCD and offered detail into the work that was done around the NCD.

Francesca Gordini, 122 Otis Street, Cambridge, MA, spoke against the proposed Ordinance and shared that as a renter in Cambridge she supports the NCD as something that is voted by homeowners.

Andrew Richardson, 176 Third Street, Cambridge, MA, spoke in support of the existing historic NCD Ordinance as it stands, and supports Charles Sullivan and his staff.

James Zall, 203 Pemberton Street, Cambridge, MA, commented that the NCD Ordinance that is 40 years old is in need of reform and shared that NCD's are not about quantitative issues but about character.

Heather Hoffman, 213 Hurley Street, Cambridge, MA, agreed with the comments made by Charles Sullivan.

Charles Hinds, 207 Hurley Street, Cambridge, MA agreed with the comments made by Charles Sullivan and believes they must be enforceable and shared that NCD is not going to curb housing production.
Itamar Turner-Trauring, 139 Oxford Street, Cambridge, MA, commented that the laws should be changed to deal with realities and make it easier to build more housing and to build more affordable housing.
Elizabeth Gombosi, 42 Irving Street, Cambridge, MA, spoke against the proposed Ordinance and noted that the City is fortunate enough to have a strong and knowledgeable Historical Commission to provide professional guidance and NCD's.
Fritz Donovan, 42 Irving Street, Cambridge, MA, spoke in strong opposition to the negative aspect of Policy Order #11 and supports the views of Charles Sullivan.
The Chair, Councillor McGovern recognized Vice Mayor Mallon who made a motion to close public comment.
City Clerk LeBlanc called the roll.
Councillor Azeem – Yes
Councillor Carlone – Yes
Vice Mayor Mallon – Yes
Councillor McGovern – Yes
Councillor Nolan – Yes
Councillor Simmons – Absent
Councillor Toner – Yes
Councillor Zondervan – No
Mayor Siddiqui – Yes
Yes–7, No–1, Absent–1. Motion passed.

The Chair, Councillor McGovern reviewed the agenda packet which included the original language proposed, two memos received from Executive Director Charles Sullivan related to the original language, and revised language to the proposed ordinance.

The Chair, Councillor McGovern made a motion to amend the proposed ordinance language by substitution with the revised language that he submitted to the Clerk for inclusion in the agenda packet. Attachment C.
City Clerk LeBlanc called the roll.
Councillor Azeem – Yes
Councillor Carlone – Yes
Vice Mayor Mallon – Yes
Councillor McGovern – Yes
Councillor Nolan – Yes
Councillor Simmons – Absent
Councillor Toner – Yes
Councillor Zondervan – Yes
Mayor Siddiqui – Yes
Yes – 7, No – 0, Absent – 1. Motion passed.

The Chair, Councillor McGovern recognized Councillor Zondervan who shared that he would be in favor of a working group to look at the proposed Ordinance language and would also like to

look at the language suggested by Roy Russell who spoke during public comment. Councillor Zondervan offered suggestions on how to move forward.
The Chair, Councillor McGovern suggested bringing the original petitioners and Executive Director Sullivan together to work on the language in advance of the next Ordinance Committee meeting.

The Chair, Councillor McGovern recognized Councillor Nolan who noted that she wanted the Committee to make sure they are clear on the various amendments that are being proposed. She shared that it was important to work with the Historical Commission, Law Department, and any other staff and to get input from residents across the City. Councillor Nolan offered that she is in favor of following the lead of Charles Sullivan and appreciates the work that was done by volunteers in the East Cambridge NCD.

The Chair, Councillor McGovern recognized Councillor Carlone who shared he would like to be a part of the working group. He noted that he agreed that language needs to be analyzed and worked out together to come back with language that everyone could potentially be happy with.

The Chair, Councillor McGovern recognized Vice Mayor Mallon who commented that she was not in favor of a working group and believes that the amendments and memos should be worked out in the Ordinance Committee. She noted that Executive Director Sullivan provided suggestions for amendments and that everyone should be able to come together and talk about how to move forward in Committee.

The Chair, Councillor McGovern recognized Councillor Toner who shared he supports the idea of a working group. Coucnillor Toner offered comments around protecting the expertise of people in NCD and believes it would be beneficial to refresh and update policies to reflect the City's overall goals.

The Chair, Councillor McGovern recognized Councillor Azeem who noted that he would like the City to get to a point where Boards and Commissions are more representative of the City and stressed the importance of having people who rent in the City be part of them. He commented that he would like to be a part of the working group and hopes that the City can get to a good place around this proposed Ordinance.

The Chair, Councillor McGovern addressed the negative comments against the petitioners and stated that everyone has the right to express their views and opinions and should be able to do so with respect. Councillor McGovern noted that he is in favor of more diverse Boards and Commissions and agrees that a ten-year review is appropriate noting the current Ordinance hasn't been reviewed in forty years. Councillor McGovern noted that history is important, but the City needs to find balance with historical preservation while also making sure the City is moving forward.

The Chair, Councillor McGovern recognized Councillor Zondervan who suggested the two Ordinance Committee Chairs come together to create a unified document that the Committee can review and discuss.

The Chair, Councillor McGovern recognized Councillor Nolan who agreed with Councillor Zondervan about having a unified working document and addressed the negative tone of some of the comments being made. Councillor Nolan also noted that she supported the comments made by Roy Russell related to climate change.

The Chair, Councillor McGovern recognized Councillor Carlone who shared he agrees with the idea of the Ordinance being looked at every ten years and looks forward to future discussions around the new proposed language.

The Chair, Councillor McGovern recognized Mayor Siddiqui who offered comments around the proposed Ordinance and concurred that everyone should work together get to as much agreement as possible, so the Ordinance Committee move forward with making a decision.

The Chair, Councillor McGovern recognized Vice Mayor Mallon who shared she would like to see the Ordinance Committee meet sooner rather than later around this discussion. The Chair, Councillor McGovern, and Co-Chair Councillor Zondervan both agreed, with Councillor McGovern noting that they will come back with a cleaner version for debate and discussion.

The Chair, Councillor McGovern recognized Councillor Carlone who made a motion to adjourn the meeting.
City Clerk LeBlanc called the roll.
Councillor Azeem – Yes
Councillor Carlone – Yes
Vice Mayor Mallon – Yes
Councillor McGovern – Yes
Councillor Nolan – Yes
Councillor Simmons – Absent
Councillor Toner – Yes
Councillor Zondervan – Yes
Mayor Siddiqui – Yes
Yes–7, No–0, Absent–1. Motion passed.

Attachment A – Presentation titled, "NCD Reform Petition"
Attachment B – Memorandum from Charles Sullivan to City Manager Huang dated March 6
Attachment C - Revised Language submitted by Councillor McGovern

The City Clerk's Office received 7 written communications, Attachments D-J.

Clerk's Notes: The City of Cambridge/22 City View records every City Council meeting and every City Council Committee meeting. This is a permanent record.

The video for this meeting can be viewed at:
https://cambridgema.granicus.com/player/clip/460?view_id=1&redirect=true&h=ab7eb29413ce43027380001b699ca476

Amendment to Chapter 2.78 of the Cambridge Code of Ordinance, entitled "Historical Buildings and Landmarks." (Ordinance #2022-11)

That the memo from Charles Sullivan regarding Comments on Citizen's Petition to Amend Ch. 2.78, Article III, Neighborhood Conservation Districts and Landmarks and the memo from Charles Sullivan regarding the Proposed Friendly Amendments to Ch. 2.78, Art. III be forwarded to the full City Council with the recommendation to refer said memos to the Ordinance Committee for further discussion.

A communication was received from Councillor Marc McGovern, transmitting revised language to the original citizen's petition.

Attachment A

NCD Reform Petition

March, 7th 2023

Ordinance Committee

Cambridge, MA

Opportunity to modernize NCDs to make them work better for our community for the next 40 years

Goals: increase diversity and representation, protect AHO projects, balance preservation with other city priorities

- Petition inspired by real examples across the city, especially North and East Cambridge
- Lots of good feedback since March of 2021
- This draft is a cleaned up version of what was before this committee in Fall 2021
- We're encouraged by the overlap between petition and CHC proposal!
- Our petition requires professional experience on NCDs along with a diversity of other relevant experiences

We believe that this petition will leave NCDs stronger: more diverse, more consensual, and more aligned to address contemporary challenges

This petition addresses several real world issues from recent experience in North and East Cambridge

Main issues addressed in petition

- Increase diversity on NCD Commissions and Study Committees
- Ensure NCDs are supported by communities throughout their lifecycle
- Account for NCDs' affordably impact
- Maintain the spirit of the AHO and protect from added costs
- Protect climate resiliency and accessibility projects from added costs
- Ensure NCDs don't assume roles properly reserved for zoning, etc.
- Provide business community input when appropriate

We were grateful for Mr. Sullivan's memo and proposals

We sense that we agree with Mr. Sullivan on several key petition principles

- Increasing diversity is vital to NCDs legitimacy and service in our diverse neighborhoods
- Enlarging study committees will allow for greater member diversity
- NCD studies should take place under non binding review
- CHC staff need not serve on NCDs
- One NCD member must have professional experience
- NCDs should balance preservation with other Council goals

We would be glad to see Mr. Sullivan's proposals incorporated with petition where there is alignment. Helpful supplements, not substitutes.

Petition asks that NCD commission membership reflect multiple dimensions of neighborhood diversity

	Current	CHC Proposal	Petition Proposal
Members	**5**	**5**	**6**
	Homeowner	Homeowner	Homeowner
	Homeowner	Homeowner	Property owner
	Property owner	Property owner	Renter
	CHC member	CHC member (3 years)	Biz owner/operator*
	Open	Open	Open
			Open
Aleternates	**3**	**3**	**3**
	Property owner	Property owner	Open
	Property owner	Property owner	Open
	Property owner	Property owner	Open
Notes	No diversity language	No diversity language	"Composition should reflect diversity of the neighborhood"

- Proportionate renter representation impossible with 7 of 8 seats reserved for property owner
- Only 36% of Cambridge residents own homes (CCF)
- Black residents 45% less likely to own their home than white residents (CCF)

NCD commissions struggle to attract renters and minority applicants, and issues may be structural

The current ordinance is a recipe for discrimination and effectively excludes vast majority or residents

- Unpaid work
- Property ownership requirements
- Weighting credentialism over other relevant experience

Proposal seeks to enlarge the eligibility pool

- Roll back property ownership requirements
- Intentionally seek out experience beyond the what has traditionally thought of as "professional"
- City could go further with stipends

Other petition proposals will improve the way NCDs are initiated and operated

Initiation

- Increased signature threshold
- City Council approval
- 10 year review (inspired by charter review)

Housing affordability, climate, and accessibility

- Research driven affordability data
- Protect affordable housing projects
- Exempt climate and accessibility features

Avoiding "zoning by another means"

- Reserve dimensional and setback considerations for ordinances appropriately enacted under MGL 40(A)

Questions?

Attachment B

CAMBRIDGE HISTORICAL COMMISSION

831 Massachusetts Avenue, 2nd Fl., Cambridge, Massachusetts 02139
Telephone: 617 349 4683 TTY: 617 349 6112 Fax: 617-349-6165
E-mail: histcomm@cambridgema.gov URL: http://www.cambridgema.gov/Historic

Bruce A. Irving, *Chair*; Susannah Barton Tobin, *Vice Chair*; Charles Sullivan, *Executive Director*
Joseph V. Ferrara, Chandra Harrington, Elizabeth Lyster, Jo M. Solet, Yuting Zhang, *Members*
Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

March 6, 2013

To: Yi-An Huang, City Manager

From: Charles Sullivan
Cambridge Historical Commission

Re: Currently Proposed Amendments to Ch. 2.78, Art. III

I am writing to update my memo of October 17, 2022 regarding the proposed amendments to Ch.2.78, Art. III. These amendments are presented in the Annotated NCD Ordinance that accompanies the March 7 agenda of the Ordinance Committee, which is attached. I proposed some alternative amendments in another memo, also dated October 17.

The petitioners' suggested amendments fall into several broad categories:

1. **NCD membership requirements (2.78.160A)**

NCD commissions presently consist of five members and three alternates allocated among homeowners, residents, property owners, and a member of the Cambridge Historical Commission.

Response:

The proposed amendments would alter the balance of property owners and tenants in favor of the latter. They would require appointment of two tenants and one business owner, reducing the number of required homeowners. The amendments call for the appointment of a "business owner" without defining the term and without requiring that the person own property in the district.

	Current	Citizen Proposal
Members - 5	2 resident homeowners 1 resident (tenant optional) 1 other property owner 1 CHC member	1 homeowner 2 tenants 1 other property owner 1 business owner
Alternates - 3	3 property owners	No requirements

- While tenants outnumber owners in almost all NCDs, the burdens and responsibilities of conservation districts fall most heavily on property owners.
- The Ordinance already allows for appointment of tenants. The Mid Cambridge NCD Order requires a tenant representative, but over many years it has proved almost impossible

to recruit candidates for this slot. Avon Hill and Half Crown-Marsh are mostly single-family residential districts with small numbers of tenants.

- The Avon Hill, Half Crown-Marsh, and Mid Cambridge NCDs contain very few or no business-occupied buildings. Where a district involves many properties occupied by businesses, as in Harvard Square, the City Manager can be trusted to appoint members "with regard to diverse viewpoints" or interests.

The proposed amendment laudably calls for commission members to represent the diversity of the neighborhood. **However, such language should track the City Manager's published guidelines for appointments.**

2. NCD member qualifications and terms (2.78.160B)

Appointments are currently to be made "with regard to diverse viewpoints expressed in the creation of the district." Members should "have demonstrable knowledge and concern" for the district and certain "professional qualifications" and currently serve until replaced or reappointed.

Response:

The proposed amendments would strike the current requirement that members and alternates represent the "the diverse viewpoints expressed in the creation of the district" and "have demonstrable knowledge and concern for improvement, conservation, and enhancement of the district." Professional qualifications related to real estate, architecture, or historic preservation would also be deleted, degrading the ability of NCD commissions to deal with complex architectural and development issues.

The proposed amendments introduce term limits in a manner that will threaten institutional knowledge and endanger the ability of commissions to gather a quorum. Recruitment for public broads and commissions can be difficult. Members who continue to demonstrate competence and concern should be allowed to continue to serve until replaced.

3. Powers and Duties; Certificates (2.78.170, 2.78.210)

Neighborhood conservation districts currently have authority to regulate issuance of building permits similar to that of the Historical Commission in historic districts (except color).

Response:

The proposed amendments would eliminate the authority of neighborhood conservation district commissions to review projects developed under the affordable housing overlay.[1] If the City Council desires to prioritize affordable housing projects, NCD review should be made non-binding. The Historical Commission and the various NCD commissions have a long history of constructively balancing community goals with their stated purpose of restraining adverse influences on the city's built environment. Non-binding reviews allow NCD commission to make advisory recommendations and allow community input without hindering project development.

4. Designation Procedures (2.78.180)

Section 2.78.180.C requires that a study committee consist of three Historical Commission members and four other neighborhood property owners and residents. Studies may be initiated by the Commission on its motion or by a ten-citizen petition, and City Council approval of an NCD

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[1] The similar amendments to these sections are duplicative.

study is not required (2.78.180.D). Preliminary Reports study the costs and benefits of regulations along with other pros and cons of NCD proposals. Mandatory building permit approvals are required during studies. New districts are required to undergo a sunset review.

Response:

The proposed amendments would eliminate CHC member participation on study committees, raise the number of petitioners to 30 (for landmarks) and 100 (for NCDs), require City Council approval before an NCD study could be initiated, require that a landmark study period be limited to 45 days rather than one year as at present,[2] mandate cost-benefit studies not required for similar measures such as zoning amendments, and make building permit review during studies non-binding. The proposed amendments would require re-adoption of each existing NCD every ten years.

- Preventing CHC members from serving on study committees eliminates an essential source of institutional knowledge. CHC staff have elsewhere suggested amendments to the NCD study process.
- Ten-citizen petitions allow introduction of zoning amendments. Eliminating the ten-citizen petition route to an NCD study would deny citizens an important current right. The Historical Commission has several times exercised its ability to decline frivolous or inappropriate petitions.
- Prior Council approval of an NCD study should not be necessary. The Historical Commission should be trusted to exercise its judgement on this topic. The study itself is necessary to develop arguments for and against a proposed district.
- NCD studies are designed to elicit a range of views. Requiring the Historical Commission to identify all the opponents of a proposed district would be an impossibility. The study process is already designed to elicit and respond to a range of views.
- Limiting landmark designation studies to 45 days would defeat the opportunity for careful analysis and public discussion.
- The temporary jurisdiction exercised by the Historical Commission in NCD study areas is acknowledged to be burdensome. Currently proposed friendly amendments would eliminate this jurisdiction entirely but maintain it for landmarks during study periods.
- The amendments overlook the provisions of paragraph 2.180.J, which provides for inclusion of a sunset clause in the Order establishing each district. Requiring a simultaneous decennial sunset review would be excessively burdensome. The Avon Hill, Mid Cambridge, and Harvard Square NCDs all had sunset reviews after establishment. The Harvard Square Order was readopted in 2021.

5. Factors considered by commissions (2.78.220)

NCD commissions are currently authorized to "impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance."

Response:

The proposed amendment would eliminate the authority of an NCD commission over "dimensions, setbacks, size or massing" of new construction or additions. Elimination would seriously weaken the authority of NCD commissions.

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[2] The amendment incorrectly assumes that landmark designation studies are carried out by a study committee.

6. Expanding time limit for appeal (2.78.240)

The time limit for appeals of an NCD commission determination is currently twenty days. The twenty day window is based on the M.G.L. Ch. 40C, Section 12, which is incorporated by reference.

Response:

The proposed amendments would extend the time period for appeals from twenty to sixty days. Extending the time period for appeals to sixty days would unfairly burden applicants by exposing them to legal jeopardy for an unreasonable length of time.

7. Enforcement and remedies (2.78.270)

NCD commissions are currently authorized to enforce their decisions in a manner similar to that provided by state law to historical commissions.

Response:

The proposed amendments eliminate the authority of NCD commissions to enforce their decisions. Eliminating the ability of NCD commissions to enforce their decisions in effect makes all decisions non-binding on the applicant.

Attachment

Amendment to Chapter 2.78 of the Cambridge Code of Ordinance, entitled "Historical Buildings and Landmarks." (Ordinance #2022-11)

Chapter 2.78 - HISTORICAL BUILDINGS AND LANDMARKS

Article III. Establishment of Neighborhood Conservation Districts and Protected Landmarks

2.78.140 Purpose.

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 built 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~~ in balance with allowing housing growth in all City neighborhoods to welcome a diverse set of residents; 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~~, desirable, affordable, diverse, equitable, accessible and inclusive 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.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(1))

2.78.150 Definitions for Article III.

In addition to the terms defined in Section 2.78.080 of this Chapter, the following terms, when used whether or not capitalized in this subsection, shall have the meanings set forth in this section, unless the context otherwise requires:

A. "Demolition" means the act of pulling down, destroying, removing or razing structures, or commencing the work of total or substantial destruction with the intent of completing the same.

B. "Exterior architectural features" means and includes such portion of the exterior of a structure as is open to view from a public street, way, park or body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, material and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

C. "Historic district" means an area so established under the authority of Chapter 40C of the General Laws.

D. "Landmark" means any property within the City so designated in accordance with Section 2.78.180 of this article.

E. "Neighborhood conservation district" means any area within the City so designated in accordance with Section 2.78.180 of this article.

F. "Neighborhood conservation district commission" or "district commission" means a commission provided for by Section 2.78.160 of this article.

G. "Structure" means a combination of materials including a building, sign, fence, wall, terrace, walk, driveway, street, bridge, statue, monument or other manmade feature.

