

February 6, 2017

William B. King, Chair  
Cambridge Historical Commission  
831 Massachusetts Avenue  
Cambridge, Massachusetts 02139

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CAMBRIDGE HISTORICAL COMMISSION

re: Petition for Appeal / Reconsideration of Determination on Landmark Petition  
Landmark Application No. L-125  
Abbot Building, 1-7 JFK St. / Map Lot 160-57

APPEAL FROM THE DECISION OF THE CAMBRIDGE HISTORICAL COMMISSION

Dear Mr. King, Chair:

This letter serves as an appeal and petition for reconsideration, pursuant to Section 2.78.240 of the Cambridge City Code as well as G. L. c. 40C, §§12-12A, of the decision of the Cambridge Historical Commission (CHC) to not accept the Petition submitted by 13 residents of the City of Cambridge to initiate a landmark study for the structure known as the “Abbot Building” and “Abbott Building” at 1-7 JFK St.

APPLICABLE LEGAL AUTHORITIES

Cambridge City Code, Section 2.78.180A. provides in pertinent part the specific criteria for landmark designation in Cambridge:

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... (emphasis added)

Cambridge City Code, Section 2.78.180A. provides in pertinent part the specific criteria for designation of 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...

Cambridge City Code, Section 2.78.180D. provides in pertinent part guidelines for initiating the process of designating a landmark:

Any ten 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 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.

Cambridge City Code, Section 2.78.180B. provides in pertinent part for the requirement of a report:

Prior to the recommendation of designation or amendment or 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...

Cambridge City Code, Section 2.78.180C. provides that "in the case of a landmark, the report shall be prepared by the Historical Commission."

Cambridge City Code, Section 2.78.180E. provides that the Planning Board may consider and give recommendations to the Historical Commission prior to a public hearing.

Cambridge City Code, Section 2.78.240 provides in pertinent part procedures for appeal by an aggrieved party:

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.

General Laws, c. 40C, § 12 provides in pertinent part the procedure for appeal by an aggrieved party:

A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the city or town is a member. If the city or town is not a member of a regional planning agency, the department of community affairs shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section twelve A.

General Laws c. 40C, § 12A provides in pertinent part the procedure for appeal by an aggrieved party:

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section twelve are included in a local ordinance or by-law, may, within twenty days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such

other decree as justice and equity may require. The remedy provided by this section shall be exclusive but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

## CLAIMS

The Abbot Building is situated within the Harvard Square Conservation District (HSCD). The Ordinance specifies that such Districts are governed by Neighborhood Conservation Districts. Therefore, the Historical Commission may not have the authority to decide cases in this or another Cambridge Neighborhood Conservation District since the Ordinance specifies that such districts are governed by neighborhood conservation district commissions comprised of a group of neighbors within the district appointed by the city manager. The Cambridge Historical Commission overstepped its authority in making this decision.

Should the Commission have jurisdiction over the initiation of a report after submission of a Landmarking Petition, then, the Petitioners claim, that during deliberations of the Abbot Building landmark case at the Commission hearing, there was considerable debate among the commissioners and others as to whether the CHC in this case had prepared a “report,” or instead, that the associated text<sup>1</sup> comprised a staff statement or memo. Furthermore, the Ordinance provides that following the receipt of the petition that the CHC “*shall hold a preliminary hearing and arrange for the preparation of a report...*” (emphasis added).

The Commission and the Executive Director incorrectly claim that the Abbot Building is already protected to the same extent by the Harvard Square Conservation District as it would be if it were landmarked, because the conservation district was adopted in 2000 under the same Council Order that enables Landmark Designations. Specifically, they claim that Landmark Designation would not add any further regulatory protection.

The Commission did not follow its own procedures regarding the Landmarking Petition pursuant to Sections 2.78.180A.-D. and its decision not to initiate the preparation of a landmark report is arbitrary and capricious, an abuse of discretion, in excess of its authority, unsupported by substantial evidence and otherwise not in accordance with law.

