



## CAMBRIDGE HISTORICAL COMMISSION

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March 31, 2026

To: Members and Alternates of the Cambridge Historical Commission  
From: Charles Sullivan, Executive Director  
Re: Appeal of Case MC-7293: 60 Ellery Street

On February 20, 2026, Cambridge Historic Commission (“CHC”) staff received a letter from the law firm of Marcus, Errico, Emmer & Brooks on behalf of the Ellery Square Owners’ Association (ESOA) communicating an appeal of the decision of the Mid Cambridge Neighborhood Conservation District (NCD) Commission (the “Commission”) to approve a Certificate of Appropriateness in Case #MC-7293. On March 11, all eleven signatures were verified by the Election Commission as representing registered Cambridge voters, thereby validating the petition. The petition is attached along with the record of the case.

The staff scheduled a hearing on the appeal for the April 9, 2026, meeting of the Cambridge Historical Commission. Staff then compiled the accompanying record of the case, including the application for a Certificate of Appropriateness, supporting documents and plans, public notices, approved minutes, and the Certificate itself. Letters to the Mid Cambridge NCD Commission that were submitted for the record during the course of the review are attached, but correspondence directed to the staff about administrative questions and requests is not. The case file is available for review at the Historical Commission office.

### Appeals of NCD Decisions to the Historical Commission

Pursuant to Article 2, Section 2.78.240 of the Cambridge Code of Ordinances, the City’s Ordinance permits the Historical Commission to review an appeal by any applicant aggrieved by a determination by an NCD commission or ten registered voters of the City opposing a determination. In reviewing a neighborhood conservation district commission’s determination, the Historic Commission applies the same deferential standard applied in judicial review contexts. As such, the Historic Commission will need to determine whether the NCD commission exceeded its authority or if its determination was arbitrary, capricious or erroneous or unsupported by the evidence.<sup>1</sup>

Appeals of decisions of neighborhood conservation district commissions to the Cambridge Historical Commission follow the procedures described in Chapter 2.78.240 of the Cambridge Municipal Code, which states,

#### Section 2.78.240 Appeal procedure.

... 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

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<sup>1</sup> Collins v. Historic District Commission of Carver, 73 Mass. App. Ct. 388, 393, fn. 13 (2008)

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.

In appeals of a determination by the Historical Commission, the referenced section from Chapter 40C of the Massachusetts General Laws states,

Section 12A. Appeal to superior court.

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.

The role of the Historical Commission in reviewing NCD appeals is to review the record of the case and determine a) whether due process requirements were met; b) whether the NCD Commission's decision was supported by evidence (i.e., was not arbitrary or capricious); and c) whether the NCD Commission acted within its authority, as provided in the local ordinance and in light of the guidelines and criteria provided in the order establishing the district and any subsequent amendments to the enabling ordinance. The Historical Commission does not conduct a *de novo* hearing of the original application and does not seek to substitute its opinion on matters of appropriateness for that of the NCD Commission.

Similarly, Massachusetts courts apply a deferential standard when reviewing decisions of historic district commissions. Under G.L. c.40C, §12A, a trial court may not annul or otherwise overturn a decision of a historic district commission unless the commission exceeded its authority or the decision was arbitrary, capricious or erroneous or unsupported by the evidence.<sup>2</sup>

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<sup>2</sup> Collins, 73 Mass. App. Ct. at 393, fn. 13; See, Warner v. Lexington Historic Districts Commission, 64 Mass. App. Ct. 78, 82 (2005), citing Gumley v. Board of Selectmen of Nantucket, 371 Mass. 718, 723-724 (1977) and quoting,

### Context of the Appeal

On May 19, 2025, CHC staff received an application for a Certificate of Appropriateness to raze the existing building at 60 Ellery Street and construct a new building as allowed by the recently-adopted multi-family housing amendments to the Cambridge Zoning Code. The case was heard at the next regular meeting of the Mid Cambridge NCD Commission on June 9, 2025. This hearing was continued with the consent of the applicant to the August 4, 2025, meeting of the Commission.

On August 4, the Commission voted to approve the project contingent on the approval of the Architects Committee after a review of design details. The Architects Committee met with the applicant on September 29, October 30, and November 20, 2025, each time discussing the evolution of the design and requesting improvements. The applicant did not return after the November 20 meeting, and in February 2026 the Executive Director advised Allison Crosbie, the CHC staff member responsible for the NCD's affairs, to issue the Certificate of Appropriateness authorized in August 2025. This certificate, which delegated final approval of the project to the Commission's Architects Committee, was filed with the City Clerk on February 20, 2026.