H. "Gross floor area" means the floor area so defined in Article 2.000 of the Zoning Ordinance of the City of Cambridge.

(Ord. 1166 §§7, 16, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(2))

2.78.160 Neighborhood conservation district commission—Established—Membership requirements.

A. Upon designation as provided in Section 2.78.180 of this article of any neighborhood conservation district, and unless the designation provides that the Historical Commission itself shall exercise authority with respect thereto, the City Manager shall appoint a neighborhood conservation district commission to consist of five members and three alternates, whose composition fairly represents the diversity of the neighborhood itself in terms of age, race, ethnicity, sex, gender, and sexual and gender minority status, among other relevant dimensions. The City Manager shall at all times endeavor to achieve and maintain a balance on Commissions that fairly represents the community within and surrounding the district. The members shall include at least three residents of the neighborhood, ~~not less than~~ two of whom shall be ~~homeowners~~tenants and one of whom shall be a homeowner; one neighborhood property owner (who may or may not be a neighborhood homeowner); and, where practible, one ~~member~~ person who owns and/or ~~alternate of the Cambridge Historical Commission.~~operates a business within the neighborhood. One member and/or one alternate of a neighborhood conservation district commission~~, in addition to the mandated member of the Cambridge Historical Commission,~~ may be a Cambridge resident who lives outside the district. ~~The remaining alternates shall be neighborhood property owners.~~ The City Manager shall at all times endeavor to ensure Commission membership achieves a balance between residents with a diversity of recent housing experiences in the City and members with professional credentials relevant to the commission's work. Commissions shall have at least one member who possesses technical knowledge in one or more of the following fields: Historical preservation, civic planning, architecture, or a similar field. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration. A member of the Historical Commission staff should be assigned to provide ongoing administrative and operational support to the neighborhood conservation district commission.

~~B. Any member or alternate of the Historical Commission may be appointed to a neighborhood conservation district commission for a term coterminous with such person's term as a member or alternate of the Historical Commission. Members and alternates of a neighborhood conservation district commission who are not members of the Historical Commission shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation and enhancement of the district, and at least two of the members or alternates shall have professional qualifications related to real estate or architecture or historic preservation.~~ B. The members of the neighborhood conservation district commission shall be appointed by the City Manager with regard to the ~~diverse viewpoints expressed in the creation~~diversity of the district. Such members shall serve for a

term of three years, except that the initial appointments shall be for one member to serve one year and one member to serve two years, and vacancies shall be filled for the unexpired term of office. Each member and alternate shall continue in office for up to six months after expiration of his or her term until a successor is duly appointed and qualified, except that no member shall serve more than two consecutive terms.

C. The neighborhood conservation district commission shall elect annually a ~~Chairman~~Chair and Vice-~~Chairman~~Chair from its own number. In the case of absence, inability to act, or unwillingness to act because of self-interest on the part of a member, ~~his or her~~their place shall be taken by an alternate member designated by the ~~Chairman~~Chair, if available, otherwise by the Vice-~~Chairman~~Chair if available, otherwise by a majority vote of the members and alternate members of the Commission present. The person exercising the function of Executive Director of the Historical Commission shall serve as secretary of each neighborhood conservation district commission. Persons serving as members or alternate members of a neighborhood conservation district commission shall, as a result of such service, be considered as "special municipal employees" for purposes of Chapter 268A of the General Laws.

(Ord. 1331, 12/14/2009; Ord. 1166 § 8, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(3))

2.78.170 Powers and duties.

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, ~~honapplicability~~non applicability 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. The Historical Commission and each neighborhood conservation district commission shall have no powers, functions or duties with respect to, or jurisdiction over, affordable housing projects that either are developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of Area Median Income.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(9))

2.78.180 Designation procedures.

A. The Historical Commission by majority vote may recommend for designation as a landmark any property within the City being or containing a place, structure, feature or object which it determines to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic or social history of the City or the Commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction or association with a famous architect or builder) either by itself or in the context of a group of structures;

may recommend for designation as a neighborhood conservation district any area within the City containing places and structures which it determines are of importance to the architectural, aesthetic, cultural, political, economic or social history of the City, and which considered together cause such area to constitute a distinctive neighborhood or to have a distinctive character in terms of its exterior features; and may recommend amendments to any designation of landmark or neighborhood conservation district theretofore made.

B. Prior to the recommendation of designation or amendment of designation of any landmark or neighborhood conservation district an investigation and report on the historical, architectural and other relevant significance thereof shall be made. The report shall recommend the boundaries of any proposed landmark or neighborhood conservation district and shall recommend for incorporation in the order of the City Council designating each landmark or neighborhood conservation district general and/or specific standards and appropriate criteria consistent with the purposes of this article and the provisions of Section 2.78.190 of this article that are to be applied in making any determination of the type referred to in Sections 2.78.170, 2.78.210 and 2.78.220 of this article, with respect to the designated landmark or within the designated neighborhood conservation district.

C. In the case of a landmark, the report shall be prepared by the Historical Commission. In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of ~~three members or alternates of the Historical Commission and four~~five persons appointed by the City Manager, including at least one person who resides in the district under consideration, at least one person who owns property in the district under consideration, ~~and one person who owns property or resides elsewhere in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character.~~at least one person who owns and/or operates a business within the district under consideration, and at least one person who rents in the district under consideration. The City Manager shall at all times endeavor to ensure study committee membership achieves a balance between a diversity of recent housing experiences in the City and technical skills relevant to the commission's work. Commissions shall have at least one member who possesses technical knowledge in one or more of the following fields: Historical preservation, civic planning, architecture, or a similar field.

D. Any ~~ten~~thirty registered voters of the City may petition that the Historical Commission initiate, or the Historical Commission on its own may initiate, the process of designating a landmark or amending or rescinding any such designation theretofore made. Any one hundred registered voters of the City may petition that the Historical Commission initiate the process of designating a neighborhood conservation district or amending or rescinding any such designation theretofore made. The Commission shall within forty-five days following the filing of such request or petition hold a preliminary hearing and arrange for the preparation of a report and, if required, request the appointment of a study committee. In the event the Commission requests the appointment of a study committee, the approval of the formation of such committee shall be by order of the City Council. If the Commission declines to request the appointment of a study committee, it must make its recommendation as to whether or not to designate the landmark or neighborhood conservation district within forty-five days of the original petition or request for that designation. The Historical Commission shall not reconsider a proposed designation, amendment or rescission of designation within ~~one year~~ten years of its previous hearing thereon~~, unless two thirds of all its members vote to do so.~~ No later than forty-five days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public hearing. The Commission shall give not less than ~~fourteen~~thirty days notice of such public hearing by publication in a newspaper of general circulation in the City and by mailing notice thereof to the owner of the proposed

landmark and to every owner abutting the proposed landmark or within the proposed neighborhood conservation district, each such owner to be determined from the then current records of the Assessing Department, to the residents of every address within the proposed neighborhood conservation district, and to the City Manager, the Planning Board and the City Clerk.

E. Prior to the public hearing, the Commission shall transmit copies of the report to the Planning Board for its consideration and recommendations.

F. The recommendation of the Historical Commission with regard to any designation, amendment or rescission shall be transmitted to the City Manager and to the City Clerk with a copy of the approved designation report. Along with its recommendation, the Historical Commission shall include a report on the impact of the designation on housing and renovation costs in the district and a letter from each business association within, or within 500 yards of, the proposed district setting out their views on the proposed district, and the Historical Commission shall identify opponents to the proposed district and allow them to submit a letter setting out their views on the proposed district and a counter-proposal to the CHC's recommendation. The Historical Commission shall base its cost impact estimate on a review of current, available academic and industry research on the price effects of historical preservation districting and neighborhood landmarking (defined to including Historic Districts, Neighborhood Conservation Districts, and similar area historic preservation and districting), and shall provide a written summary of the current research consensus along with the Commission's estimates. That summary shall include a list of citations as well as working hyperlinks to or physical versions of complete copies of all works cited. Designation of a landmark or a neighborhood conservation district or amendment or rescission of designation shall be by order of the City Council. In the case of a designation, the order shall include a statement of the reasons for such designation and a statement of standards which the Historical Commission or neighborhood conservation district commission is to apply under Sections 2.78.170 and 2.78.190 through 2.78.220 of this article.

G. No designation, amendment or rescission of designation shall become effective until a map setting forth the boundaries of the landmark or neighborhood conservation district or change in the boundaries thereof, has been filed with the City Council and has been recorded with the Registry of Deeds for the South District of Middlesex County.

H. If the order establishing or amending a neighborhood conservation district contains provisions for both regulatory and educational/incentive programs, the regulatory provisions of the order shall not be effective unless and until the educational/incentive provisions of the order are funded.

I. Following acceptance of a designation petition for a landmark by the Historical Commission, no application for a building permit for new construction or alterations on the premises of a property being considered for designation shall be granted until reviewed by the Commission as though the property were designated as a landmark ~~or a neighborhood conservation district~~ under this Article III. ~~Beginning with the~~ Following acceptance of a designation petition for a neighborhood conservation district by the Historical Commission and authorization of a study of the appropriateness of that designation by order of the City Council, and until (a) the Historical Commission makes a negative recommendation on a proposed designation, (b) the City Council determines not to enact the proposed designation, or (c) one year has elapsed, whichever is less, the Commission shall conduct a non-binding review of all proposed construction, demolition, or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features, of the structures on the premises of a proposed landmark or within a proposed neighborhood

conservation district. The period during which these rules and procedures apply may not be extended other than due to a declared emergency.

J. Notwithstanding the prior provisions of this section 2.78.180, a neighborhood conservation district previously established by order of the City Council, in accordance with this section, which order instructs that there be a review of the activities of the neighborhood conservation district commission established pursuant to that order, following one or more public hearings by such neighborhood conservation district commission and by the Historical Commission, and a report to the City Council by such commissions containing a summary of testimony at such hearings and recommendations by such commissions for amendments to the powers, responsibilities and procedures of such neighborhood conservation district commission (including amendments to the boundaries of the affected neighborhood conservation district), may be amended by the City Council, in a manner consistent with the recommendations of such report, or be rescinded without the necessity of the appointment of a new study committee or of a de novo study process.

K. Beginning in 2022, and every ten years thereafter, the City Council shall review each existing neighborhood conservation district and adopt an order (1) to renew the neighborhood conservation district unchanged; (2) to renew the neighborhood conservation district with more limited boundaries; (3) to renew the neighborhood conservation district with less restrictive rules and/or guidance; or (4) to discontinue the neighborhood conservation district. In the review process, the City Council shall revise the rules and/or guidance to conform with the current version of this ordinance, including setting a schedule for conformance of neighborhood conservation district commissions, upon vacancies, to the current membership requirements. In the absence of a City Council order renewing a neighborhood conservation district, the neighborhood conservation district shall be discontinued.

(Ord. 1331, 12/14/2009; Ord. 1166 §§9, 10, 17, 18, 1995; Ord. 1009A (part), 1984; Ord. 1002 (part), 1983: prior code § 2-147(k)(4))

2.78.190 Review procedures.

A. Except as the order designating or amending a landmark or neighborhood conservation district may otherwise provide in accordance with this article, the Historical Commission or neighborhood conservation district commission having jurisdiction shall review all construction, demolition or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features, of any landmark or within any neighborhood conservation district.

B. The order designating or amending a landmark or neighborhood conservation district may provide that the authority of the Historical Commission or neighborhood conservation district commission having jurisdiction shall not extend to the review of one or more of the following categories of structures or exterior architectural features of the landmark or within the neighborhood conservation district in which event the structures or exterior architectural features so excluded may be constructed or altered without review by the Commission:

1. The application of exterior wall material in a manner that does not require the removal or enclosure of any cornice, fascia, soffit, bay, porch, hood, window or door casing, or any other protruding decorative element;

2. ~~Alternations~~ Alterations to the exterior of existing structures that do not increase or diminish the size and location of windows and doors, cause the removal of any bay, porch, hood, window or door casing or any other protruding decorative element, or alter the appearance of a roof;

3. The exterior appearance of a new structure that does not require a variance or special permit under the zoning ordinance then in effect;

4. Signs, temporary structures, lawn statuary, or recreational equipment, subject to such conditions as to duration of use, dimension, location, lighting, removal and similar matters as the Commission may reasonably specify;

5. Terraces, walks, driveways, sidewalks and similar structures substantially at grade level;

6. Walls and fences;

7. Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae, trelliswork and similar appurtenances.

C. The Historical Commission or a neighborhood conservation district commission may determine from time to time after a public hearing that certain categories of exterior architectural features or structures, including, without limitation, any of those enumerated in this section, if the provisions of the applicable order do not limit the authority of such commission with respect thereto, may be constructed or altered without review by such commission without causing substantial derogation from the intent and purposes of this article.

D. If the order establishing or amending a neighborhood conservation district provides, the determination of a neighborhood conservation district commission shall be binding only with regard to applications to construct a new building, to demolish an existing structure if a demolition permit is required, to construct a parking lot as a principal use, and to construct an addition to an existing structure that would increase its gross floor area, and in all other cases the determinations of a commission shall be advisory only and not binding on an applicant. In no case shall a building permit be issued until the commission has made a determination under the applicable provisions of this article.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(5))

2.78.200 Maintenance, repair and reconstruction.

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark or within a neighborhood conservation district which does not involve a change in design or material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, not construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the order which designates that landmark or district, nor construed to prevent the reconstruction, substantially similar in exterior design, of a structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(6))

2.78.210 Certificates of appropriateness, nonapplicability or hardship.

A. Except as the order establishing or amending a landmark or neighborhood conservation district may otherwise provide, no structure designated a landmark or within a neighborhood conservation district shall be constructed or altered in any way that affects exterior architectural features unless the Historical Commission or neighborhood conservation district commission having jurisdiction shall first have issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.

B. Any person who desires to obtain a certificate from the Historical Commission or neighborhood conservation district commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability 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.

C. No building permit for alteration of an exterior architectural feature of a landmark or construction of a structure or for alteration of an exterior architectural feature within a neighborhood conservation district and no demolition permit for demolition or removal of a landmark or of a structure within a neighborhood conservation district shall be issued by the City or any department thereof until the certificate required by this article has been issued by the Historical Commission or neighborhood conservation district commission having jurisdiction. This provision does not apply to proposals for, or existing, affordable housing projects that either are developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of Area Median Income, over which neither the Historical Commission nor any neighborhood conservation district commission has jurisdiction.

(Ord. 1166 §§11, 12, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(7))

2.78.220 Factors considered by Commissions.

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.~~ A Commission shall have no jurisdiction over dimensional, setback, size, or massing of structures, projects, sites, or features that might otherwise come under review in the case of new construction or of additions or alterations to an existing structure. ~~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~~rejecting proposals incongruous to the historic aspects~~,~~ or the architectural significance ~~or the distinctive character~~ of the landmark or neighborhood conservation district.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(8))

2.78.230 Public meetings and hearings.

The Historical Commission and each neighborhood conservation district commission shall adopt rules for the reasonable conduct of its meetings and public hearings, which rules shall not be inconsistent with the procedures provided for meetings of and hearings by historic district commissions under Section 11 of Chapter 40C of the General Laws; and in the absence of the adoption of any such rules, meetings and public hearings of the Historical Commission and of each neighborhood conservation district commission shall be in conformity with the provisions of Section 11 of Chapter 40C applicable to historic district commissions.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(10))

2.78.240 Appeal procedure.

Any person aggrieved by a designation of a landmark or district may appeal to the superior court within thirty days after such designation. Any applicant aggrieved by a determination of a neighborhood conservation district commission or ten registered voters of the City opposing a determination under this article may appeal to the Historical Commission within ~~twenty~~sixty days after the filing of the notice of such determination with the City Clerk. The Historical Commission may overrule the determination and return it for reconsideration consistent with that finding. If the applicant is aggrieved by the determination of the Historical Commission, or if action is not taken by the Historical Commission within thirty days of filing for review, the applicant may appeal to the superior court. Appeal from a Historical Commission determination shall be taken within thirty days of the formal decision; appeal from a failure to act shall be taken within sixty days after the filing for review. The superior court may reverse a determination if it is not supported by substantial evidence in the record. In all other respects, the appeal shall be made in the same manner as provided under Section 12A of Chapter 40C of the General Laws.

(Ord. 1166 §13, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(11))

2.78.250 Historical Commission authority not limited.

No provisions of this article shall alter or diminish the duties and functions of the Historical Commission under the authority of Chapter 40, Section 8D and Chapter 40C of the General Laws, or apply to any

historic district currently administered by such commission, or restrict the establishment of any future historic district under Chapter 40C of the General Laws.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(13))

2.78.260 Limitation on applicability.

The provisions of Article II of this chapter (relative to procedures for demolition permits for significant buildings) shall not be applicable with respect to the demolition of any structure within a neighborhood conservation district if the appropriate neighborhood conservation district commission has issued a certificate of appropriateness or a certificate of hardship permitting the demolition of such structure.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(14))

2.78.270 Enforcement and remedies.

The Historical Commission ~~and any neighborhood conservation district commission are each~~is specifically authorized to institute any and all actions, proceedings in law and in equity, as ~~they deem~~it deems necessary and appropriate to obtain compliance with the requirements of this article or to prevent a threatened violation thereof. Any violation of any provision of this article may be punished to the like extent provided in Section 13 of Chapter 40C of the General Laws for a violation of said Chapter 40C. In addition to the foregoing, no building permit shall be issued, with respect to any premises upon which a landmark or a structure within any neighborhood conservation district has been voluntarily demolished otherwise than pursuant to a certificate granted after compliance with the provisions of this article, for a period of two years after the date of the completion of such demolition (the word "premises" for the purposes of this sentence referring to the parcel of land upon which the demolished structure was located and all adjoining parcels of land under common ownership or control.)

(Ord. 1002 (part), 1983: prior code § 2-147(k)(12))

Attachment C

Chapter 2.78 - HISTORICAL BUILDINGS AND LANDMARKS

Article III. Establishment of Neighborhood Conservation Districts and Protected Landmarks

2.78.140 - Purpose.

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 built 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;~~ in balance with allowing housing growth in all City neighborhoods to welcome a diverse set of residents; 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, affordable, diverse, equitable, accessible, and inclusive 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.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(1))

2.78.150 - Definitions for Article III.

In addition to the terms defined in Section 2.78.080 of this Chapter, the following terms, when used whether or not capitalized in this subsection, shall have the meanings set forth in this section, unless the context otherwise requires:

A. "Demolition" means the act of pulling down, destroying, removing or razing structures, or commencing the work of total or substantial destruction with the intent of completing the same.

B. "Exterior architectural features" means and includes such portion of the exterior of a structure as is open to view from a public street, way, park or body of water, including but not limited to the architectural style and general arrangement, and setting ~~, and illumination~~ thereof, the kind, material and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

C. "Historic district" means an area so established under the authority of Chapter 40C of the General Laws.

D. "Landmark" means any property within the City so designated in accordance with Section 2.78.180 of this article.

E. "Neighborhood conservation district" means any area within the City so designated in accordance with Section 2.78.180 of this article.

F. "Neighborhood conservation district commission" or "district commission" means a commission provided for by Section 2.78.160 of this article.

G. "Structure" means a combination of materials including a building, sign, fence, wall, terrace, walk, driveway, street, bridge, statue, monument or other manmade feature.

H. "Gross floor area" means the floor area so defined in Article 2.000 of the Zoning Ordinance of the City of Cambridge.

~~I. "Architectural Lighting" means any manner of artificially and intentionally illuminating an exterior architectural feature or features for the purpose of enhancing the design and the human experience of the physical structure.~~

(Ord. No. 2020-26_, 2-3-2021; Ord. 1166 §§7, 16, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(2))

2.78.160 - Neighborhood conservation district commission—Established—Membership requirements.