The Abbot Building, a structure that now forms part of what the CHC calls the “Harvard Collection” (*sic*), is being addressed again in the forthcoming February 16, 2017 CHC hearing along with the other Harvard Collection (*sic*) buildings. The intent of this hearing is to specifically address “Alterations to Designated Properties” (Case 3678: continued and amended). This hearing is scheduled to consider not only the demolition of the adjacent building (9-11 JFK St - with frontage also on Brattle St., voted to be demolished, in principle, at the December CHC

hearing), but also the construction of a new infill building, and the construction of an upper-story addition, that includes a terrace on the Abbot Building roof, as well as the alteration of storefronts (here including the Abbot Building).<sup>2</sup> The proposed Abbot Building façade and plans that the CHC has posted for a Certificate of Appropriateness for this structure are neither consistent with what would be allowed for a landmarked building, nor for a structure within an historic district due to discrepancies with core historic features such as mullion, masonry coinage, roof changes, and other details, making it clear that landmarking the structure would indeed provide the building with greater protection.

## ARGUMENT

### A. Errors of the Historical Commission

The appeal of the Cambridge Historical Commission's (CHC) decision to deny the application for a landmark study of the Abbot Building is based on the assertion that the CHC made the following errors within the Cambridge Historical Commission's statement on the Abbot Building landmark case<sup>3</sup> as addressed below:

As amply demonstrated in the Abbot Building Landmarking Petition and as stated Section 2.78.180A. of the Cambridge City Code, there is a clear distinction between the purposes of landmarking and creation of neighborhood conservation districts.

Section 2.78.180A. stipulates specifically that "any property" in Cambridge can be designated a landmark if it meets the correct criteria, thus affirming that distinctions do exist between specific building forms whether in a conservation district or elsewhere in the City, and further, neither Massachusetts nor Cambridge City Ordinance specifically precludes differentially designating buildings in the manner suggested here within its conservation districts.

The added recognition also puts any future owner on notice that certain features of the building will be preserved. Moreover as stipulated by the State of Massachusetts on the Secretary of State's website: "The strongest form of protection is a local historic district..." Harvard Square is a conservation district not an historic district suggesting there is a clear difference. A legal essay on Conservation District vs. Historic District protections states that "standards of review in conservation districts are far less restrictive than those for historic districts" and that "...conservation district laws generally do not provide the same level of scrutiny or protection for historic resources as do many historic preservation laws."<sup>4</sup> They cite Cambridge Ma., specifically, as including conservation districts of this format. In short, usually the specific criteria that can be considered tend to be stricter in a landmarked building than with a generic building in a conservation district and include elements that otherwise may not be considered, among these are: mullion, signage, and historic details such as pedestals. In short a landmark designation CAN add further regulatory protection now AND into the future. Landmarking does offer more consistent protection of a designated structure, even if situated in a conservation district, and would remove some of the arbitrariness that a commission vote might place on the outcome.

The Commission claims the Equity One project is currently under review by the Historical Commission under the terms of the Harvard Square Conservation District. Acceptance of the petition and initiation of a landmark study would not change the nature of that review.

Yet any such review would be based on incomplete information. A landmark study and preparation of a report would allow critical time to thoroughly study the structure, its historic importance, and the historic importance of its architect, owners, and occupants. This more in-depth research has potential to alter current perceptions. It is important to fully understand the structure's history and persons associated with it; however, any study can be tailored to a certain outcome, such that the biases will hinder objective scholarship. The level of scrutiny that a landmark study would hope to provide is vitally important for a building of such visual significance and meaning to Harvard Square's core. The petitioners, like the thousands who signed the Curious George (a popular store currently in the Abbot Building) petition, are deeply concerned that Harvard Square is rapidly losing the historic fabric of its most important identity-giving architectural examples.

Key exterior features are threatened with the current development project AND all the significant external features are not being maintained; the proposed changes are not minor. If a landmark study were to be approved, key historic details such as mullion and roof design would have to be consistent with the historical nature of this building. Specifically, the proposed terrace atop the roof for the adjacent proposed new sixteen feet tall pavilion to be built atop the adjacent Corcoran building or its replacement would likely be viewed as inconsistent and incongruous with the character of the building's historic roof and traditional roof patterns in the district, as would be the congregation of individuals atop the Abbot Building roof (partying or for other activities), since both would be visible from the streetscape below and the Abbot Building skyline would be negatively impacted. Additionally, if a floor is removed from this structure, related ambiguities in lighting and internal movement will be visible on the exterior.

#### B. Procedural Defects

The language of the Ordinance states at Section 2.78.180D. that "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..." (emphasis added)

The Commission had no legal authority to hold a preliminary hearing without accepting the Landmark Petition and arranging for the preparation of a report.