The house at 60 Ellery Street is a 2½ story brick structure on an irregularly-shaped 5,404 square foot lot with about 200' of frontage and about 115' deep. The lot is traversed by a right-of-way for the benefit of the adjacent Ellery Square development.

The project was first reviewed at a hearing on June 9, 2025. During the meeting, the Commission discussed both the existing and proposed structures, as well as their recently amended jurisdiction. The architect testified that their "justification" for demolishing the building was to maximize the number of units to meet the City's housing goals. The Commission determined that the overall design appeared too commercial and was not in keeping with the surrounding residential neighborhood. The applicant was asked to continue the case and return with a revised design that eliminated multiple cladding materials in favor of brick masonry, adjusted the front entrance to reduce the amount of ramping, and revised the side walkway, including the placement of trash storage and the transformer. Although it was not within the Commission's purview, the applicant was encouraged to give further consideration to the building's proposed massing. Additionally, the Commission advised the applicant to study the surrounding neighborhood for better visual context and to take public comments into consideration.

The continued hearing was held on August 4, 2025. The revised design moved the transformer below grade, shifted the entrance to the side, and adjusted the accessible ramp and the trash storage area. The building was set back further from the street, allowing for additional landscaping in front. The design modifications also allowed for one additional residential unit. Cladding consisted of brick and composite panels. The Commission agreed that the design was going in the right direction but needed further simplification in terms of materials, which still looked too commercial. The Commission approved the proposal with the condition that further revisions be reviewed at an Architects Committee meeting to address the following:

- Rework the façade composition. Reduce the cladding materials to two. Break apart the composition of the bay windows and balconies, which contributed to the commercial appearance. The trim and the brick portion needed more detail. The applicant was advised to

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MacGibbon v. Board of Appeals of Duxbury, 369 Mass. 512, 515-516 (1976), regarding the similar standard of review under special historic district legislation with similar or identical language to G.L. c.40C.

look to the adjacent buildings, Swissnex and Ellery Square, for clues to detailing as well as other brick buildings along Broadway.

- Materiality – The applicant was advised to simplify materials and look at emphasizing the horizontal for a more residential feel. The panels were still commercial-looking even though no longer metal.
- Enhance the landscape design to incorporate more tree plantings on the street side and add more vegetation in general.
- The fence was a key element that would matter to abutters and should be very well designed.

At the Architects Committee meeting on September 29, 2025, the committee reviewed the updated design, which featured more widely spaced bays, the replacement of balconies with Juliet balconies, a combination of brick and cementitious cladding, and additional brick detailing. The committee expressed appreciation for these revisions but recommended further simplification of the façade details, particularly at the transition between the front and side elevations. The committee also asked the applicant to consider revising the façade facing Ellery Square to make it more contextually appropriate, even though it was not visible from a public way. Additionally, the committee requested that the applicant return with more details regarding the proposed fencing.

Another Architects Committee meeting was held on October 30, 2025. The committee reviewed a revised landscape plan and elevations, including the replacement of a mural with a green screen following a neighbor's suggestion, as well as a revised rear elevation facing Ellery Square. The committee recommended holding an on-site meeting to review material samples.

On November 20, 2025, an Architects Committee meeting was held at 60 Ellery Street. The applicant presented three material sample boards, which were reviewed by the committee and members of the public. The committee recommended establishing a four-story brick datum line and aligning it across all four façades. The Commission and public attendees commented on the proposed color schemes. An additional meeting was determined necessary to finalize the material selection.

On February 20, 2026, CHC staff, concerned by the passage of time without a formal resolution (there being no time limit on repeated reviews), filed a Certificate of Appropriateness with the City Clerk. The Certificate described the delegation of authority to the Architects Committee for final approval of the project details (see attached). The applicant has yet to return for final approval.

#### Mid Cambridge NCD Goals, Guidelines, and Jurisdiction

Chapter 2.78, Article II of the City Code, the enabling ordinance for neighborhood conservation districts and landmarks, was amended in 2023 to encourage housing production by setting new goals for NCD commissions and limiting their review of new construction projects

The current goals and purposes of conservation districts are expressed in Section 2.78.140:

##### 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; 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, racial, or social history of the City; to foster appropriate use and wider public knowledge and appreciation of such

neighborhoods, areas or structures; to welcome a diverse set of residents and broaden appreciation for individuals with marginalized identities who have shaped Cambridge's history; and by furthering these purposes in balance with other City priorities such as affordable housing construction, environmental sustainability, and accessibility to promote the public welfare by making the City a more attractive, 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. No. 2022-11, 10-2-2023; Ord. 1002 (part), 1983: prior code § 2-147(k)(1))*

Section 2.78.220 was amended to update guidance for commissions reviewing applications:

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 Neighborhood Conservation District Commission shall not consider the appropriateness of the size and shape of the structure, and a Neighborhood Conservation District Commission shall not 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 Neighborhood Conservation District Commission shall not make any recommendation or requirement except for the purpose of preventing proposals incongruous to the historic aspects, architectural significance or the distinctive character of the landmark or neighborhood conservation district.