A. Upon designation as provided in Section 2.78.180 of this article of any neighborhood conservation district, and unless the designation provides that the Historical Commission itself shall exercise authority with respect thereto, the City Manager shall appoint a neighborhood conservation district commission to consist of ~~five~~ six members and three alternates whose composition fairly represents the diversity of the neighborhood itself in terms of age, race, ethnicity, sex, gender, and sexual and gender minority status. The City Manager shall at all times endeavor to achieve and maintain a balance on ~~C~~commissions that fairly represents the community within and surrounding the district. The members shall include ~~three~~ at least four residents of the neighborhood, ~~not less than two of whom shall be homeowners~~including at least one neighborhood homeowner; one neighborhood property owner (who may or may not be a neighborhood homeowner); one person who resides in a rented home in the neighborhood; and, ~~one member or alternate of the Cambridge Historical Commission. One member and/or one alternate of a neighborhood conservation district commission, in addition to the mandated member of the Cambridge Historical Commission, may be a Cambridge resident who lives outside the district. The remaining alternates shall be neighborhood property owners. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration.~~when a district includes commercial properties, one person who owns or operates a business within the neighborhood, preferably one that employs no more than 50 full-time equivalent employe~~re~~s, preferably in a retail, local service, or restaurant setting, and is not a formula business as define~~s~~d in Article 2.000. One member and/or one alternate of a ~~N~~neighborhood ~~C~~conservation ~~D~~district ~~C~~commission may be a Cambridge resident who lives outside the district. The City Manager shall at all times endeavor to ensure ~~C~~commission membership achieves a balance between residents with a diversity of recent housing experiences in the City and members with professional credentials relevant to the work of the ~~C~~commission's ~~work~~. Commissions shall have at least one member who possesses technical knowledge in one or more of the following fields: Historical preservation, civic planning, architecture, or a similar field. The ~~N~~neighborhood ~~C~~conservation ~~D~~district ~~C~~commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration. A member of the Historical Commission staff should be assigned to provide ongoing administrative and operational assistance to the ~~N~~neighborhood ~~C~~conservation ~~D~~district ~~C~~commission.

B. ~~Any member or alternate of the Historical Commission may be appointed to a neighborhood conservation district commission for a term coterminous with such person's term as a member or alternate of the Historical Commission. Members and alternates of a neighborhood conservation district commission who are not members of the Historical Commission shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation and enhancement of the district, and at least two of the members or alternates shall have professional qualifications related to real estate or architecture or historic preservation.~~ The members of the neighborhood conservation district commission shall be appointed by the City Manager with regard to the ~~diverse viewpoints expressed in the creation~~diversity of residents within ~~of~~ the district. Such members shall serve for a term of three years, except that the initial appointments shall be for one member to serve one year and one member to serve two years, and vacancies shall be filled for the unexpired term of office. Each member and alternate shall continue in office for up to six months after expiration of his or her term until a successor is duly appointed and qualified, except that no member shall serve more than two consecutive terms.

C. The neighborhood conservation district commission shall elect annually a Chair~~man~~ and Vice-Chair~~man~~ from its own number. In the case of absence, inability to act, or unwillingness to act because of self-interest on the part of a member, ~~his or her~~their place shall be taken by an alternate member designated by the Chair~~man~~, if available, otherwise by the Vice-Chair~~man~~ if available, otherwise by a majority vote of the members and alternate members of the Commission present. The person exercising the function of Executive Director of the Historical Commission shall serve as secretary of each neighborhood conservation district commission. Persons serving as members or alternate members of a neighborhood conservation district commission shall, as a result of such service, be considered as "special municipal employees" for purposes of Chapter 268A of the General Laws.

(Ord. 1331, 12/14/2009; Ord. 1166 § 8, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(3))

2.78.170 - Powers and duties.

A. 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.

B. The Historical Commission and ~~E~~each n~~N~~eighborhood ~~C~~conservation ~~D~~district ~~C~~commission shall have no powers, functions, or duties with respect to, or jurisdiction over, affordable housing projects that are either developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of area median income.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(9))

2.78.180 - Designation procedures.

A. The Historical Commission by majority vote may recommend for designation as a landmark any property within the City being or containing a place, structure, feature or object which it determines to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic or social history of the City or the Commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction or association with a famous architect or builder) either by itself or in the context of a group of structures; may recommend for designation as a neighborhood conservation district any area within the City containing places and structures which it determines are of importance to the architectural, aesthetic, cultural, political, economic or social history of the City, and which considered together cause such area to constitute a distinctive neighborhood or to have a distinctive character in terms of its exterior features; and may recommend amendments to any designation of landmark or neighborhood conservation district theretofore made.

B. Prior to the recommendation of designation or amendment of designation of any landmark or neighborhood conservation district an investigation and report on the historical, architectural and other relevant significance thereof shall be made. The report shall recommend the boundaries of any proposed landmark or neighborhood conservation district and shall recommend for incorporation in the order of the City Council designating each landmark or neighborhood conservation district general and/or specific standards and appropriate criteria consistent with the purposes of this article and the provisions of Section 2.78.190 of this article that are to be applied in making any determination of the type referred to in Sections 2.78.170, 2.78.210 and 2.78.220 of this article, with respect to the designated landmark or within the designated neighborhood conservation district.

C. In the case of a landmark, the report shall be prepared by the Historical Commission. In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of three members or alternates of the Historical Commission and ~~four~~ six persons appointed by the City Manager~~,~~ whose composition fairly represents the diversity of the neighborhood itself in terms of age, race, ethnicity, sex, gender, and sexual and gender minority status. The City Manager shall at all times endeavor to achieve and maintain a balance on study committees -that fairly represents the community within and surrounding the district, including at least one person who resides in the district under consideration, ~~at least~~ one person who owns property in the district under consideration, one person who resides in a rented home in the neighborhood, ~~and~~ one person who owns property or resides ~~elsewhere~~ in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character, and, when a district includes commercial properties, ~~at least~~ one person who owns or operates a business within the neighborhood, preferably one that employs no more than 50 full-time equivalent employe~~r~~es, preferably in a retail, local service, or restaurant setting, and is not a formula business as defined~~s~~ in Article 2.000. The City Manager shall at all times endeavor to ensure study committee membership achieves a balance between residents with a diversity of recent housing experiences in the City and members with professional credentials relevant to the ~~C~~committee~~ssion~~'s work.

D. Any ~~ten~~ thirty registered voters of the City may petition that the Historical Commission initiate, or

the Historical Commission on its own may initiate, the process of designating a landmark or amending or rescinding any such designation theretofore made. Any one hundred registered voters of the City many petition that the Historical Commission initiate the process of designating a neighborhood conservation district or amending or rescinding any such designation theretofore made. The Commission shall within forty-five days following the filing of such request or petition hold a preliminary hearing and arrange for the preparation of a report and, if required, request the appointment of a study committee. In the event the Historical Commission requests the appointment of a study committee, the approval of the formation of such committee shall be by order of the City Council. If a petition for a landmark designation is not accepted by the Historical Commission or a request to initiate a study of a neighborhood conservation district is not recommended by the Historical Commission or approved by the City Council, the Historical Commission shall not reconsider a proposed designation, amendment or rescission of designation within ~~one~~ ten -years of its previous hearing thereon~~, unless two-thirds of all its members vote to do so~~. No later than forty-five days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public hearing. The Commission shall give not less than ~~fourteen~~ thirty days notice of such public hearing by publication in a newspaper of general circulation in the City and by mailing notice thereof to the owner of the proposed landmark and to every owner and resident abutting the proposed landmark or within the proposed neighborhood conservation district, each such owner and resident to be determined from the then current records of the Assessing Department or other City staff, and to the City Manager, the Planning Board and the City Clerk.

E. Prior to the public hearing, the Commission shall transmit copies of the report to the Planning Board for its consideration and recommendations.

F. The recommendation of the Historical Commission with regard to any designation, amendment or rescission shall be transmitted to the City Manager and to the City Clerk with a copy of the approved designation report. Along with its recommendation, the Historical Commission shall include a report on the impact of the designation on housing and renovation costs in the district and a letter from each business association within, or within 500 yards of, the proposed district setting out their views on the proposed district, and the Historical Commission shall identify opponents to the proposed district and allow them to submit a letter setting out their views on the proposed district and a counter-proposal to the ~~Ch~~Historical Commission's recommendation. The Historical Commission shall base its cost impact estimate on a review of current, available academic and industry research on the price effects of historical preservation districting and landmark designation (defined to include Historic Districts, Neighborhood Conservation Districts, and similar area historic preservation districting and landmark designation), and shall provide a written summary of the current research consensus along with the Commission's estimates. That summary shall include a list of citations as well as working hyperlinks to or physical versions of complete copies of all works cited. Designation of a landmark or a neighborhood conservation district or amendment or rescission of designation shall be by order of the City Council. In the case of a designation, the order shall include a statement of the reasons for such designation and a statement of standards which the Historical Commission or neighborhood conservation district commission is to apply under Sections 2.78.170 and 2.78.190 through 2.78.220 of this article.

G. No designation, amendment or rescission of designation shall become effective until a map setting forth the boundaries of the landmark or neighborhood conservation district or change in the boundaries thereof, has been filed with the City Council and has been recorded with the Registry of Deeds for the South District of Middlesex County.

H. If the order establishing or amending a neighborhood conservation district contains provisions for both regulatory and educational/incentive programs, the regulatory provisions of the order shall not be effective unless and until the educational/incentive provisions of the order are funded.

I. Following acceptance of a designation petition for a landmark by the Historical Commission, no application for a building permit for new construction or alterations on the premises of a property being considered for designation shall be granted until reviewed by the Commission as though the property were designated as a landmark ~~or a neighborhood conservation district~~ under this Article III. ~~Beginning~~ Following initiation of a ~~N~~neighborhood ~~C~~conservation ~~D~~district study by the City Council ~~with the acceptance of a designation petition~~ and until (a) the Historical Commission makes a negative recommendation on a proposed designation, (b) the City Council determines not to enact the proposed designation, or (c) one year has elapsed, whichever is less, the Commission shall conduct a non-binding review of all proposed construction, demolition, or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features, of the structures on the premises of a proposed landmark or within a proposed neighborhood conservation district.

J. The period during which these rules and procedures apply may not be extended other than due to a declared emergency.

K~~J~~. Notwithstanding the prior provisions of this section 2.78.180, a neighborhood conservation district previously established by order of the City Council, in accordance with this section, which order instructs that there be a review of the activities of the neighborhood conservation district commission established pursuant to that order, following one or more public hearings by such neighborhood conservation district commission and by the Historical Commission, and a report to the City Council by such commissions containing a summary of testimony at such hearings and recommendations by such commissions for amendments to the powers, responsibilities and procedures of such neighborhood conservation district commission (including amendments to the boundaries of the affected neighborhood conservation district), may be amended by the City Council, in a manner consistent with the recommendations of such report, or be rescinded without the necessity of the appointment of a new study committee or of a de novo study process.

L. Every ten years beginning in 2024, the City Council shall review each existing neighborhood conservation district and adopt an order (1) to renew the neighborhood conservation district unchanged; (2) to renew the neighborhood conservation district with more limited boundaries; (3) to renew the neighborhood conservation district with less restrictive rules and/or guidance; or (4) to discontinue the neighborhood conservation district. In the review process, the City Council shall revise the rules and/or guidance to conform with the current version of this ordinance, including setting a schedule for conformance of neighborhood conservation district commissions, upon vacancies, to the current membership requirements. In the absence of a City Council order renewing a neighborhood conservation district, the neighborhood conservation district shall be discontinued. The Harvard Square Conservation District shall be exempt from the initial review in 2024, due to its recently completed review, and subject to subsequent reviews on the same decadal schedule as the other neighborhood conservation districts.

(Ord. 1331, 12/14/2009; Ord. 1166 §§9, 10, 17, 18, 1995; Ord. 1009A (part), 1984; Ord. 1002

(part), 1983: prior code § 2-147(k)(4))

2.78.190 - Review procedures.

A. Except as the order designating or amending a landmark or neighborhood conservation district may otherwise provide in accordance with this article, the Historical Commission or neighborhood conservation district commission having jurisdiction shall review all construction, demolition or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features of any landmark or within any neighborhood conservation district.

B. The order designating or amending a landmark or neighborhood conservation district may provide that the authority of the Historical Commission or neighborhood conservation district commission having jurisdiction shall not extend to the review of one or more of the following categories of structures or exterior architectural features of the landmark or within the neighborhood conservation district in which event the structures or exterior architectural features so excluded may be constructed or altered without review by the Commission:

1. The application of exterior wall material in a manner that does not require the removal or enclosure of any cornice, fascia, soffit, bay, porch, hood, window or door casing, or any other protruding decorative element;

2. ~~Alternations~~ Alterations to the exterior of existing structures that do not increase or diminish the size and location of windows and doors, cause the removal of any bay, porch, hood, window or door casing or any other protruding decorative element, or alter the appearance of a roof;

3. The exterior appearance of a new structure that does not require a variance or special permit under the zoning ordinance then in effect;

4. Signs, temporary structures, lawn statuary, or recreational equipment, subject to such conditions as to duration of use, dimension, location, lighting, removal and similar matters as the Commission may reasonably specify;

5. Terraces, walks, driveways, sidewalks and similar structures substantially at grade level;

6. Walls and fences;

7. Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae, trelliswork and similar appurtenances.

C. The Historical Commission or a neighborhood conservation district commission may determine from time to time after a public hearing that certain categories of exterior architectural features or structures, including, without limitation, any of those enumerated in this section, if the provisions of the applicable order do not limit the authority of such commission with respect thereto, may be constructed or altered without review by such commission without causing substantial derogation from the intent and purposes of this article.

D. If the order establishing or amending a neighborhood conservation district provides, the determination of a neighborhood conservation district commission shall be binding only with regard to applications to construct a new building, to demolish an existing structure if a demolition permit is required, to construct a parking lot as a principal use, and to construct an addition to an existing structure that would increase its gross floor area, and in all other cases the determinations of a commission shall be advisory only and not binding on an applicant. In no case shall a building permit be issued until the commission has made a determination under the applicable provisions of this article.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(5))

2.78.200 - Maintenance, repair and reconstruction.

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark or within a neighborhood conservation district which does not involve a change in design or material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, not construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the order which designates that landmark or district, nor construed to prevent the reconstruction, substantially similar in exterior design, of a structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(6))

2.78.210 - Certificates of appropriateness, nonapplicability or hardship.

A. Except as the order establishing or amending a landmark or neighborhood conservation district may otherwise provide, no structure designated a landmark or within a neighborhood conservation district shall be constructed or altered in any way that affects exterior architectural features unless the Historical Commission or neighborhood conservation district commission having jurisdiction shall first have issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.

B. Any person who desires to obtain a certificate from the Historical Commission or neighborhood conservation district commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability 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.

C. No building permit for alteration of an exterior architectural feature of a landmark or construction of a structure or for alteration of an exterior architectural feature within a neighborhood conservation district and no demolition permit for demolition or removal of a landmark or of a structure within a

neighborhood conservation district shall be issued by the City or any department thereof until the certificate required by this article has been issued by the Historical Commission or neighborhood conservation district commission having jurisdiction.

D. This provision does not apply to proposals for, or existing, affordable housing projects that either are developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of Area Median Income, over which neither the Historical Commission nor any neighborhood conservation district commission has jurisdiction.

(Ord. 1166 §§11, 12, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(7))

2.78.220 - Factors considered by Commissions.

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 not 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~~ shall not ~~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~~rejecting proposals incongruous to the historic aspects, architectural significance ~~or the distinctive character~~ of the landmark or neighborhood conservation district.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(8))

2.78.230 - Public meetings and hearings.

The Historical Commission and each neighborhood conservation district commission shall adopt rules for the reasonable conduct of its meetings and public hearings, which rules shall not be inconsistent with the procedures provided for meetings of and hearings by historic district commissions under Section 11 of Chapter 40C of the General Laws; and in the absence of the adoption of any such rules, meetings and public hearings of the Historical Commission and of each neighborhood conservation district commission shall be in conformity with the provisions of Section 11 of Chapter 40C applicable to historic district commissions.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(10))

2.78.240 - Appeal procedure.

Any person aggrieved by a designation of a landmark or district may appeal to the superior court within thirty days after such designation. Any applicant aggrieved by a determination of a neighborhood conservation district commission or ten registered voters of the City opposing a determination under this article may appeal to the Historical Commission within twenty days after the filing of the notice of such determination with the City Clerk. The Historical Commission may overrule the determination and return it for reconsideration consistent with that finding. If the applicant is aggrieved by the determination of the Historical Commission, or if action is not taken by the Historical Commission within thirty days of filing for review, the applicant may appeal to the superior court. Appeal from a Historical Commission determination shall be taken within thirty days of the formal decision; appeal from a failure to act shall be taken within sixty days after the filing for review. The superior court may reverse a determination if it is not supported by substantial evidence in the record. In all other respects, the appeal shall be made in the same manner as provided under Section 12A of Chapter 40C of the General Laws.

(Ord. 1166 §13, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(11))

2.78.250 - Historical Commission authority not limited.

No provisions of this article shall alter or diminish the duties and functions of the Historical Commission under the authority of Chapter 40, Section 8D and Chapter 40C of the General Laws, or apply to any historic district currently administered by such commission, or restrict the establishment of any future historic district under Chapter 40C of the General Laws.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(13))

2.78.260 - Limitation on applicability.

The provisions of Article II of this chapter (relative to procedures for demolition permits for significant buildings) shall not be applicable with respect to the demolition of any structure within a neighborhood conservation district if the appropriate neighborhood conservation district commission has issued a certificate of appropriateness or a certificate of hardship permitting the demolition of such structure.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(14))

2.78.270 - Enforcement and remedies.

The Historical Commission and any neighborhood conservation district commission are each specifically authorized to institute any and all actions, proceedings in law and in equity, as ~~they~~ it deems necessary and appropriate to obtain compliance with the requirements of this article or to prevent a threatened

violation thereof. Any violation of any provision of this article may be punished to the like extent provided in Section 13 of Chapter 40C of the General Laws for a violation of said Chapter 40C. In addition to the foregoing, no building permit shall be issued, with respect to any premises upon which a landmark or a structure within any neighborhood conservation district has been voluntarily demolished otherwise than pursuant to a certificate granted after compliance with the provisions of this article, for a period of two years after the date of the completion of such demolition (the word "premises" for the purposes of this sentence referring to the parcel of land upon which the demolished structure was located and all adjoining parcels of land under common ownership or control.)

(Ord. 1002 (part), 1983: prior code § 2-147(k)(12))

Erwin, Nicole Attachment D

From: Catherine Zusy <cathzusy@gmail.com>
Sent: Tuesday, March 7, 2023 11:52 AM
To: City Council; City Clerk; City Manager
Subject: Vote no the Crowe Petition once again!

I can't believe that the Crowe Petition in being considered by the Council again—for how many times? What a waste of time and everyone's energy. I realize that this is an election year and that some councilors will soon seek more campaign funding from developers, but this is the WRONG reason to continue this assault on the Cambridge Historical Commission and our historic buildings and neighborhoods.

Our rich historic fabric in Cambridge gives character to our City and is an asset, even a financial asset. It's part of why people want to live here. It should not be sacrificed for the sake of short-term development. Building $1m units everywhere will NOT reduce the need for housing in Cambridge. There is a global and insatiable demand for housing here—with proximity to Harvard and MIT, Kendall Square and Boston. We can't build housing for everyone—either affordable or market rate units.

With carrot and stick, the CHC has historically protected and inspired the preservation of our neighborhoods. Please don't diminish its authority with this petition.

Would you have a layman operate on your mother? No! You'd seek a qualified doctor to do the job. Why remove people who know about buildings (architects and preservationists+), from oversight of our historic fabric and diminish their ability to do their work for the pubic good?

Cathie Zusy
202 Hamilton St.
Cambridge, MA 02139

3.7.23

Erwin, Nicole Attachment E

From: Jean Spera <jmspera@comcast.net>
Sent: Tuesday, March 7, 2023 11:51 AM
To: City Manager; City Clerk; City Council
Subject: Ch.2.78, Ord. #2022-11

Dear Cambridge City Manager, City Clerk, and City Council Members,

We are writing in strong opposition to Chapter 2.78, Ordinance #2022-11. The City of Cambridge has strong Conservation District process in place that ensures that we are operating in the best interests of the Cambridge community. Our Commission works under rigorous standards overseen by highly qualified professionals in the areas of historical factors, architecture, and community equity and diversity. Please maintain our current organizational structure, authority, and process. To do otherwise would significantly impact on the character and history of Cambridge! Cambridge has been able to maintain the rich diversity of our community while also retaining the architectural components and history of our predecessors. History and community working together to maintain a vibrant Cambridge which respects its past and embraces its future in a seamless and responsible way.