The Executive Director's Memoranda dated 11/29/16 and 12/29/16 do not constitute a formal recommendation of the Historical Commission but rather a "staff memo" as stated on the CHC website and related "staff recommendation" therein. Nor do the Memoranda constitute a study report for the purposes of Section 2.78.180 of the Cambridge City Code.

The Abbot Building case is consistent with the core-related criteria. As is noted in the Memoranda: "The Abbot Building meets criterion (1) for its associations with the economic and social history of Cambridge. It also meets criterion (2) as being architecturally significant in the context of Harvard Square."

Despite substantial evidence to the contrary, the Commission failed to initiate a landmark study, which likely would have recommended designation since the criteria were met, as the Commission so stated in its “staff memo.”

## CONCLUSION

It should be emphasized that the purpose of landmark designation, as described in the ordinance, is

...enacted to preserve, conserve and protect the beauty and heritage of the City and to improve the quality of its environment through identification, conservation and maintenance of neighborhoods, sites and structures which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the City; to resist and restrain environmental influences adverse to this purpose; to foster appropriate use and wider public knowledge and appreciation of such neighborhoods, areas, or structures; and by furthering these purposes to promote the public welfare by making the city a more desirable place in which to live and work. (2.78.140)

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<sup>1</sup><[https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/L125\\_eval.pdf?la=en](https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/L125_eval.pdf?la=en)>

<sup>2</sup><<https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/021617%20NOTICE.pdf?la=en>

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<sup>3</sup> Ibid.

<sup>4</sup> Rebecca Lubens and Julia Miller in the Preservation Law Reporter, Jan.-Mar. 2002-03 (the latter a lawyer at the National Trust for Historic Preservation).

For these reasons we the undersigned appeal the Cambridge Historical Commission's decision to deny a landmark study for the Abbot building that the CHC itself agrees meets the core criteria for Landmark status, and instead set up a study committee to explore this option as stipulated within this ordinance.

Very Truly Yours,



Dr. Suzanne Blier, on behalf of Petitioners

Cc: Donna P. Lopez, Cambridge City Clerk  
Bruce A. Irving, Vice-Chair, Cambridge Historical Commission  
Charles M. Sullivan, Executive Director, Cambridge Historical Commission  
James J. Rafferty, Esq. o/b/o Harvard Collection LLC.

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<sup>1</sup> <[https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/L125\\_eval.pdf?la=en](https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/L125_eval.pdf?la=en)>

<sup>2</sup>

<<https://www.cambridgema.gov/~media/Files/historicalcommission/pdf/casfiles/021617%20NOTICE.pdf?la=en>>

<sup>3</sup> ibid.

<sup>4</sup> by Rebecca Lubens and Julia Miller in the Preservation Law Reporter. Jan.-Mar. 2002-03 (the latter a lawyer at the National Trust for Historic Preservation).



Attachment A

Petitioners Consent to Appeal to the Cambridge Historical Commission

We, the undersigned Petitioners who are registered voters in the City of Cambridge, consent to the within appeal for the Historical Commission to reconsider its decision on 1/5/17 and as set forth in its 1/12/17 letter to deny acceptance of the Landmarking Petition dated 11/23/16 .

Suzanne P. Blier

Suzanne P. Blier  
5 Fuller Pl., 02138

Rudolph Blier

Rudolph Blier  
5 Fuller Pl., 02138

Priscilla McMillan

Priscilla McMillan  
12 Hilliard St., 02138

Clifford Hurley

Clifford Hurley  
10 Hillard Pl.

Paul Funk

Paul Funk  
8 Hilliard St., 02138

Marilee B Meyer

Marilee B. Meyer  
10 Dana St. #404, 02138

Esther Pullman

Esther Pullman  
10 Ash St. Pl. 02138

Christopher Pullman

Christopher Pullman  
10 Ash St. Pl. 02138

Timothy C. Mudarri

Timothy C. Mudarri  
112 Fayerweather St. #1, 02138

~~John B. ...~~

~~112 Fayerweather St. #1, 02138~~

James M. Williamson

James M. Williamson  
1000 Jackson Pl. #45, 02140

Raine Figueroa (Sp6)

Raine Figueroa  
9 Hilliard Pl., 02138

Gladys P. Gifford

Gladys P. Gifford  
15 Hilliard St., 02138

Dated: 2/6/17