Thank you for your attention.

Sincerely,
Anna and Jean Spera
12 Sciarappa Street

Sent from my iPhone

Erwin, Nicole Attachment F

From: Macy Radloff <mradloff@Truman-Architects.com>
Sent: Tuesday, March 7, 2023 11:41 AM
To: City Council; City Manager; City Clerk
Cc: Sullivan, Charles M.; Catherine Truman
Subject: Letter Regarding NCDs Hearing Today
Attachments: Letter to City Council re NCDS 03_07_2023.pdf

Good morning,

I am submitting the attached letter on behalf of Catherine Truman ahead of today's hearing at 12:30 pm.

Thank you,

Macy Radloff
Office Manager

catherine truman architects
29 Warren Street
Cambridge, MA 02141
t: 857.285.2500
c: 617.785.0254
www.truman-architects.com

CATHERINE TRUMAN ARCHITECTS
29 Warren St. Cambridge MA 02141 | 857.285.2500 | truman-architects.com

March 7, 2023

Honorable Mayor and Members of the Cambridge City Council,

I am writing to voice my opposition to the Policy Order before the ordinance committee today that proposes changes to the existing Neighborhood Conservation Districts. There are many issues with this Policy Order, but of utmost concern to me is how these changes will gut architectural preservation efforts in the city.

This Petition is a direct response to the Proposed East Cambridge Neighborhood Conservation District. As a one-time resident and current business owner in East Cambridge, I have a deep appreciation for the neighborhood's architectural and cultural history. But I in the nearly two decades I have lived and/or worked in East Cambridge I've seen how much is has changed and recognize the value in it establishing a Cambridge Neighborhood Conservation District, and the importance of having a reasonable path by which to do so.

Instead of empowering this newest NCD to help preserve architectural history of this corner of the city, the proposed changes to NCD requirements will make it more difficult for all neighborhoods to preserve their unique character and the historically significant buildings they contain, and will make it nearly impossible for smaller pockets of the city to create their own districts. For example, the area around Hilliard Street, which has relatively few homes as is, and half of which are in the neighboring Half Crown-Marsh NDC. However, the excluded section contains several historically significant buildings, including some designed by early female architects, and those inhabited by significant scholars and authors.

Sweeping changes aren't necessary to improve the existing, and effective, NCD structure. Improvements, such as the desire to increase diversity within NCD membership, are important not only for NCDs, but all City committees. However, it can be achieved by encouraging the City Manager making a conscious effort to select a more diverse group of NCD members from the pool of available candidates. A range of ages, ethnicities, professional backgrounds, and a mix of both renters/owners should all be included. However, other requirements, such as potential new NCDs requiring permission from City Council to even begin the study process, itself a time-consuming endeavor that is only undertaken by citizens who are deeply invested in their communities, will politicize what should be a neutral decision based on the architectural merit of any given area.

The goals of the Policy Orders only seem to benefit those interested in tearing down viable housing to build more commercial buildings and luxury housing, which will untimately result in driving up home values, taxes, and rental and home-owner costs more generally. The authors of this proposed changes don't seem to understand the way in which communities and community members coexist in dense urban areas. NCDs provide neighbors to an outlet by which they can contribute to important decisions that impact their lives day-to-day and year-to-year.

This Policy Order will gut not only NCDs but also the role of the highly respected Cambridge Historic Commission, and could forever impact the legacy of historic architecture in Cambridge, and as such I request that you do not support it in today's hearing.

Respectfully,

Catherine Truman

Erwin, Nicole Attachment G

From: Roy Russell <mrroygbiv@gmail.com>
Sent: Tuesday, March 7, 2023 10:42 AM
To: City Council
Cc: City Clerk; Sullivan, Charles M.
Subject: public comments for Ordinance Committee meeting 7 March 2023
Attachments: Ordinance Committe comments 7 March 2023.pdf

Honorable members of the Ordinance Committee,

Below is a copy of the comments I will be making at today's Ordinance Committete meeting below.

Best regards,

Roy Russell
40 Cottage Street

To: Cambridge Ordinance Committee
Cc: City Clerk, Charlie Sullivan Historical Commission
Date: 7 March 2023
Re: public comment for Cambridge Ordinance Committee 7 March 2023

In his memo of 17 October 2022, Charlie Sullivan suggested an addition to section 2.78.220, Factors to be considered by Commissions:

5. Alignment with City Goals (2.78.220)

In recent years Cambridge has faced growing problems of gentrification, diminishing diversity, and lack of affordable housing. It is critical that efforts to "preserve, conserve and protect the beauty and heritage of the city [and to] resist and restrain environmental influences adverse to this purpose" be aligned with city goals. Accordingly, I propose the addition of a new paragraph C to Section 2.78.220 - Factors considered by Commissions:

> **C. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall also consider community goals as may from time to time be expressed by the City Council, including the need to provide additional housing, affordable and otherwise, and to promote the sustainable use of energy and capacity for climate resilience.**

Addressing climate change is not a fleeting priority for the City Council but rather a long term global crisis requiring action at all levels of government and building development. As such, reducing GHG emissions must necessarily be a key factor in all decisions concerning the city's built environment.

The council has consistently voted many times over many years on policy orders and ordinances that the city address greenhouse gas emissions. As the council knows from many discussions, buildings account for 80% of the GHG emissions in Cambridge. And often zoning and historical considerations are at odds with addressing these emissions.

In order to better align the behavior of the Hisotical Commission and ncd commissions with the city, state, national, and global goals, section 2.78.220 should be modified to include sustainability. However, the wording should place reduction of GHG emissions at least as important as other factors. So I suggest adding the following **bolded language** to paragraph A instead of Charlie's proposed paragraph C.

2.78.220 Factors considered by Commissions.
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, **GHG emissions reduction, the need to provide additional housing,** 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. A Commission shall not consider interior arrangements or architectural features not subject to public view.

In addition, paragraph B of this same section which reads as follows:

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.

I believe that this paragraph limits the ability of the Historical Commission and the NCD commissions to consider GHG emissions in rendering their decision. Instead of the double negative construction, it should be framed more positively and include GHG reduction considerations:

B. A Commission shall make recommendation or requirement for the purpose of preventing developments incongruous to the historic aspects, architectural significance or the distinctive character of the landmark or neighborhood conservation district and be consistent with the City's and Commonwealth's goals of reducing GHG emissions.

Respectfully submitted

Roy Russell
40 Cottage Street

Erwin, Nicole Attachment H

From: Francesca Gordini <francesca.gordini@gmail.com>
Sent: Monday, March 6, 2023 2:13 PM
To: City Council; City Manager; City Clerk
Subject: Opposition to Changes to Ch. 2.78, Ord #2022-11

Dear Council Members, City Manager and City Clerk:

With this email I would like to reiterate my strong opposition to the resurrection of the "Crowe Petition", which should've expired quite a while ago.

With my opposition I would like to strongly reiterate my support in favor of all conservation district as the only and last standing tool to protect the identity of our beloved city. We can't risk shaking it for the sake of the city's future and I urge you to consider and analyze the importance that identity brings to the table along with a true affordable panorama for renters like myself.

Respectfully,

Francesca Gordini | Boston
cell: +1 617 230 3914

Erwin, Nicole Attachment I

From: marie elena saccoccio <saccocciom@yahoo.com>
Sent: Monday, March 6, 2023 12:32 PM
To: City Council; City Clerk; City Manager
Subject: Submission in Opposition to Changes to Ch. 2.78, Ord. #2022-11
Attachments: Letter to CC Opp Pet to Amend NCD etc 3-6-2023.docx; Bagalay v Avon Hill Neighborhood Conservation District Commission 2004 MBAR 532 Mass Super 2004 (1).pdf; Hancock Village I LLC v Town of Brookline (1).pdf

Dear Council Members, City Manager, City Clerk:

Could you kindly submit the attached letter and attachments for consideration at the Ordinance Meeting, tomorrow, 3/7/2023?

Dear Council Members and City Manager:

I recognize the present Petition for what it is: the resurrection of the expired "Crowe Petition," and I reiterate my past opposition and incorporate new comments for your consideration. This Petition is a direct response to the Proposed East Cambridge Neighborhood Conservation District. As many of you know, I am fourth generation Cambridge resident. My family has paid taxes to this city for over a century. My parents and grandparents worked in the factories here. I say this to emphasize my breath of interest in preservation of our history, whether it be our immigrant industrial history; our African American history; or, yes, even the history of our privileged West Cambridge landed gentry. Based on this appreciation and full well having experienced the razing of Boston's West End, along with the unbridled development in Kendall, I rallied some neighbors to study the possibility of establishing a Conservation District in East Cambridge. We were not a group of old white privileged wealthy people. We were a group of serious-minded residents who were truly motivated by an appreciation of the value in our history and architecture. We met almost weekly for about 9 months in the St. Francis of Assisi Church Hall, a notable Landmark itself. We spent much time establishing boundaries, looking at other guidelines employed around the country and within Cambridge, taking walking tours of the boundaries; and researching the history of this great neighborhood.

Once the petition for establishing a Conservation District was filed, we were pilloried all over social media. Audrey Vetrano Cunningham and I were mocked incessantly with video clips posted to twitter even ridiculing our "Italian accents." Bill Dines was portrayed as an out of control privileged old white man. John Whisnant was mercilessly described as an old greedy white man. And the social media authors were all "white men." Truly the basis was absurd since the positions we were taking were absolutely supported in law. There was even a cut and paste video of Charles Sullivan making him look uninformed; confused and dismissive. We full well know he is none of that and even the naysayers have described him as a "savant" of the history of Cambridge.

Recently I noted that Conservation Districts in Brookline have been struck down as unlawful. Why?? Because they did not mirror the process or requirements set forth in MGL. C. 40(C). Our Conservation District ordinance and process up to now is faithful to 40(C). The Proposed Ordinance is devoid of any foundation in law to be presented as a variation of any Conservation District composition or process. The Proposal before you creates some kind of land use system, not zoning and not preservation, premised on equity and diversity and business interests. It completely alters the rigors of standing which are as old as property law itself and embodied in the language of 40C. It rejects any notion of professional or academic qualifications likewise mandated by 40C. And in doing so, this proposal insults the lawyers, architects, real estate professionals, urban planners and historians who have always comprised the Commission and the Neighborhood Conservation Districts and most have been uncompensated volunteers. **I cringe to see the inclusion of "equity" and "diversity" embedded in the language since this same**

council were completely dismissive and disrespectful of the black lifelong residents who recently spoke in opposition to the proposed closure of Memorial Drive. To be quite honest, I was shocked and disgusted. The Council likes to throw around words but when it really matters, you are MIA.

I am attaching here two cases for your review. The Brookline case clearly provides that even with a Neighborhood Conservation District, the strictures of MGL c. 40C apply. You simply cannot ignore state law. And, I am attaching here a Cambridge case involving our Avon Hill Neighborhood Conservation District in which the Superior Court found that:

"The Commission incorrectly argues for a "supported by substantial evidence" standard. Cambridge Municipal Code, 2.78.240 ("The superior court may reverse a determination if it is not supported by substantial evidence in the record"). To the extent such section of the Municipal Code seeks to alter the statutory standard of review as set out in G.L.c. 40C, §12A, such section violates state supremacy, and is therefore void."

As I have requested many times before, in violation of Plan E, one City Councilor, who at present is a Sponsor of this Petition, intervened with the Cambridge Historic Commission, personally attempting to stop the process and promote her constituents' position. I have a letter she authored attesting to this and there is also a recorded meeting of the Conservation District in which she demanded that the entire process be stopped. As this is a flagrant violation of Plan E, I am requesting that City Councilor refrain from any further participation, including discussion at Council, and any vote or decision that may result.

II am excited to share that The Foundry has recently been nominated for several awards for the Massachusetts Preservation and National Preservation. The saving of the Foundry was definitely an endeavor of the longtime residents of East Cambridge under the guidance of our Cambridge Historical Commission, within the strictures of the present ordinance. In other words, "If it's not broke, don't fix it."

Respectfully submitted,

Marie Elena Saccoccio, Esquire

55 Otis Street

Cambridge, MA 02141

BBO#552854

2004-MBAR-532

John Bagalay et al.
v.
Avon Hill Neighborhood Conservation District Commission et al.[1]

No. 0304830

Superior Court of Massachusetts

November 22, 2004

Opinion No.: 86756

As-is Docket Number: 03-04830

Venue: Middlesex

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Houston, J.

Opinion Title: MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

This is an appeal from a decision of the Avon Hill Neighborhood Conservation District Commission ("Commission") denying plaintiff's application for a certificate of appropriateness to build a garage in the front setback of their property. This appeal is pursuant to G.L.c. 40C, §12A. Plaintiff moves for judgment on the pleadings pursuant to Mass.R.Civ.P. 12(c).[2]

BACKGROUND

Plaintiffs, John and Julia Bagalay, submitted an application for a certificate of appropriateness to the Commission to construct a 21' x 22' garage within the front setback of their home. It is undisputed that the proposed design was by the original architect of the Bagalay's home, was consistent with the historical and architectural character of the home, and was consistent with the historical and architectural character of the entire neighborhood. After two public hearings and a site visit, the Commission voted unanimously to deny the application. The Bagalays appealed to the Cambridge Historical Commission. The Cambridge Historical Commission failed to act on the appeal within thirty days from the date of filing, thereby entitling the Bagalays to an appeal before this court, pursuant to G.L.c. 40C, §12A and Cambridge Municipal Code, 2.78.240.

DISCUSSION

The superior court may only annul a decision of a historic district commission if: (1) the decision exceeds the authority of the commission, or (2) the decision is unsupported by the evidence. G.L.c. 40C, §12A. Two courts have refined this standard using somewhat similar language. In Marr v. Back Bay Architectural Comm'n, the court stated that a historic district commission decision may be annulled if: (1) the reasons given on the face of the decision are insufficient in law to warrant the commission's decision, or (2) if the reasons given on the face of the decision are unwarranted by the evidence. See 23 Mass.App.Ct. 679, 683-84 (1987). In Gumley v. Board of Selectmen of Nantucket, the court stated that a decision may be annulled if: (1) the decision is based on legally untenable grounds, or (2) the decision is "unreasonable, whimsical, capricious or arbitrary." See 371 Mass. 718, 724 (1977) citing MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638-39 (1970).[3]

The plaintiff attempts to argue that the Commission fails both prongs of the inquiry. As to the first prong, plaintiff claims that the Commission failed to consider the statutory criteria of "appropriateness,"[4] specifically, "architectural value and significance," and instead denied plaintiffs' application based solely on a legally untenable valuation of public space over private space.

The certified record clearly reveals that the Commission considered the "architectural value and significance" of the proposed garage as well as its "relation to the land area... and to buildings... in the vicinity..." G.L.c. 40C, §7.[5] Furthermore, the Commission's consideration of the relative value of public space, on a case by

fastcase

case basis, clearly falls within the specific statutory mandate for Historic District Commissions. G.L.c. 40C, §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... through the maintenance and improvement of settings for such buildings and places...") (emphasis added). The protection of historically significant public space is also included among the statutory criteria of appropriateness. See G.L.c. 40C, §7 ("[T]he commission shall consider, among other things[6]... the building... in relation to the land area upon which the building... is situated... and the commission may in appropriate cases impose... set-back requirements...") (emphasis added); see also Cambridge Municipal Code, 2.78.220.

Therefore, to the extent the application was denied based upon the incongruousness of the front setback garage to the public's enjoyment of the "place" of Avon Hill, and the incongruousness of the front setback garage to the "setting" in which Avon Hill's historic houses reside, such basis for decision was entirely appropriate under the law.

Turning to the second prong of the inquiry, the court will not intrude upon the discretion granted the Commission by the legislature to make such a determination of incongruity unless such determination was "unreasonable, whimsical, capricious or arbitrary" in light of the evidence before the court.[7] Gumley, 371 Mass. at 724. The evidence before the court is the certified record dated March 25, 2004, and upon this record, the Commission's determination that the proposed siting of the garage was incongruous to the historic character of Avon Hill is entirely reasonable and cannot be said to be whimsical, capricious, or arbitrary.

Plaintiffs' assertions to the contrary are meritless: (1) that the Commission ignored the unanimous support of neighbors for the plaintiffs' project is of no momentùthe Commission is tasked by c. 40C with promoting "the general welfare of the public" and not simply the interests of a few abutters; (2) that there exists a maximum 30% lot coverage cap in the applicable zoning ordinance does not mean there exists a "certificate of appropriateness by right" for all projects falling below the maximum; (3) the Commission agreed that the garage's architecture was significant, beautiful, and congruous to the neighborhood, but nowhere in the statute does it state that architectural factors are more important than the physical siting of the garage or the siting's effect on the public's enjoyment of an historic streetscape; and (4) any concern expressed by the Commission about setting unfavorable precedent is a mere statement of the consequences the Commission believed in good faith would attend the improper granting of a certificate of appropriateness. That the certificate would be improper was based upon a careful and reasoned judgment in light of the statutory criteria of appropriatenessùa judgment which the court may not replace with its own.

ORDER

For the foregoing reasons, it is hereby ORDERED that judgment enter AFFIRMING the decision of the Avon Hill Neighborhood Conservation District Commission denying Plaintiffs' application for a certificate of appropriateness.

Julian T. Houston

Justice of the Superior Court

Notes:

[1] Cambridge Historical Commission.

[2] See also Superior Court Standing Order 1-96(4).

[3] The Commission incorrectly argues for a "supported by substantial evidence" standard.

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Cambridge Municipal Code, 2.78.240 ("The superior court may reverse a determination if it is not supported by substantial evidence in the record"). To the extent such section of the Municipal Code seeks to alter the statutory standard of review as set out in G.L.c. 40C, §12A, such section violates state supremacy, and is therefore void.

[4] Delineated by G.L.c. 40C, §7.

[5] Some examples of the Commission's consideration of the statutory criteria are as follows: "Mr. Irving said... the proposed garage worked with the main house and was subsidiary to it." C.R. at 101; "Ms. Norfleet commended the applicants for the original drawings... [S]he disagreed that the garage would not detract from the pedestrian experience of the street." C.R. at 101; "[Ms. Born] said the information and design were very good." C.R. at 102; "Ms. Born recommended that the motion deny the application based on the proposed siting of the garage but not on the architectural design of the garage building." C.R. at 118.

[6] "Among other things" are several "General Conservation Standards" as set forth in the "Avon Hill Neighborhood Conservation District Order (June 15, 1998)." C.R. at 79. The general conservation standards are to "conserve the historic development patterns of the neighborhood, including its green space, open vistas, generous setbacks, and predominantly low density lot coverage [and to] enhance the pedestrian's visual enjoyment of the neighborhood's buildings, landscapes and structures..." These standards permissibly expand upon the statutory criteria of appropriateness and conform to the explicit purpose of c. 40C as delineated in §2.

[7] Plaintiffs urge this court to rule that the Commission did not give "sufficient weight to the statutory factors and criteria of 'appropriateness,' " specifically, the architectural significance of the garage and its relation to surrounding buildings and the land. Plaintiffs' brief at 3-4 (emphasis added). The amount of weight to grant the various pieces of evidence before the Commission falls solely within the discretion of the Commission.

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2019 WL 4189357
Only the Westlaw citation is currently available.
Massachusetts Land Court,
Department of the Trial Court,.
Norfolk County.

HANCOCK VILLAGE I, **LLC**, Plaintiff,
v.
The **TOWN** OF **BROOKLINE**, Defendant.

PERMIT SESSION CASE No. 18
PS
000192 (HPS)
|
Dated: September 4, 2019

DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Howard P. Speicher, Associate Justice

INTRODUCTION

*1 "You call this a barn? This looks like a stable."

"Well, if you look at it, it's a barn; if you smell it, it's a stable."

"Well, let's just look at it." [1]

Sometimes one's perception of the nature of a thing (or in this case, a law) depends on one's perspective or on the context in which it is perceived. In the present dispute, plaintiff **Hancock Village** I, **LLC** ("plaintiff") perceives **Brookline's** Neighborhood Conservation District Bylaw as a zoning bylaw illegitimately masquerading as a general bylaw in order to stymie the redevelopment of the plaintiff's property. The **town** of **Brookline** ("**Brookline**" or "the **town**") perceives the same bylaw as a legitimate exercise of its home rule powers to enact a general bylaw. According to the plaintiff, however, **Brookline** has chosen to view the bylaw from a perspective that willfully and conveniently ignores its true substance and nature. In short, the plaintiff contends that the **town** has elected not to smell the stable so that it might insist that it is a barn.

In 2011, the **town** of **Brookline** adopted a "neighborhood conservation district" bylaw. This bylaw would serve to create local commissions with the ability to regulate the dimensions, layout, and design of construction in designated districts. **Brookline** adopted the bylaw not as an amendment to its zoning bylaw pursuant to G. L. c 40A, or as a historic district bylaw pursuant to G. L. c. 40C, but as a general **town** bylaw pursuant to its general home rule powers.

The first district established under the bylaw comprised solely the entire **Brookline** portion of the 70-acre property of plaintiff. [2] Plaintiff filed this action seeking to invalidate both the bylaw establishing the framework for the creation of neighborhood conservation districts in the **town**, as well as the particular section of the bylaw creating the district encompassing the plaintiff's property. It contends that the bylaw was not a proper exercise of **Brookline's** general police power, as its subject matter falls squarely under the purview of G. L. c 40A and G. L. c. 40C, and must therefore have been enacted pursuant to the procedures provided in those statutes, and with the substantive protections and mechanisms required by those statutes.

For reasons discussed below, I find and rule that although the Neighborhood Conservation District Bylaw and the related **Hancock Village** Neighborhood Conservation District Bylaw were in the form of general bylaws, they are both properly characterized as zoning bylaws that fail to comply with the procedural and substantive requirements of the Zoning Act, G. L. c. 40A, and that further, to the extent they are characterized as historic district bylaws, they fail to comply with the procedural and substantive requirements of G. L. c. 40C. Accordingly, they will be declared to be invalid and of no force and effect.

PROCEDURAL HISTORY

*2 On April 13, 2018, plaintiff **Hancock Village** I, **LLC** filed a six-count complaint against defendant the **town** of **Brookline** seeking declarations to the effect that Section 5.10 of the **Brookline** General Bylaws was invalidly enacted and is of no force and effect. Counts I through IV seek declaratory judgment pursuant to G. L. c. 231A. Count I requests a declaration that the bylaw in question was enacted without compliance with the procedures of G. L. c. 40A, § 5, and Count II requests a declaration that the substance of the

bylaw is in conflict with G. L. c. 40A. Count III requests a declaration that the bylaw was enacted without compliance with G. L. c. 40C, § 3, and Count IV requests a declaration that the substance of the bylaw is in conflict with the same. Count V seeks a determination of the validity of the bylaw as applied to its property pursuant to G. L. c. 240, § 14A. Count VI asserts a violation of the Due Process Clause of the 14th Amendment of the United States Constitution, and Part I, Article 10 of the Massachusetts Declaration of Rights.

Brookline filed an Answer on May 14, 2019, and an Amended Answer on May 21, 2019. The parties attended a case management conference on May 29, 2018. In accordance with an agreed-upon schedule, on February 15, 2019 the parties filed cross-motions for summary judgment and responses to each other's motions. A hearing was held before me on the parties' respective motions on May 7, 2019, after which I took the motions under advisement.

UNDISPUTED FACTS

The following material facts are found in the record for purposes of Mass. R. Civ. P. 56, and are undisputed for the purposes of the pending motions for summary judgment:

1. **Hancock Village** is a 70-acre mixed-use development consisting of 789 garden-style apartments, 530 of which are in **Brookline**, with the remainder in the 20-acre portion of the property that lies over the city line in Boston. **Hancock Village** is owned by plaintiff **Hancock Village** I, **LLC**. [3]

2. The vast majority of the **Brookline** portion of **Hancock Village** is located in the M-O.5 (Apartment) zone, **Brookline's** lowest density apartment house district. [4] The remainder is in a single-family district.

3. In August, 2011, the plaintiff submitted an application for "Major Impact Project Review" to the **Brookline** Building Commissioner, which is a preliminary step in applying for a special permit under the **Brookline** Zoning Bylaw. The application was for the development of thirty-one detached single-family homes and 162 dwelling units in a multifamily building. [5]

4. In the fall of 2011, two warrant articles – Article 5 and Article 6 – were proposed, and were scheduled for consideration at a November 15, 2011 Special **Town** Meeting. [6]

5. Article 5 would insert Section 5.10 into **Brookline's** General Bylaws; this section, titled "Neighborhood Conservation Districts" (the "NCD Bylaw"), set out the framework for the operation of Neighborhood Conservation Districts ("NCDs") in **Brookline**. [7]

6. The petitioner's description of the NCD Bylaw that accompanied the warrant for Article 5 described NCDs as a tool "designed to be more neighborhood specific than the **Town's** Local Historic District (LHD) By-Law ... The guidelines for a particular NCD, unlike an LHD, can be focused less on preservation of the specific details of each structure and more on preserving the general character of a neighborhood, by ensuring that the general scale, composition, massing and design is compatible with the site as well as other existing structures in the surrounding area." It stated that "the guidelines for an NCD could address landscape and urban issues such as protection of landscapes, open spaces, viewsheds and paving without grade changes." [8]

7. Article 6 would insert Section 5.10.3.d.1 into this section, creating the **Hancock Village** Neighborhood Conservation District ("**Hancock Village** NCD"), which was to be an NCD applicable solely to the plaintiff's property. [9] This was the first time an NCD had been on the warrant for any **town** meeting in **Brookline**. [10]

*3 8. These articles were proposed as general **town** bylaws under the **town's** home rule power, rather than as zoning bylaws adopted pursuant to the procedures in G. L. c. 40A.

9. Articles 5 and 6 were discussed and debated at seventeen meetings of various **town** boards and committees. [11]

10. Article 5 and Article 6 were approved by **Town** Meeting in November 2011. Article 5 was passed by a recorded ballot vote of 183 in favor, 35 opposed, with 5 abstentions. Article 6 was passed by a counted vote of 200 in favor and 24 opposed. [12]

11. On May 30, 2012, the Attorney General approved the adoption of Article 5 and Article 6; however, she noted that the "question is close" as to whether the proposed bylaw should have been adopted as a zoning bylaw. [13]

12. Since the passage of the NCD Bylaw, plaintiff has secured comprehensive permit approvals pursuant to G. L. c. 40B for the further development of **Hancock Village**. The

development approved under the comprehensive permit would be exempt from the requirements of the NCD Bylaw. [14] **Brookline** and a number of abutting landowners filed an appeal of plaintiff's comprehensive permit on March 11, 2015. That appeal was dismissed by order of the Land Court (Piper, J.) on July 17, 2018. [15]

13. Plaintiff has made at least six applications to the **Hancock Village** NCD Commission for work on existing homes. None of these have been denied. [16]

14. On April 3, 2018, plaintiff filed the present action seeking to invalidate the NCD Bylaw contained in Section 5.10 as a whole, including both its establishment of the general NCD framework as well as the particular **Hancock Village** NCD contained in Section 5.10.3.d.1. [17]

The NCD Bylaw

15. Section 5.10.1 of the NCD Bylaw, which sets forth the bylaw's purpose, states, in part:

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, landscapes, and viewsheds that are historically significant or significant to the character of the **town** or its neighborhoods; preserving and protecting distinctive features of the architectural, cultural, economic, political, or social history of the **town** and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolition and new construction on the character of the **town** and its neighborhoods. Through this by-law, alterations, additions, demolition, and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings, and neighborhood character. [18]

16. Pursuant to Section 5.10.4 of the NCD Bylaw, each NCD is to be overseen by a commission ("NCD Commission") of at least five members, consisting of a combination of **Brookline** Preservation Commission members and residents of the **town** appointed by the Board of Selectmen. [19]

17. Each NCD Commission is tasked by the NCD Bylaw with "exercis[ing] its powers in administering and regulating the alteration of buildings, other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law," and "review[ing] all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape of topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures." [20]

*4 18. Section 5.10.2 defines "Reviewable Project" as including "(i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof ... (iii) addition or replacement of doors or windows ... (iv) a change to a site that includes constructing, placing, erecting, installing, enlarging, or moving a building or other structure or similar activities; (v) the removal or addition of streets, driveways, parking areas, walkways, or paved surfaces..." [21]

19. Section 5.10.5 provides that "a building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness." [22]

20. Section 5.10.7 states in part: "The Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the applicable district and the purposes of the bylaw." It further states that a Certificate of Appropriateness will be issued if the Commission deems it compatible, and denied if it is deemed incompatible. [23]

21. Section 5.10.3.c states: "The Commission may impose dimensional requirements that further the purposes of the by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green

space, open space, landscape, vegetation or viewshed character of the NCD." [24]

22. Section 5.10.3.d.1 establishes the **Hancock Village** NCD, and provides a number of specific "design guidelines" for the NCD. Per these guidelines, elements that "shall be compatible with the existing buildings in the district" include: "[t]he architectural design and building materials" (Section 5.10.3.d.1.i); the elements of the façade, such as windows, doors, and trim (Section 5.10.3.d.1.iii); the "shape, pitch, style, and type of roof (Section 5.10.3.d.1.iv); and "[t]he size, height and massing of a building or other structure." (Section 5.10.3.d.1.ii). [25]

23. As to this final category, Section 5.10.3.d.1.ii of the Bylaw goes on to state: "Compatible building size, height and massing shall include, but not be limited to limited to [sic]: (a) No building over 2 ½ stories in height ... shall be constructed. (b) In relation to any abutting single family, detached homes, any new single-family homes shall be similarly oriented, have similar rear yard depths, and similar distance between dwelling units." [26]

24. Section 5.10.3.d.1.v also states that the project shall "maintain the spatial organization of the district," and shall not have a "significant negative impact on historical architectural or landscape elements ...." It further provides that "[s]ignificant negative impacts shall include, but not be limited to: ... (d) Addition of new impervious surfaces within 100 feet of abutting properties, and (e) Loss of open space through building coverage exceeding 20% of the area of the district ...." [27]

The Zoning Bylaw

25. As provided in Section 1.00, the purposes of the **Brookline** Zoning Bylaw (the "Zoning Bylaw") include "(b) preventing overcrowding of land ... (e) preventing undue concentration of population ... (j) encouraging the preservation of historically and architecturally significant structures; ... (l) providing for adequate open space, including landscaped and usable open space, public shade trees and other landscape and natural features." [28]

***5** 26. Sections 5.00 – 5.92 of the Zoning Bylaw comprise extensive dimensional regulations imposed on districts throughout the **town**. Table 5.01, in particular, provides specific height maximums, minimum lot sizes, open space requirements, minimum setback requirements, and floor area ratio maximums. [29]

27. Section 5.06 of the Zoning Bylaw provides "Special District Regulations" for certain areas of the **town** on the basis that "unique land use, environmental, architectural and other physical conditions present within the **Town** require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; [and] historic and natural resource conservation; residential neighborhood preservation ...." These Special District Regulations are to be established by **Town** Meeting "from time to time, in accordance with M.G.L. Chapter 40A." [30]

28. Special District Regulations established under Section 5.06 impose dimensional requirements, such as maximum height, minimum open space, and maximum floor area ratio, which differ from those which would otherwise be required by Table 5.01.

29. Section 5.09 of the Zoning Bylaw, which is applicable in a number of designated areas in the **town**, establishes a "Design Review" process with the purpose of "provid[ing] individual detailed review of certain uses and structures which have a substantial impact on the character of the **Town** and upon traffic, utilities and property values therein, thereby affecting the public health, safety, and general welfare thereof." [31]

30. This process allows the Planning Board and Zoning Board of Appeals to review proposed construction for, among other things, "consisten[cy] with "use, scale, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area" (Section 5.09(4)(c)); "the location and configuration of open space" (Section 5.09(4)(d)); the impact of layout on vehicular circulation (Section 5.09(4)(e)); and consideration of "historic, traditional or significant uses, structures or architectural elements ...." (Section 5.09(4)(k)). [32]

JURISDICTION

***6** The Land Court has exclusive jurisdiction over actions brought pursuant to G. L. c. 240, § 14A for the determination of the validity of an ordinance "adopted under the provisions of chapter forty A or under any special law relating to zoning, so called, which purports to restrict or limit the present

or future use, enjoyment, improvement or development of such land." G. L. c c. 240, § 14A. "The primary purpose of proceedings under § 14A is to determine how and with what rights and limitations the land of the person seeking an adjudication may be used under the provisions of a zoning enactment in terms applicable to it, particularly where there is no controversy and hence no basis for other declaratory relief." *Hansen & Donahue, Inc. v. **Town** of Norwood*, 61 Mass. App. Ct. 292, 295, 809 N.E.2d 1079 (2004). There is no dispute that plaintiff is the owner of the land which is subject to the challenged bylaw, and the nature of its challenge – contending that the bylaw should have been, but was not, enacted pursuant to G. L. c. 40A – falls within the purview of the statute. See G. L. c. 240, § 14A; *Valley Green Grow, Inc. v. **Town** of Charlton*, 27 LCR 99, 103 (2019) (Foster, J.) ("The court sees little distinction between determining the validity of a bylaw enacted under c. 40A and the validity of a bylaw that the plaintiffs claim should have been enacted under c. 40A.").

This court likewise has jurisdiction over the plaintiff's counts for declaratory judgment under G. L. c. 231A. Under that statute, the Land Court may "on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby ... in any case in which an actual controversy has arisen and is specifically set forth in the pleadings." G. L. c. 231A, § 1. "A landowner who seeks to challenge the validity of a zoning by-law where there is an actual controversy may bring a proceeding in the Land Court under G. L. c. 231A or under G. L. c. 240, § 14A." *Mantoni v. Board of Appeals*, 34 Mass. App. Ct. 273, 275, 609 N.E.2d 502 (1993).

Construing the plaintiff's constitutional claims as a subset of its G. L. c. 240, § 14A claim, they may properly be heard in the Land Court as well. Typically, a plaintiff must notify the Attorney General of constitutional claims pursued within the context of a declaratory judgment action. See *id.*, quoting *Gamache v. Acushnet*, 14 Mass. App. Ct. 215, 223, 438 N.E.2d 82 (1982) ("If the party seeks to involve a question of constitutionality in the declaratory judgment proceeding, 'the attorney general shall also be notified of the proceeding.' "). The record reflects the plaintiff's previous communications to the Attorney General strenuously objecting to the passage of the Warrant Articles; however, there is no indication one way or the other whether the plaintiff has indeed notified the Attorney General of the present action. Nonetheless, no notice to the Attorney General is required for an action under G. L. c. 240, § 14A. *Id.* Accordingly, the Land Court may maintain jurisdiction over the plaintiff's constitutional claims insofar as they are considered to be incorporated into its G. L. c. 240, § 14A action.

The Land Court independently has jurisdiction over the present action because it was properly filed in the Permit Session. Pursuant to G. L. c. 185, § 3A:

> The permit session shall have original jurisdiction, concurrently with the superior court department, over civil actions in whole or part: (a) based on or arising out of the appeal of any municipal, regional or state permit, order, certificate or approval, or the denial thereof, concerning the use or development of real property, including without limitation appeals of such permits, orders, certificates or approvals, or denials thereof, arising under or based on or relating to chapter ... 40A to 40C, inclusive, ...or any local bylaw or ordinance; (b) seeking equitable or declaratory relief (i) designed to secure or protect the issuance of any municipal, regional or state permit or approval concerning the use or development of real property or (ii) challenging the interpretation or application of any municipal, regional or state rules, regulations, statutes, laws, bylaws, ordinances concerning any permit or approval; ...and (d) any other claims between persons holding any right, title or interest in land and any municipal, regional or state board, authority, commission or public official based on or arising out of any action taken with respect to any permit or approval concerning the use or development of real property but in all such cases of claims (a) to (d), inclusive, only if the underlying project or development involves either 25 or more dwelling units or the construction or alteration of 25,000

square feet or more of gross floor area
or both.

*7 Although not a direct appeal of a denial of a permit, the plaintiff alleges in its complaint, and the record supports the claim, that the adoption of the NCD Bylaw is a direct response to, and improperly impacts plaintiff's efforts to develop additional housing – both single-family units and multi-family units – as well as other improvements on the **Hancock Village** property.[33] In August 2011, the plaintiff proposed a "major impact project" to add additional housing at **Hancock Village**.[34] It is not in dispute that the proposal to adopt the NCD Bylaw and the **Hancock Village** NCD Bylaw was a direct response to this proposal.[35] Under these circumstances, the Land Court's jurisdiction is properly grounded in G. L. c. 185, § 3A, in addition to G. L. c. 240, § 14A and G. L. c. 231A.

DISCUSSION

SUMMARY JUDGMENT STANDARD

"Summary judgment is granted where there are no issues of genuine material fact, and the moving party is entitled to judgment as a matter of law." *Ng Bros. Constr. v. Cranney*, 436 Mass. 638, 643-644, 766 N.E.2d 864 (2002); Mass. R. Civ. P. 56(c). "The moving party bears the burden of affirmatively showing that there is no triable issue of fact." *Ng Bros. Constr.*, supra, 436 Mass. at 644, 766 N.E.2d 864. In determining whether genuine issues of fact exist, the court must draw all inferences from the underlying facts in the light most favorable to the party opposing the motion. See *Attorney Gen. v. Bailey*, 386 Mass. 367, 371, 436 N.E.2d 139, cert. denied, 459 U.S. 970, 103 S.Ct. 301, 74 L.Ed.2d 282 (1982). Whether a fact is material or not is determined by the substantive law, and "an adverse party may not manufacture disputes by conclusory factual assertions." See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Ng Bros. Constr.*, supra, 436 Mass. at 648, 766 N.E.2d 864. When appropriate, summary judgment may be entered against the moving party and may be limited to certain issues. *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553, 340 N.E.2d 877 (1976); Mass. R. Civ. P. 56(c).

SUMMARY OF THE PARTIES' ARGUMENTS

The crux of this case is whether **Brookline** has impermissibly circumvented G. L. c. 40A and G. L. c. 40C by utilizing its general home rule power to pass a bylaw that is, in truth, either a zoning bylaw, a historic district bylaw, or both. Plaintiff argues that the NCD Bylaw replicates the manner of regulation governed by these two statutes, but evades their mandatory procedural and substantive requirements for enactment and administration. It also argues that the provisions governing an NCD commission's power to impose requirements are too vague to pass constitutional muster, and deprive an applicant of due process. **Brookline** contends that the effect of the NCD Bylaw is not to amend the **Brookline** Zoning Bylaw, but rather to supplement it through land use regulation not the exclusive domain of zoning. Similarly, it argues that the NCD Bylaw differs from historic district bylaws, and that G. L. c. 40C does not govern all bylaws that happen to fall within the broad field of historic preservation. Therefore, it contends, the NCD Bylaw was properly enacted pursuant to the **town's** general police powers, and did not need to adhere to the procedural requirements of either G. L. c. 40A or G. L. c. 40C. Alternatively, it argues that, even if the NCD Bylaw does fall under the ambit of these statutes, **Brookline** substantially complied with the procedural requirements of both. **Brookline** also repeatedly draws attention to the fact that Neighborhood Conservation District bylaws have been adopted in other Massachusetts municipalities as general **town** bylaws, as they are seen as an effective alternative to more traditional means of regulation.[36]

I. THE NCD BYLAW IS PROPERLY CHARACTERIZED AS A ZONING BYLAW AND WAS INVALIDLY ADOPTED AS A GENERAL BYLAW

*8 **Towns** may enact "by-laws as an exercise of their independent police powers but these powers cannot be exercised in a manner which frustrates the purpose or implementation of a general or special law enacted by the Legislature in accordance with ... [art. 89, § 8, of the Amendments to the Constitution]." *Board of Appeals of Hanover v. Housing Appeals Comm. in the Dept. of Community Affairs*, 363 Mass. 339, 360, 294 N.E.2d 393 (1973). A municipality's zoning power is "one category of the more general police power, concerned specifically with the regulation of land use," and an exercise of its zoning power must adhere to the procedural requirements of G. L. c. 40A. *Rayco Inv. Corp. v. Bd. of Selectmen of Raynham*, 368

Mass. 385, 392 n.4, 331 N.E.2d 910 (1975). A municipality cannot utilize its general police power to enact a bylaw which is, at its essence, a zoning regulation, if it does not resort to G. L. c. 40A; doing so would frustrate the purpose and implementation of the statute. See *id.* As previously noted by this court, "[t]he reason for this is that zoning bylaws have different, stricter requirements for enactment than general bylaws. A zoning bylaw must be reviewed by the planning board in a public hearing and then reported on by the board, and, crucially, may only be enacted by a two-thirds vote of **town** meeting. General bylaws have no such requirements —they may be enacted by a majority vote." *Valley Green Grow, Inc. v. **Town** of Charlton*, 27 LCR supra, at 105 (internal citations omitted).

Brookline impermissibly evaded these stricter requirements in a circumstance where they were necessary. **Brookline's** NCD Bylaw is, in its fundamental substance, a creature of zoning. It regulates subject matter falling within both the traditional definition of zoning as well as the existing purview of the **Brookline** Zoning Bylaw. Despite this, **Brookline** enacted the NCD Bylaw as a general **town** bylaw, and made no attempt to follow the particular procedures laid out in G. L. c. 40A. Accordingly, having failed to strictly comply with the requirements for enactment of a zoning bylaw, Section 5.10 of the **Brookline** General Bylaws is invalid, and of no force and effect.

A. The NCD Bylaw Addresses Subjects Traditionally Classified as Zoning Under Chapter 40A

The NCD Bylaw has the purpose and effect of regulating subject matter traditionally falling under the ambit of zoning. This is a significant factor indicating that a bylaw is governed by G. L. c. 40A, and must be enacted pursuant to its procedural requirements. In *Rayco Inv. Corp. v. Bd. of Selectmen of Raynham*, supra, 368 Mass. at 391, 331 N.E.2d 910, the Supreme Judicial Court determined that a bylaw limiting the number of trailer park licenses that the **town** could issue was not a proper exercise of the **town's** general police power, as the "nature and effect of the ... bylaw is that of an exercise of the zoning power." It noted that "similar by-laws have been adopted in the past by municipalities as zoning by-laws," and that "[t]here seems little doubt that the 1971 by-law could be viewed within the scope of the **town's** zoning power." *Id.* On the opposite side of the same coin, in *Lovequist v. Conservation Commissioner of Dennis*, 379 Mass. 7, 13, 393 N.E.2d 858 (1979), the court held that it was not improper for the **town** of Dennis to enact a wetlands bylaw through its police power rather than as a zoning bylaw; and like in *Rayco*, the court's analysis looked in part to the universe of subject matter conventionally regulated by zoning. It noted that the bylaw was not a "zoning measure for the reason that [it] manifests neither the purpose nor the effects of a zoning regulation. The Dennis by-law does not prohibit or permit any particular listed uses of land or the construction of buildings or the location of businesses or residences in a comprehensive fashion. On its face it does not deny or invite permission to build any structure. It does not regulate density." *Id.* The Court further elaborated that the wetlands values protected by the bylaw (such as water supply, groundwater, and flood control) were not "typical of the concerns usually reflected in the zoning process," which instead included such things as "the character of the community and compatibility of nearby land uses." *Id.*

Brookline relies heavily on *Lovequist*, citing to the proposition therein that "[w]e do not consider all ordinances or by-laws that regulate land use to be zoning laws," and arguing that the NCD Bylaw regulates land use in a manner that need not be classified as zoning. It is true that the court in *Lovequist* recognized that "municipal regulations that simply overlap with what may be the province of a local zoning authority" do not necessarily need to be "treated as zoning enactments which must be promulgated in accordance with the requirements of G. L. c. 40A." *Id.* at 14, 393 N.E.2d 858. However, the court made clear that such overlap was permissible in circumstances where "we think it manifest that [the bylaw] is not a zoning regulation." *Id.* Cf. *American Sign & Indicator Corp. v. Framingham*, 9 Mass. App. Ct. 66, 69, 399 N.E.2d 41 (1980) (sign bylaw's "overlap with what may be the province of a local zoning authority" did not require it to be enacted as a zoning regulation where it " 'manifests neither the purpose nor the effects of a zoning regulation' and does not involve most of the typical concerns reflected in zoning laws"); *Hamel v. Bd. of Health of Edgartown*, 40 Mass. App. Ct. 420, 422, 664 N.E.2d 1199, (1996) (board of health sewage flow regulation which overlapped with zoning's use regulations was permissible where the purpose and effect was "the maintenance of safe drinking water in the geographical area concerned."). Here, the NCD Bylaw does not incidentally overlap with the domain of zoning while embodying a different purpose and effect.

Instead, the NCD Bylaw usurps that domain wholesale, purpose, effect, and mechanisms all.

***9** All that the Dennis bylaw in *Lovequist* was not, the NCD Bylaw is. The essential focus of the NCD Bylaw's purpose clause is the protection of the "character of the **town** and its neighborhoods" as established by the physical and aesthetic characteristics of its structures and layout. This loudly echoes the central objectives of zoning. Zoning primarily operates to "balanc[e] rights or privileges of use with the character of neighborhoods, a task which necessarily calls into play issues of size, location, setback, traffic, and the sundry other matters addressed in local land use and zoning bylaws and ordinances." *Rogers v. **Town** of Norfolk*, 432 Mass. 374, 382, 734 N.E.2d 1143 (2000). Protecting the character of the neighborhood as reflected in its physical structures is indeed a familiar refrain in the context of zoning. See *Lovequist v. Conservation Com. of Dennis*, supra, 379 Mass. at 14, 393 N.E.2d 858 ("[T]he character of the community and the compatibility of nearby land uses" is a "typical concern[ ] usually reflected in the zoning process."); *Trustees of Tufts College v. City of Medford*, 415 Mass. 753, 758, 616 N.E.2d 433 (1993) ("[P]reserving the character of an adjacent neighborhood" is one of the "purposes sought to be achieved by local zoning"); *Emond v. Board of Appeals of Uxbridge*, 27 Mass. App. Ct. 630, 632, 541 N.E.2d 380 (1989) ("[T]o preserve the character of ... the neighborhood is one of the 'broad purposes of zoning' "); *Fabiano v. City of Boston*, 49 Mass. App. Ct. 281, 286, 730 N.E.2d 311 (2000) (the goal of "preserv[ing] within reason the historic residential character of the [neighborhood] ... is a goal surely within the purview of the [Boston zoning] enabling act.").

The NCD Bylaw's mimicry of conventional zoning is likewise apparent in the content and effect of its substantive provisions. "[Z]oning ordinances or by-laws govern 'the use of land and the size, location and use of buildings.' " *Hamel v. Bd. of Health of Edgartown*, supra, 40 Mass. App. Ct. at 422, 664 N.E.2d 1199, quoting *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 636, 255 N.E.2d 347 (1970). As provided in the Act of the Legislature revamping G. L. c. 40A, St. 1975, c. 808 § 2A, zoning bylaws achieve the purposes of zoning by regulating such subjects as "size, height, bulk, location, and use of structures ...; areas and dimensions of land ... to be occupied or unoccupied by uses and structures, courts, yards and open spaces; ... and the development of the natural scenic and aesthetic qualities of the community." The court in *Lovequist* itself helpfully identified a number of characteristics of conventional zoning, including regulation of density, uses of land, construction and location of structures, as well as provision of a means to apply for permission to build structures. See *Lovequist v. Conservation Com. of Dennis*, supra, 379 Mass. at 13, 393 N.E.2d 858.

Here, the NCD Bylaw's definition of "Reviewable Project" itself makes clear that the NCD Bylaw is indeed almost entirely concerned with the construction and siting of buildings. Its provisions go on to provide for regulation of the dimensional characteristics of such reviewable projects in order to manage the neighborhood's density and physical character: at the heart of the NCD Bylaw are the NCD Commission's powers to regulate "alterations, additions, demolition and new construction, and its powers to consider "without limitation" features including "design, massing, topography, scale and materials ... green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts" among others.[37] The **Hancock Village** NCD even raids the traditional zoning toolbox for particular dimensional controls, such as the delineation of specific height, setback, and open space regulations.[38] There can be no question that, unlike the bylaw in *Lovequist*, the NCD Bylaw has "the purpose [and] the effects of a zoning regulation." *Lovequist v. Conservation Com. of Dennis*, supra, 379 Mass. at 13, 393 N.E.2d 858.[39]

*B. The NCD Bylaw Addresses Subjects Already Governed by the **Brookline** Zoning Bylaw*

***10** The second factor compelling the conclusion that the NCD Bylaw falls within the scope of Chapter 40A is the fact that its subject matter has, in fact, been previously regulated in **Brookline** by the Zoning Bylaw. "If the municipality has a history of regulating that subject matter through its zoning bylaw, then it can only be further regulated through the zoning bylaw, not through a general municipal bylaw." *Valley Green Grow, Inc. v. **Town** of Charlton*, supra, 27 LCR at 105. In *Rayco*, the court considered it "significant that prior to the adoption of the 1971 by-law the **town's** zoning by-law dealt specifically with the subject of trailer parks," and that "the zoning by-law purported to cover this subject in a comprehensive fashion and it follows that

the 1971 by-law necessarily modified the earlier by-law."

Rayco Inv. Corp., supra, 368 Mass. at 393, 331 N.E.2d 910. Similarly, in *Spenlinhauer v. **Town** of Barnstable*, 80 Mass. App. Ct. 134, 140, 951 N.E.2d 967 (2011), the **town** adopted a general ordinance, not a zoning bylaw, regulating the subject of parking. The Appeals Court noted that the **town** had "historically regulated off street parking through its zoning bylaws, not its general ordinances or bylaws," and did indeed have a "comprehensive bylaw regulating parking" enacted through its zoning power. *Id.* The new parking bylaw, by comparison, was intended to address the impact of parking on the "character and quality of the **town's** neighborhoods, precisely the target at which the **town's** zoning ordinance is so thoroughly and comprehensively aimed." *Id.* at 141, 951 N.E.2d 967. Accordingly, the court concluded that "the challenged ordinance is a matter for regulation through the **town's** zoning power, not through its use of a general ordinance." *Id.*

Given the above conclusion that the NCD Bylaw regulates subject matter conventionally at the heart of zoning, it is unsurprising that those subjects are, in fact, already comprehensively governed by the **Brookline** Zoning Bylaw. The Zoning Bylaw's stated purposes reflect those expressly outlined in the NCD Bylaw – of particular note are the purposes of "encouraging the preservation of historically and architecturally significant structures" and "providing for adequate open space, including landscaped and usable open space, public shade trees and other landscape and natural features." [40]

The mechanisms by which the NCD Bylaw sets out to achieve these objectives replicate, and indeed replace, those already present in the Zoning Bylaw. Table 5.01 of the Zoning Bylaw contains the typical dimensional controls, common across all zoning ordinances and bylaws, which regulate height, setbacks, open space, and density of construction in the **town**. These provisions are intended to control the massing, scale, and siting of structures and buildings. The NCD Bylaw displaces the Zoning Bylaw by generally empowering the NCD Commission to set its own requirements related to precisely these same categories. Section 5.10.3.c allows the Commission to "impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD." [41] Section 5.10.3.d.1 goes even further to impose its own version of particular dimensional controls already expressly provided in the Zoning Bylaw: it requires 80% open space, a 100 foot setback, [42] and a maximum building height of two and a half stories, [43] thus baldly supplanting the dimensional requirements set forth in Table 5.01 of the Zoning Bylaw. The NCD Bylaw's usurpation of the Zoning Bylaw's domain is made expressly clear by the concluding statements in both Section 5.10.11 and 5.10.3.d that, where the NCD Bylaw imposes stricter requirements than other bylaws, the NCD Bylaw shall prevail. [44]

In fact, in replacing baseline dimensional requirements for a designated locale, the NCD Bylaw appears to operate in a similar manner to a mechanism already contained with the Zoning Bylaw – the creation of Special Districts. Pursuant to Section 5.06 of the Zoning Bylaw, the **town** may establish Special Districts encompassing certain areas of the **town**; these are meant to address "unique land use, environmental, architectural and other physical conditions" of certain neighborhoods which require particularized regulation. To address these factors, Special Districts are subjected to dimensional requirements which differ from those otherwise imposed by Table 5.01. Thus, not only is the imposition of generalized dimensional controls the province of the Zoning Bylaw, but even the act of designating special areas for particularized regulation is as well. The NCD Bylaw cannot usurp this power by filling geographic holes which have purposefully been left free of such particularized regulation. **Brookline's** argument that its NCD districts "supplement" the Zoning Bylaw is no different from the **town's** unavailing argument in *Spenlinhauer* that, because the "detailed and extensive" parking regulations in the zoning bylaw did not apply to single family homes, parking for that use could be properly regulated by a supplementary general bylaw. The court in *Spenlinhauer* rejected this, holding that the framework's inapplicability to a particular use "does not create a hole the **town** can fill through enactment of general ordinances." *Spenlinhauer v. **Town** of Barnstable*, supra, 80 Mass. App. Ct. at 140, 951 N.E.2d 967.

***11** In sum, the NCD Bylaw's imposition of its own dimensional requirements – whether discretionarily crafted by the Commission, or delineated by the bylaw itself – regulates a field already comprehensively addressed by the Zoning Bylaw, and for precisely the same purpose. Though **Brookline** contends that the NCD Bylaw's regulation of these

subjects permissibly supplements the Zoning Bylaw because it is tailored to specific neighborhoods, this argument employs "supplement" as a euphemism for "supplant." They expressly regulate the same subject matter, and the NCD Bylaw serves to effectively replace the Zoning Bylaw's requirements. As in *Rayco*, the NCD Bylaw's effect is to "necessarily modif[y]" the zoning bylaw in such a way that it "ought to be considered as an amendment to the zoning by-law." *Rayco Inv. Corp.*, supra, 368 Mass. at 394, 331 N.E.2d 910.

II. THE NCD BYLAW IMPERMISSIBLY INVADES THE PROVINCE OF CHAPTER 40C

Brookline next points to the fact that, apart from its dimensional regulations, the NCD Bylaw also regulates aesthetic architectural and landscaping elements through "design guidelines." It contends that design has been traditionally regulated through **Brookline's** general bylaws, rather than the Zoning Bylaw, as the latter only regulates such aesthetic and design elements for certain uses or structures or in certain areas of the **town**. Therefore, it argues, the subject matter regulated by the NCD Bylaw does not overlap with that of the Zoning Bylaw. Nor does it, **Brookline** contends, improperly overlap with G. L. c. 40C's regulation of historic districts, but instead acts as a permissible alternative to the manner of regulation envisioned by that statute. Even assuming that the NCD Bylaw's "design guidelines" could be practically severed from its dimensional regulations – a highly unlikely proposition, given the manner in which they are closely intertwined – the **town's** contention that they are permissible subjects of the **town's** general police power is still unavailing, as they do indeed intrude upon the domain of G. L. c. 40C.

First, it should be noted that the Zoning Bylaw does itself regulate design to a certain degree. Section 5.06 of the Zoning Bylaw imposes Special District Regulations on certain designated Special Districts in the **town**; these address "unique land use, environmental, architectural and other physical conditions" of particular neighborhoods which require further regulation. Not only do these Special District regulations alter the dimensional requirements to which the district would otherwise be subject, but they also subject an applicant to design review pursuant to Section 5.09 of the Zoning Bylaw. Section 5.09's Design Review Guidelines provide for "individual detailed review of certain uses and structures which have a substantial impact upon the character of the **Town**...." This requires the Planning Board to submit design recommendations to the Board of Appeals, which must then consider those recommendations as an additional factor when reviewing special permit applications. This design review includes consideration of "historic, traditional or significant uses, structures or architectural elements." For one particular district, it provides that "any new structure shall be harmoniously related to nearby pre-existing structures and the street façade in terms of color, texture, materials, scale, height, setbacks, roof and cornice lines, signs, and design elements ...." [45]

Plaintiff nonetheless agrees that the preservation of historic architectural design elements is indeed "more definitively" [46] regulated under Section 5.6 of the **town's** general bylaws, titled "Preservation Commission and Historic Districts Bylaw," [47] than by the Zoning Bylaw. **Brookline** likewise points to this section as proof that the NCD Bylaw's proper place is amongst the **town's** general bylaws. [48] However, the appearance of historic district regulation in the **town's** general bylaws does not open the door to unrestrained regulation of the subject under the **town's** home rule power, because Section 5.6 was enacted pursuant to and is governed by G. L. c. 40C. The NCD Bylaw's regulation of historic design mimics that statute, and must likewise follow its necessary procedures. **Brookline**, contending that it did not have to follow the procedural requirements for adoption of a historic district bylaw as provided by G. L. c. 40C, §§ 3 and 4, does not argue that it has complied with those requirements.

***12** G. L. c. 40C pursues 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...." G. L. c. 40C, § 2. Similar to G. L. c. 40A's mandate allowing **towns** to establish zoning districts only pursuant to specified procedures, G. L. c. 40C states that "[a] city or **town** may, by ordinance or by-law adopted by two-thirds vote ... establish historic districts subject to" a number of procedural requirements that must be followed "[p]rior to the establishment of *any historic district*." G. L. c. 40C, § 3. (emphasis added) It is true that "[Chapter 40C] gives municipalities unfettered discretion whether to establish a historic district and, if so, what lands, buildings, and structures to include in that district." *Springfield Preservation Trust, Inc. v. Springfield Library & Museums Ass'n*, 447 Mass. 408, 419, 852 N.E.2d 83 (2006). However, if a municipality does choose to establish a historic district, it must follow the statutory procedures for doing so. [49]

The practical framework of G. L. c. 40C provides that no building permit shall issue in a historic district "for alteration of an exterior architectural feature" without a certificate of appropriateness, certificate of non-applicability, or certificate of hardship. G. L. c. 40C, § 6. In determining whether an alteration is historically appropriate,

> 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.

G. L. c. 40C, § 7.

The regulation of architectural design for the purposes of historic preservation under this framework, and under the comparable framework provided in **Brookline's** Preservation Commission and Historic Districts Bylaw, is no different from the regulation of design provided by the NCD Bylaw. Section 5.10.3.d.1 begins by articulating the history of the **Hancock Village** neighborhood, and describes the particulars of its historic architectural design. In addition to the dimensional requirements described above, the NCD Bylaw's substantive design guidelines govern the same exterior design features covered by G. L. c. 40C, § 7; and, like the statute, the NCD Bylaw requires evaluation of those features for compatibility with the surrounding neighborhood's historical character. It provides for this evaluation with the aim of "preserving and protecting groups of buildings and their settings that are architecturally or historically significant," which again directly mirrors the purpose set forth in G. L. c. 40C, § 2. It even calls for the same manner of approval – a "Certificate of Appropriateness" – as appears in the statute. Although **Brookline** contends that the NCD Bylaw differs in that it "allows **Brookline** to address issues beyond the scope of M.G.L. c. 40C," the additional issues it lists – "landscape and urban issues such as protection of landscapes, open spaces, viewsheds"[50] – are simply the very same issues which themselves improperly fall within the purview of the Zoning Bylaw and G. L. c. 40A, as described above. A bylaw cannot escape categorization under either statute by packaging the content of one along with the other.

***13** The unavoidable conclusion is that, with regard to exterior design elements, the NCD Bylaw establishes a historic district of the type specifically envisioned by G. L. c. 40C. Accordingly, by purporting to enact the NCD Bylaw pursuant to **Brookline's** general home rule power, but without following the procedural requirements G. L. c. 40C, **Brookline** has frustrated that statute's purpose. See *Board of Appeals of Hanover v. Housing Appeals Comm.*, supra, 363 Mass. at 360, 294 N.E.2d 393. **Brookline** contends that G. L. c. 40C does not occupy the field of historic preservation, and that the NCD Bylaw may therefore regulate historic preservation without conforming to the requirements of the statute. As support for this contention, **Brookline** cites no applicable authority other than the Attorney General's memorandum, which itself concluded without citation to any precedent that G. L. c. 40C "neither explicitly or implicitly preempts other types of by-laws aimed at architectural or historic preservation."[51] There is no apparent reason, however, why the interaction between a municipality's general home rule power and the statutory scheme provided in G. L. c. 40C should differ in any way from the interaction between that power and the statutory scheme of G. L. c. 40A. The principles articulated in *Rayco* and *Spenlinhauer* apply just as much in the context of the former as they do in the latter. It might be so that the entire field of historic preservation, speaking broadly, is not preempted by G. L. c. 40C; however, it is not so difficult to determine that a **town** bylaw which singles out a district for historic preservation, utilizes a mechanism identical to that of G. L. c. 40C, does so for the same professed purpose, and does so in a **town** that has already accepted G. L. c. 40C, has trespassed on the purview of the statute. Were it otherwise, the statute's provision of

procedural requirements for the creation of a historic district would be meaningless, as municipalities could avoid them at will.

Accordingly, even if the NCD Bylaw's regulation of historic architectural design does not fall under the umbrella of G. L. 40A and the Zoning Bylaw, it is functionally identical to the historic districts governed by G. L. c. 40C, and would therefore in any event be required to follow that statute's procedural requirements for enactment.

III. THE ENACTMENT OF THE NCD BYLAW FAILED TO COMPLY WITH THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF CHAPTER 40A AND CHAPTER 40C

Because the NCD Bylaw's dimensional regulations are, in purpose and effect, an amendment to the **Brookline** Zoning Bylaw, the bylaw can only be valid if enacted pursuant to the procedures of G. L. c. 40A. It was not. **Brookline** argues that the process "substantially complied"[52] with the provisions of G. L. c. 40A, and that this is sufficient to sustain the bylaw. It is not. In *Canton v. Bruno*, 361 Mass. 598, 603, 282 N.E.2d 87 (1972), the Supreme Judicial Court expressly rejected this same argument, then advanced by the **town** of Canton, that "substantial compliance" was sufficient to satisfy the procedural requirements of the predecessor statute to G. L. c. 40A, § 5. Interpreting the same language that now appears in the current text of § 5, it held that "the Legislature mandated a rule of strict compliance by the plain language '[Zoning] ordinances or by-laws may be adopted ... *but only in the manner ... provided*' ...." *Canton v. Bruno*, supra, 361 Mass. at 598, 282 N.E.2d 87. See *Penn v. **Town** of Barnstable*, 26 LCR 215, 217 (2018)*Penn v. **Town** of Barnstable*, 26 LCR 215, 217 (2018) (Vhay, J.). Cf. *McIntyre v. Selectmen of Ashby*, 31 Mass. App. Ct. 735, 739, 584 N.E.2d 1137 (1992) (noting that G. L. c. 40, § 21(17), which authorizes earth-removal ordinances, was enacted "to avoid the involved and strict procedural requirements for adopting or amending zoning ordinances and by-laws ....").

Brookline asserts that the numerous **town** and board meetings held concerning the NCD Bylaw were more than sufficient to provide notice and procedural protection equivalent to that available under Chapter 40A. Strict compliance, however, brooks no equivalence. It is not in dispute that **Brookline** failed to strictly comply[53] with the provisions of G. L. c. 40A, § 5; accordingly, Section 5.10 of the **Brookline** General Bylaws, as enacted by the passage of Warrant Articles 5 and 6, cannot stand. Similarly, the NCD Bylaw failed to comply with G. L. c. 40C's procedural requirements for enactment. These failures include, among others, the failure to give written notice of the public hearing on the required report of a study committee at least fourteen days prior to the date of the required hearing. G. L. c. 40C, § 3, ¶ 1. **Brookline's** contention, repeated once more, that it "substantially complied" with the requirements of G. L. c. 40C is just as unavailing the second time as the first. Thus, even if Section 5.10's regulation of historic exterior design in **Hancock Village** were severable from its dimensional regulations, the bylaw still could not survive.

***14** Of course, even had the **town** complied with the procedural requirements for the adoption of a zoning bylaw in G. L. c. 40A, § 5, the bylaw as passed is invalid because it fails to include or incorporate (as was the **town's** apparent intention) the many substantive protections and mechanisms of G. L. c. 40A. The NCD Bylaw, purporting to be a general bylaw, provides no protection for prior nonconforming uses or lots as required by G. L. c. 40A, § 6; it does not recognize the zoning freeze provisions of the same section; it does not provide for zoning relief to be granted in the form of special permits or variances, but instead substitutes types of approvals and relief not sanctioned by G. L. c. 40A; it institutes as the local board granting approvals a commission composed in a manner not recognized or sanctioned by G. L. c. 40A; it does not provide for the notice or hearing requirements required by G. L. c. 40A, §§ 11 and 15; and perhaps most egregiously, by providing no specific avenue of appeal, it provides for what is only a limited record review by an action in the nature of certiorari instead of the more robust de novo review required by G. L. c. 40A, § 17.

IV. THE NCD BYLW VIOLATES THE UNIFORMITY PROVISIONS OF G. L. c. 40A, § 4

Aside from its invalidity for failure to utilize the procedural requirements for adoption of a zoning bylaw, and its failure to include the substantive protections, noted above, required to be included in every zoning bylaw, the NCD Bylaw is also invalid because it violates the uniformity principles that are fundamental to the validity of any zoning laws, and which are required by G. L. c. 40A, § 4. Pursuant to that section, "[a]ny zoning ordinance or by-law which divides cities and **towns** into districts shall be uniform within the district for each class or kind of structures or uses permitted." G. L. c. 40A, § 4. A bylaw fails to provide uniformity where it is so

general in its grant of powers as to effectively provide a permit granting authority with unbridled discretion to fashion its own requirements on an ad hoc basis. See *SCIT, Inc. v. Planning Bd. of Braintree*, 19 Mass. App. Ct. 101, 108, 472 N.E.2d 269 (1984); *Fafard v. Conservation Comm'n of Reading*, 41 Mass. App. Ct. 565, 572, 672 N.E.2d 21 (1996). Such an improper delegation of legislative power results in a scheme in which criteria are "devised for the occasion, rather than of uniform applicability." *Id.* at 572, 672 N.E.2d 21.

The seminal example of a violation of uniformity is provided by *SCIT v. Planning Board of Braintree*, where a **town's** zoning bylaw rendered every use in a particular district subject to a special permit, with the only rubric for consideration being the bylaw's general purpose clause. See *SCIT, Inc. v. Planning Bd. of Braintree*, supra, 19 Mass. App. Ct. at 103-108, 472 N.E.2d 269. The Appeals Court found this to be invalid, holding that § 4 "does not contemplate ... conferral on local zoning boards of a roving and virtually unlimited power to discriminate" between different applications. *Id.* at 108, 472 N.E.2d 269. The bylaw violated the uniformity requirement of § 4 because " '[i]t attempted to delegate to the board ... a new power to alter the characteristics of zoning districts, a power conferred ... only upon the legislative body of the city to be exercised only in the manner prescribed by [G. L. c. 40A] ... and it attempted to do this without furnishing any principles or rules by which the board should be guided, leaving the board unlimited authority to indulge in 'spot zoning' at its discretion or whim.' " *Id.*, quoting *Smith v. Board of Appeals of Fall River*, 319 Mass. 341, 344, 65 N.E.2d 547 (1946). Cf. *Salvadore v. **Town** of Westborough*, Case No. 97-0547, 2002 WL 1554586, at *4, 2002 Mass. Super. LEXIS 199, at *3 (May 22, 2002) (bylaw which provided for adoption of dimensional requirements on a case-by-case basis for municipal structures was valid; though "structures in other zones, such as single-family residences, commercial or industrial structures" are amenable to uniform requirements, municipal uses – such as water towers and fire stations – are not).

The requirement for uniformity is not limited to zoning bylaws subject to G. L. 40A, § 4, but extends to other exercises of the police power as well. "In the administration of controls limiting the use of land – as with any exercise of the police power – uniformity of standards and enforcement are of the essence." *Fieldstone Meadows Dev. Corp. v. Conservation Comm'n of Andover*, 62 Mass. App. Ct. 265, 267, 816 N.E.2d 141 (2004), quoting *Fafard v. Conservation Comm'n of Reading*, supra, 41 Mass. App. Ct. at 569, 672 N.E.2d 21. For example, in *Fieldstone Meadows*, supra, 62 Mass. App. Ct. at 267 n.5, 816 N.E.2d 141, a conservation commission administering a local wetlands bylaw employed a policy prohibiting construction within twenty-five feet of bordering vegetated wetlands. This requirement was, however, not specifically laid out within the actual regulatory framework; moreover, it "provide[d] that 'special justification' could be advanced for proposals for building within the twenty-five foot zone." The court held that this policy did not provide uniformity of application, and was a legally insufficient basis for the commission's denial. *Id.*, at 270, 816 N.E.2d 141.

***15** Nonetheless, discretion in applying dimensional requirements is not *per se* delegation of authority resulting in a violation of the uniformity principle; it is only when a board's discretion is truly unrestrained that uniformity is threatened. In *Emond v. Board of Appeals of Uxbridge*, supra, 27 Mass. App. Ct. at 632, 541 N.E.2d 380, a provision of the bylaw permitted the board to grant special permits for lots with less frontage or area than required by the bylaw's dimensional requirement, as long as the lots were "in neighborhoods where there is a general pattern of house lots that deviate similarly ...." The court found no violation of § 4: "The by-law does not give the board unlimited discretion.... Adjustments to conform zoning standards to the circumstances of particular fact situations need not, we think, be made exclusively by establishing zoning districts on a neighborhood by neighborhood basis. Authorizing adjustments by special permit, subject to clear and uniform standards, does not violate the uniformity requirement of G. L. c. 40A, § 4." *Id.* See also *MacGibbon v. Board of Appeals of Duxbury*, supra, 356 Mass. at 638, 255 N.E.2d 347 ("The by-law confers a measure of discretionary power to the board, but it does not confer unrestrained power to grant or withhold special permits by the arbitrary exercise of that discretion.").

Here, the NCD Bylaw goes too far in delegating what is, in effect, an unrestrained power to legislate ad hoc zoning requirements. In particular, Section 5.10.3.c missteps in affording the Commission the general power to conjure up whatever dimensional requirements it sees fit on a case-by-

case basis. Section 5.10.3.c states, "The Commission may impose dimensional requirements that further the purposes of the by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD." Like the bylaw in *SCIT*, this provides virtually unlimited discretion, guided only by very general statements of purpose, to create dimensional zoning requirements from whole cloth, and to do so on a case-by-case basis, resulting in the very antithesis of uniform application.[54] See *SCIT, Inc. v. Planning Bd. of Braintree*, supra, 19 Mass. App. Ct. at 108, 472 N.E.2d 269. And, it provides not just the power to tweak the numerical element of a set dimensional constraint – such as *Emond's* downward adjustment of the frontage requirement – but also the power to create whatever new categories and types of dimensional constraints the Commission might imagine. Unlike *Emond*, the ability of the Commission to discretionarily create and impose its own dimensional requirements deprives the bylaw of the "clear and uniform standards" which must necessarily be articulated in the bylaw itself. *Emond v. Board of Appeals of Uxbridge*, supra, 27 Mass. App. Ct. at 632, 541 N.E.2d 380. The NCD Bylaw suffers from this deficiency whether it is classified as a zoning bylaw (as concluded above) or a general bylaw (as contended by **Brookline**).

V. THE NCD BYLAW CONSTITUTES IMPERMISSIBLE SPOT ZONING

***16** A variant of violation of the principle of uniformity required by G. L. c. 40A, § 4 is spot zoning. "Spot zoning involves the singling out for disparate treatment of one parcel of land from similar parcels in the same zoning district." *Murphy v. City of Springfield*, Case No. 114481, 1987 WL 966132 *2 (Mass. Land Court, 1987) (Fenton, J.), aff'd 25 Mass. App. Ct. 1121, 522 N.E.2d 1017 (Rule 1:28 Decision). " 'Spot zoning'—singling out a parcel of land for special treatment as compared to other parcels in the same zoning district—is unlawful." *Canteen Corp. v. City of Pittsfield*, 4 Mass. App. Ct. 289, 293, 346 N.E.2d 732 (1975). Where a single parcel is re-zoned at the behest of citizens objecting to a particular proposed use of the parcel, such re-zoning violates the uniformity principle and is invalid spot zoning. *Schertzer v. City of Somerville*, 345 Mass. 747, 752, 189 N.E.2d 555 (1963).

A zoning amendment "will be sustained unless there exists no substantial relation between it and the expressed purposes of [G. L. c. 40A]." *Id.* at 751, 189 N.E.2d 555. "If the reasonableness of a zoning regulation is fairly debatable, the judgment of the local legislative body (here the zoning commission of Boston) should be sustained and the reviewing court should not substitute its own judgment. Nevertheless, a zoning ordinance or by-law will be held invalid if it is unreasonable or arbitrary, or substantially unrelated to the public health, safety, convenience, morals or welfare." *National Amusements, Inc. v. City of Boston*, 29 Mass. 305, 309-310, 560 N.E.2d 138 (1990)*National Amusements, Inc. v. City of Boston*, 29 Mass. 305, 309-310, 560 N.E.2d 138 (1990) (citations omitted).

The re-zoning of a single lot of land "at the instigation of citizens who objected to a particular proposed business use," setting it apart from other similar adjacent uses, "constitute[s] arbitrary and unreasonable action." *Schertzer v. City of Somerville*, supra, 345 Mass. at 752, 189 N.E.2d 555. This is so even if the target site of the re-zoning is large enough that it would not ordinarily be unreasonable for it to be treated as a subject of re-zoning. In *National Amusements, Inc. v. City of BostonNational Amusements, Inc. v. City of Boston*, the Appeals Court upheld a judgment of the Land Court invalidating the re-zoning of a 13.8-acre parcel from business use to residential, holding that zoning changes, "which have no better purpose than to torpedo a specific development on a specific parcel are considered arbitrary and unreasonable." *National Amusements, Inc. v. City of Boston*, supra, 29 Mass. at 312, 560 N.E.2d 138.

There is no doubt that **Brookline's** purpose in adopting the NCD Bylaw and the **Hancock Village** NCD Bylaw was the same purpose deemed invalid in *Scherzer* and *National Amusements*: to frustrate a single property owner's efforts to develop a particular use on its property. See *Schertzer v. City of Somerville*, supra, 345 Mass. at 752, 189 N.E.2d 555; *National Amusements, Inc. v. City of Boston*, supra, 29 Mass. at 312, 560 N.E.2d 138. In August, 2011, the plaintiff submitted an application package to the **town's** building commissioner seeking a "Major Development Impact Review" for an immediate proposal to build 31 single-family dwellings as well as multi-family housing at **Hancock**

Village.[55] An August 29, 2011 memorandum by the building commissioner confirms that the single-family part of the proposal, and probably the multi-family portion as well, could be approved by special permits issued by the board of appeals.[56]

The proposal to adopt the NCD Bylaw and the **Hancock Village** NCD Bylaw followed directly, with, as noted above, an explicit written acknowledgment by the **Brookline** Advisory Committee Subcommittee on Planning and Regulation that "[t]he impetus for [Article 6 of the **Town** Warrant adopting the **Hancock Village** NCD Bylaw] comes from the proposals by [the owner of **Hancock Village**] to add as many as 466 new housing units to **Hancock Village** ... [the owner's] most recent proposal (August 2011) is a major impact project that includes 31 detached single-family houses and 162 units in a multi-family building. The Planning Board, Building Commissioner, Preservation Commission, Department of Public Works (Traffic and Engineering), and Housing Advisory Board all have begun to review the proposal."[57] The Board of Selectmen also made it abundantly clear that the **town's** intention in adopting Article 6 was to force **Hancock Village** to remain the quaint garden-style apartment complex it has been since first built in 1949. In the Board of Selectmen's "Supplemental Recommendation" to the **Town** Meeting on the subject of Article 6, the Selectmen wrote:

> *17 **Hancock Village** was designed and constructed in accordance with commitments made by the developer John **Hancock** Insurance Company, including not only a commitment that there would be a buffer strip along the side of the land facing Russett and Beverly Roads, but also an agreement that the area would be a "garden **village** type of housing" development, with horizontally divided (as opposed to vertically divided **town**-house type units) not exceeding 25% of the units, with flat roofs not exceeding 25% of the buildings, with building coverage not exceeding 20% of the area, and with no building over 2 stories in height.
>
> ...
>
> The design guidelines in Article 6 are intended to ensure that the development and alterations within the **Hancock Village** area are compatible with the existing neighborhood and abutting properties ... to provide "an additional layer of protection for existing residents of **Hancock Village** and its immediate surroundings."[58]

These explicit acknowledgments of the purpose of the proposed warrant articles, coming from the committee charged with reviewing the proposed warrant articles prior to their consideration by the **town** meeting and from the board of selectmen, in combination with the surrounding undisputed circumstances of the adoption of Warrant Articles 5 and 6, including their timing in light of **Hancock Village's** submission of its development proposal,[59] compel the inference that in adopting the two NCD bylaws, "the **town** was concerned only with blocking the plaintiff['s] development." *Pheasant Ridge Associates Ltd. Partnership v. **Town** of Burlington*, 399 Mass. 771, 779, 506 N.E.2d 1152 (1987). Where the undisputed record allows the court to draw such an inference, the **town's** action, even adopted by **town** meeting, may be invalidated. *Id.* (facially valid eminent domain taking for park purposes invalidated where undisputed record allowed inference that true purpose was to block proposed G. L. c. 40B development).

The NCD Bylaw and the **Hancock Village** NCD Bylaw, although facially not adopted as zoning amendments, were, for the reasons stated above, bound to comply with the principles governing the adoption of zoning amendments, and also for the reasons stated above, violated the requirements for uniformity that prohibit spot zoning.

CONCLUSION

For the foregoing reasons, the plaintiff's Motion for Summary Judgment is ALLOWED, and the defendant's Motion for Summary Judgment is DENIED. The court need not address the plaintiff's arguments as to the unconstitutional vagueness of the NCD Bylaw, as it invalid for the independent grounds articulated above. Because it failed to adhere to the procedural and substantive requirements of G. L. c. 40A and G. L. c. 40C, and fails to provide for uniformity of application, the enactment of Warrant Articles 5 and 6 was beyond the scope of the **town's** power and authority, and Section 5.10 of the **Brookline** General Bylaws, in its entirety, is accordingly invalid and of no force and effect.[60] Judgment will enter in accordance with this decision.

All Citations

Not Reported in N.E. Rptr., 2019 WL 4189357

Footnotes

1 Chico Marx and Groucho Marx, *The Marx Brothers' Monkey Business* (Paramount Pictures 1931); directed by Norman Z. McLeod, screenplay by S. J. Perelman.

2 Fifty acres of the plaintiff's property are in **Brookline**; the other 20 acres are in Boston.

3 Agreed Facts ¶¶ 1-2, 10.

4 Agreed Facts ¶ 12.

5 Joint Appendix pp. 784, 1170, 1172.

6 Agreed Facts ¶ 21. The exact date on which they were proposed is not in the record.

7 Joint Appendix pp. 394-404.

8 Complaint Ex. A.

9 Agreed Facts ¶ 36; Joint Appendix pp. 394-404.

10 Agreed Facts ¶ 27.

11 Agreed Facts ¶ 24.

12 Agreed Facts ¶¶ 28-29; Supplemental Statement of Agreed Facts ¶¶ 29-29(b).

13 Agreed Facts ¶ 32; Joint Appendix pp. 376-389. The Attorney General's letter concluded: "[A]lthough the question is close, we cannot say it is clear that the amendments adopted under Article 5 and 6 were required to be adopted as zoning by-laws. Portions of the amendments reflect the 'nature and effect' of a zoning by-law, but other portions do not. Therefore, based upon the Attorney General's limited scope of review and the presumption of validity of municipal by-laws, we must approve them, as we have in the case of two other **towns**' general (not zoning) by-laws creating NCDs. However, we have concerns regarding various provisions of the amendments, as detailed below .... In sum, our review of the amendments adopted under Article 5 reveals that they carry many of the features of a zoning by-law, and an argument could be made that the **Town** has frustrated the purpose of the Zoning Act by not adopting them as such. However, based on the Attorney General's limited standard of review, and because there is no Massachusetts case establishing that such by-laws must be adopted as zoning by-laws, we are constrained to approve them." Joint Appendix pp. 379, 384.

14 Agreed Facts ¶ 39; Joint Appendix p. 1170.

15 See July 17, 2018 Notice of Docket Entry in *The **Town** of **Brookline** v. **Brookline** Zoning Board of Appeals*, Case No. 15 MISC 000072.

16 Agreed Facts ¶ 37.

17 Complaint ¶¶ 28-62.

18 Joint Appendix pp. 635, 877.

19 Joint Appendix pp. 637-638.

20 Joint Appendix p. 638.

21 Joint Appendix p. 636.

22 Joint Appendix pp. 639, 894.

23 Joint Appendix pp. 640-641, 897.

24 Joint Appendix pp. 637, 879.

25 Joint Appendix pp. 652-655, 879-882.

26 Joint Appendix pp. 644, 880-881.

27 Joint Appendix pp. 645, 881-882.

28 Joint Appendix p. 694.

29 Joint Appendix pp. 694, 754.

30 Joint Appendix p. 759

31 Joint Appendix p. 781.

32 Joint Appendix pp. 787-789.

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33 Complaint ¶ 24 (NCD Bylaw will prevent development of 28 lots assessed as single-family lots in single-family zoning district because of imposition of "greenbelt" setback buffer by NCD Bylaw); Complaint ¶ 27 (NCD Bylaw would impact ability to build proposed community center otherwise allowed by local zoning).

34 Joint Appendix, p. 1179.

35 "The impetus for [the warrant article imposing a Neighborhood Conservation District on **Hancock Village**] comes from proposals by [the owner of **Hancock Village**] to add as many as 446 new housing units to **Hancock Village**/// "Report on Article 6: **Hancock Village** Neighborhood Conservation District." Joint Appendix pp. 1296-1297.

36 In the face of **Brookline's** repeated references to comparable bylaws in other municipalities, the court is compelled to note that its decision in the present case invalidates a section of **Brookline's** bylaw, and **Brookline's** alone; the court passes no judgment on the validity of any other municipality's bylaw, no matter how similar. Those other bylaws are not before the court. The validity of each depends on an analysis of its particulars, and the court is neither inclined nor empowered to undertake such an analysis within the context of the present dispute.

37 Section 5.10.1, NCD Bylaw. Joint Appendix p. 875. Although not discussed by the parties, it appears that by purporting to give NCD Commissions the power to regulate "subdivision plans and layouts" the NCD Bylaw also impermissibly invades the exclusive province of the **Brookline** Planning Board under the Subdivision Control Law, G. L. c. 41, §§ 81K, et seq. This is another basis of the invalidity of the NCD Bylaw.

38 The NCD Bylaw gives the Commission the unfettered discretion to "impose dimensional regulations that further the purposes of this by-law..." Section 5.10.3.c, NCD Bylaw. Joint Appendix p. 879.

39 It must be recognized that such regulation of dimensional characteristics is not *always* a function purely of zoning; though zoning must be the default classification of such ordinances, comparable regulation may appear in a non-zoning context when specifically provided by statute. G. L. c. 40C, § 7, for example, does specifically allow a historic commission to "in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law." However, as discussed further below, the NCD Bylaw was not passed pursuant to G. L. c. 40C or any other particular statute specifically authorizing this manner of regulation.

40 Joint Appendix p. 694.

41 Joint Appendix p. 879.

42 As the plaintiff correctly points out, the provision prohibiting the "[a]ddition of new impervious surfaces within 100 feet of abutting properties," though unusual in its wording, operates identically to a traditional setback requirement.

43 Sections 5.10.3.d.1.ii.a; 5.10.3.d.1.v.d and e. Joint Appendix pp. 881-882.

44 Joint Appendix pp. 891, 899.

45 Joint Appendix p. 789, "Specific Standards for Beacon Street and Coolidge Corner General Business District."

46 Plaintiff's Memorandum in Support, p. 55.

47 Joint Appendix pp. 851-859.

48 **Brookline** points to a number of other general **town** bylaws for the same proposition, but none contain any comparable regulation of architectural design, and need not be addressed in depth. The other general bylaws cited as ostensibly similar to the NCD Bylaw's design regulation include Section 8.26, which regulates storm drains for the purpose of "eliminat[ing] non-stormwater discharges"; Section 8.27, which governs wetlands protection; Section 5.1, regulating the connection of an alarm to a police station; Section 5.2, regulating condominium health and safety; Section 5.4, which governs refuse pick-up; Section 5.8, which regulates signs; and Section 5.9, which adopts the provisions of 780 CMR 120.AA for the construction of energy-efficient buildings.

49 That is, provided that the municipality has accepted the provisions of the chapter and it has thereby become effective in the municipality. See *Allen v. Old King's Highway Reg'l Historic Dist.*, 2000 Mass. App. Div. 330, 332 (2000). It is clear that **Brookline** has done so, as it has a historic preservation bylaw passed expressly under G. L. c. 40C.

50 Defendant's Memorandum of Law in Response, p. 22.

51 Joint Appendix p. 385.

52 **Brookline's** Memorandum in Response to Plaintiff's Motion for Summary Judgment, p. 14.

53 There appears to be some dispute as to whether the plaintiff complied with a number of § 5 requirements. For example, the plaintiff contends that the Planning Board held a meeting concerning the NCD Bylaw, but it did not hold a "public hearing" as required by § 5, and did not provide proper notice that the meeting's subject matter would be the consideration of a zoning ordinance; **Brookline**, on the other hand, contends that two public hearings were indeed held. A Planning Board memorandum states that "The Planning Board held two meetings on Articles 5 & 6, one of public testimony ... and one for board discussion." Joint Appendix p. 203. There is also no indication in the record of precisely when Articles 5 and 6 were first submitted to the Board of Selectmen, for the purpose of evaluating compliance with the requirement that a Planning Board hearing be held within 65 days of the Articles' submission. Regardless, it has never been in dispute that Articles 5 and 6 were not specifically noticed as an amendment to the Zoning Bylaw; a failure to specifically identify a bylaw as Chapter 40A zoning (let alone what appears to be **Brookline's** concerted effort to emphasize that the NCD Bylaw was *not* zoning, but instead an alternative to zoning) is necessarily a "misleading" defect for the purposes of G. L. c. 40A, § 5 ¶ 2. Moreover, as discussed below, the bylaw likewise fails to comply with G. L. c. 40A's substantive requirements.

54 **Brookline** asserted at oral argument that Section 5.10.3.d.1's provision of particular dimensional requirements for **Hancock Village** meant that the Commission could not craft its own additional dimensional requirements through Section 5.10.3.c, and would be limited to those contained in Section 5.10.3.d. This reading does not comport with the plain meaning apparent in the text. Section 5.10.3.c generally empowers the Commission to "impose dimensional requirements that further the purposes of the by-law" and provides examples of the types of requirements it may impose. Section 5.10.3.d.1, applicable to **Hancock Village** in particular, states that structures "shall be compatible with the existing buildings in the district," and shall not have a "significant negative impact on historical architectural or landscape elements." Although it then provides a number of specific requirements within each of these categories, it states that the categories "shall include, but not be limited to" those specifically-provided requirements. Both 5.10.3.c and Section 5.10.3.d.1 provide the Commission with the discretion to impose its own requirements which do not specifically appear in Section 5.10.3.d.1.

55 Joint Appendix pp. 1169-1170.

56 Joint Appendix pp. 127-129.

57 Joint Appendix p. 1297.

58 Joint Appendix, pp. 632-633.

59 At a public hearing on the proposed warrant articles on September 20, 2011, a member of the Board of Selectmen expressed concern that the NCD might not be passed in time to stop the approval of **Hancock Village's** major project impact review application: "Is any understanding or concern about when this – the – NCD would have to be passed in relation to the building application – the building permit application or the approval of that application? Is there – is there a point at which the fact that we've – declared a NCD is too late in the process?" Joint Appendix p. 136.

60 It must be noted that the **Hancock Village** NCD is not the only NCD to exist as a subsection within the overall framework of Section 5.10: enacted as Section 5.10.3.d.2. is the "Greater Toxteth Neighborhood Conservation District." While the validity of this other NCD was not directly at issue in this case, the necessarily wholesale invalidation of the enabling sections of Section 5.10 for the reasons enumerated above logically precludes the independent survival of that other NCD.

End of Document

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History (2)

Direct History (2)

1. Hancock Village I, LLC v. Town of Brookline
2019 WL 4189357 , Mass.Land Ct. , Sep. 04, 2019

Judgment Entered by

2. Hancock Village I, LLC v. Town of Brookline
2019 WL 4187764 , Mass.Land Ct. , Sep. 04, 2019

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Trial Court

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Table of Authorities (32)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**1. Allen v. Old King's Highway Regional Historic Dist.** 2000 WL 1876571, Mass.App.Div., 2000 This appeal seeks judicial review and annulment of a decision of the Old King's Highway Regional Historic District approving a Certificate of Appropriateness sought by James...	Case			12
Cited	**2. American Sign and Indicator Corp. v. Town of Framingham** 399 N.E.2d 41, Mass.App.Ct., 1980 Action was brought to declare that portion of town's sign bylaw, which affected changing message signs, was null and void. The Superior Court, Middlesex County, Mitchell, J., held...	Case		"	8
Cited	**3. Anderson v. Liberty Lobby, Inc.** 106 S.Ct. 2505, U.S.Dist.Col., 1986 Libel action was brought against magazine, its publisher, and its chief executive officer. The United States District Court for the District of Columbia, 562 F.Supp. 201, granted...	Case			7
Cited	**4. Attorney General v. Bailey** 436 N.E.2d 139, Mass., 1982 Attorney General and Commissioner of Education brought action in which they sought declaration that certain persons were required to report to superintendent of schools the name,...	Case			7
Cited	**5. Board of Appeals of Hanover v. Housing Appeals Committee in Dept. of Community Affairs** 294 N.E.2d 393, Mass., 1973 Two suits in equity were brought by Board of Appeals of town of Hanover and Board of Appeals of town of Concord seeking review of decisions of Housing Appeals Committee reversing...	Case		"	8+
Cited	**6. Canteen Corp. v. City of Pittsfield** 346 N.E.2d 732, Mass.App.Ct., 1976 Proceeding was brought to determine validity of city zoning ordinance amendment which reclassified petitioner's land as residential. The Land Court, Sullivan, J., held that...	Case		"	16
Cited	**7. Community Nat. Bank v. Dawes** 340 N.E.2d 877, Mass., 1976 An individual who had signed the promissory note of a corporation appealed from the action of the Superior Court, Middlesex County, McNaught, J., in holding him liable as an...	Case			7

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Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Distinguished	**8. Emond v. Board of Appeals of Uxbridge** 541 N.E.2d 380, Mass.App.Ct., 1989 Abutters brought action to challenge decision of town's board of appeals granting special permit for home construction. The Superior Court, Worcester County, William C. O'Neil,...	Case		"	9+
Cited	**9. Fabiano v. City of Boston** 730 N.E.2d 311, Mass.App.Ct., 2000 REAL PROPERTY - Zoning and Planning. Amendment restricting historic row houses to residential use was not impermissible spot zoning.	Case		"	9
Cited	**10. Fafard v. Conservation Com'n of Reading** 672 N.E.2d 21, Mass.App.Ct., 1996 Wetlands. Municipal conservation commission arbitrarily denied permission for landowner to build house close to buffer zone of vegetation required between construction and...	Case		"	14+
Discussed	**11. Fieldstone Meadows Development Corp. v. Conservation Com'n Of Andover** 816 N.E.2d 141, Mass.App.Ct., 2004 GOVERNMENT - Municipalities. Conservation commission's denial of application was improperly based on a policy existing outside of the regulatory framework.	Case		"	14+
Cited	**12. Gamache v. Town of Acushnet** 438 N.E.2d 82, Mass.App.Ct., 1982 Property owners brought declaratory judgment action and appeal from decision of town board of zoning appeals denying their request for variance and nonconforming use permit to...	Case		"	6+
Cited	**13. Hamel v. Board of Health of Edgartown** 664 N.E.2d 1199, Mass.App.Ct., 1996 Clean Water. Town board of health regulation prohibiting construction of new guesthouses in effort to address declining water purity was valid.	Case		"	8+
Cited	**14. Hansen & Donahue, Inc. v. Town of Norwood** 809 N.E.2d 1079, Mass.App.Ct., 2004 REAL PROPERTY - Zoning and Planning. Neighbors had standing to challenge whether land could be use for discontinued ambulance service.	Case			6+

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Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Distinguished	**15. Lovequist v. Conservation Commission of Town of Dennis** 393 N.E.2d 858, Mass., 1979 Developer brought action challenging denial by town conservation commission of its application to construct access road across cranberry bog. The Superior Court, Barnstable County,...	Case		"	8+
Cited	**16. MacGibbon v. Board of Appeals of Duxbury** 255 N.E.2d 347, Mass., 1970 Proceeding upon bill in equity appealing from decision of Board of Appeals denying special permit to excavate and fill a portion of shoreland. The Superior Court, Lurie, J.,...	Case		"	9+
Cited	**17. Mantoni v. Board of Appeals of Harwich** 609 N.E.2d 502, Mass.App.Ct., 1993 Zoning. There is no requirement that Attorney General be given notice of proceeding brought under statute providing for judicial determination of validity of municipal zoning...	Case			6+
Cited	**18. McIntyre v. Board of Selectmen of Ashby** 584 N.E.2d 1137, Mass.App.Ct., 1992 After excavators received special permit for removal of sand and gravel from zoning board of appeals, board of selectmen denied application for permit under town's general bylaw...	Case		"	13
Cited	**19. Murphy v. City of Springfield** 1987 WL 966132, Mass.Land Ct., 1987 In this case, the plaintiff challenges the validity of an amendment to a municipal zoning ordinance by which the zoning designation of the plaintiff's property was changed. The...	Case		"	16
Cited	**20. Ng Brothers Const., Inc. v. Cranney** 766 N.E.2d 864, Mass., 2002 REAL PROPERTY - Liens. Perfecting mechanic's lien is possible without filing or recording notice of substantial completion.	Case		"	7+
Cited	**21. Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington** 506 N.E.2d 1152, Mass., 1987 Town, acting through its selectmen, purported to take 14.5–acre parcel of property for purposes of park, recreation, and construction of moderate income housing. Property owners,...	Case		"	17+

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Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Examined	**22. Rayco Inv. Corp. v. Board of Selectmen of Raynham** 331 N.E.2d 910, Mass., 1975 Applicant for trailer park license filed bill for declaratory relief concerning the effect of a purported town bylaw on its right to operate a mobile home park. The Superior...	Case			8+
Cited	**23. Rogers v. Town of Norfolk** 734 N.E.2d 1143, Mass., 2000 REAL PROPERTY - Zoning and Planning. Town's bylaw restricting size of child care facilities was facially valid, but invalid as applied.	Case			9
Cited	**24. Salvadore v. The Town of Westborough** 2002 WL 1554586, Mass.Super., 2002 FRANCIS R. FECTEAU, Justice. This is an action pursuant to the provisions of G.L.c. 40A, § 17, that seeks judicial review of the decision of the Zoning Board of Appeals ("board")...	Case			14
Discussed	**25. Schertzer v. City of Somerville** 189 N.E.2d 555, Mass., 1963 Proceeding on petition to determine validity of amendment to zoning ordinance. By amendment petitioners alleged the invalidity of two ordinances. The Land Court, Fenton, J., held...	Case			16+
Discussed	**26. SCIT, Inc. v. Planning Bd. of Braintree** 472 N.E.2d 269, Mass.App.Ct., 1984 Development corporation which was denied a special permit by town planning board to build an office building on land zoned a business district filed a complaint against the town...	Case			14+
Mentioned	**27. Smith v. Board of Appeals of Fall River** 65 N.E.2d 547, Mass., 1946 Suit in equity by Clifford E. Smith and others against the Board of Appeals of Fall River to have amendment to Fall River Zoning Ordinance declared invalid and decisions thereunder...	Case			14
Discussed	**28. Spenlinhauer v. Town of Barnstable** 951 N.E.2d 967, Mass.App.Ct., 2011 REAL PROPERTY - Zoning and Planning. Limits on overnight off-street parking in residential areas was a matter for regulation through town's zoning power.	Case			10+
Cited	**29. Springfield Preservation Trust, Inc. v. Springfield Library and Museums Ass'n, Inc.** 852 N.E.2d 83, Mass., 2006 REAL PROPERTY - Zoning and Planning. City's intent to exempt buildings from historical commission's review powers could be honored in part.	Case			12

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Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**30. Town of Canton v. Bruno** 282 N.E.2d 87, Mass., 1972 Bill in equity by which town sought to enjoin defendants from excavating or removing or permitting excavation or removal of gravel or other earth material from land owned by them...	Case		"	13+
Cited	**31. Trustees of Tufts College v. City of Medford** 616 N.E.2d 433, Mass., 1993 Zoning. College could not be prospectively enjoined from applying its ordinance to future construction projects in core area of college campus or to future projects similar to...	Case		"	9
Cited	**32. Valley Green Grow, Inc. v. Town of Charlton** 2019 WL 1087930, Mass.Land Ct., 2019 On November 4, 2016, the voters of the Commonwealth voted YES to Question 4, authorizing the legalization, regulation and taxation of recreational cannabis in the Commonwealth of...	Case		"	6+

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Negative Treatment

There are no Negative Treatment results for this citation.

Citing References

There are no Citing References for this citation.

Filings

There are no Filings for this citation.

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Erwin, Nicole Attachment J

From: Charles Posner <charles.posner@gmail.com>
Sent: Sunday, March 5, 2023 11:16 PM
To: Mallon, Alanna; Azeem, Burhan; City Clerk; Carlone, Dennis; Simmons, Denise; McGovern, Marc; Nolan, Patricia; Toner, Paul; Zondervan, Quinton; Siddiqui, Sumbul
Subject: Support for AHO amendment and expanding housing in Cambridge

Dear City Council,

In advance of the meeting this Tuesday, I am writing in favor of expanding the AHO and allowing taller residential building in Cambridge.

This is a top voting issue for me as someone who believes Cambridge, a city I grew up in and love, should live by its progressive values. The proposal is a responsible but impactful change that would allow Cambridge to expand affordability and transit-oriented housing for residents in all parts of the city.

NIMBY opponents twist themselves into knots finding ways to block change, while still trying to sound progressive. "I support affordable housing but..." is too common a refrain. My question for opponents is, what specific affordable housing have you recently supported? Meanwhile the waitlist continues to grow.

I don't want to see another 2042 Mass Ave, which remains a woefully underutilized lot after the sensible proposal, with plenty of compromises for neighbors, was left to the BZA to wilt and die.

Thank you for your continued dedication to this issue.

Best Regards,

Charles Posner
156 Raymond St

--
Charles Posner
(617) 549-2489
charles.posner@gmail.com

Erwin, Nicole Attachment K

From: Kavish Gandhi <kmbrgandhi@gmail.com>
Sent: Saturday, March 4, 2023 7:40 PM
To: City Council
Cc: City Clerk
Subject: Comments, Ordinance Committee Meeting 3/7

Hi,

I'm writing to broadly
(a) Support the requirement that tenants are members of these commissions. The excuse that recruiting tenants has been nearly impossible is extremely thin, in my mind.
(b) Support the exemption of affordable housing and climate change alterations from any sort of binding review.

I have little to no expertise or strong opinion on the rest of the multifarious amendments, but if their character is similar to (a) and (b) above, I suppor them.

Kavish