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.

*(Ord. No. 2022-11, 10-2-2023; Ord. 1002 (part), 1983: prior code § 2-147(k)(8))*

The original Order establishing the Mid Cambridge Neighborhood Conservation District was adopted in 1982 and most recently amended in 1992. It includes broad goals as well as guidelines for review of new construction and alterations to buildings. Some but not all of these provisions were superseded by the amendments to Ch. 2.78, Art. II adopted in 2023.

#### Sec. IV. Review Criteria to be Considered by the Commission

The Commission shall apply certain criteria in addition to those contained in Section 2.78.220 in considering applications for certificates of appropriateness, nonapplicability, and hardship.

A. General Criteria. All applications shall be considered in terms of the impact of the proposed new construction or alteration, relocation or demolition of an

existing building on the District as a whole, and in addition with regard to the potential adverse effects of the proposed construction, alteration, relocation or demolition on the surrounding properties and on the immediate streetscape and the economic assessment of the alternatives to the proposed action.

1. Avoid excessive infill
2. Encourage new construction that complements existing buildings
3. Encourage preservation of neighborhood buildings
4. Protect National Register structures
5. Enhance the economic vitality of the neighborhood

B. Construction of a New Building and Alterations to Existing Buildings. Review of the design of a proposed new building, relocated building, or applicable alteration of an existing building, shall be made with regard to the compatibility of the building with its surroundings, and the following elements of the project shall be among those considered:

1. site layout;
2. provisions for parking;
3. volume and dimensions of the building;
4. provisions for open space and landscaping;
5. the scale of the building in relation to its surroundings; and
6. the changes to existing buildings as related to new construction.

C. Demolition or Relocation of an Existing Building. The Commission shall apply the provisions of Section 2.147(k) [now Section 2.78.140, op. cit.] with regard to the proposed demolition of an existing building, and in addition shall consider the following factors:

- a. the physical condition of the building;
- b. a claim of substantial hardship, financial or otherwise, for the owner or occupants; and
- c. the design of the proposed replacement structures, if any.

Since 2023 Cambridge's NCD commissions have operated under the assumption that certain provisions of the revised enabling ordinance supersede the Order establishing the district. The provisions relevant to the current appeal include:

- An amended purpose statement reflecting city priorities such as affordable housing construction, environmental sustainability, and accessibility (2.78.140).
- In the case of new construction or additions, Commissions may not consider the appropriateness of the size and shape of new construction or additions (2.78.220(A)).
- Commissions may not impose dimensional and setback requirements in addition to those required by the zoning ordinance in the case of new construction or additions (2.78.220(A)).
- A requirement that commissions must consider current City Council goals in considering projects (2.78.220(C))
- Advisory review of ADA compliance, accessibility, climate resiliency, and renewable energy features (2.78.190(F) and (G)).

## The Appeal

The attorneys for the petitioners state that:

The Historical Commission should overturn the decision of the Neighborhood District Commission and revoke the Certificate of Appropriateness because the proposed demolition and new construction at 60 Ellery Street is incongruous to the historic aspects, architectural significance, or the distinctive character of the neighborhood.

Additionally, pursuant to Chapter 2.78, Article II of the Cambridge Code of Ordinances (the "Demolition Review Ordinance"), ESOA hereby requests formal demolition review of the existing structure at 60 Ellery Street and respectfully petitions the Commission to:

1. Determine that the building is "significant" within the meaning of Article II;
2. Determine that the building is "preferably preserved"; and
3. Impose the full twelve-month demolition delay authorized under the Ordinance.

Specifically, the petitioners make the following claims. (Refer to the appeal for the substance of the claims.)

I. The 60 Ellery Square Project Interferes with the Easement Rights of the Ellery Square Owners Association, Contrary to the Harmonious Historic Relationship Between the Properties.

II. The Project Does Not Comply with Neighborhood District Commission Criteria for Evaluating the Proposed Demolition of Existing Buildings.

III. Legal Standard Under Chapter 2.78, Article II.

IV. Demolition Is Not Appropriate Where the Existing Building Is Significant and Contributes to the Neighborhood Context.

V. Demolition Would Materially Disrupt Longstanding Recorded Easement Rights and Historic Lot Relationships.

VI. Public Interest Also Favors Imposition of the Full Twelve-Month Delay.

VII. Requested Relief

For the foregoing reasons, ESOA respectfully requests that the Cambridge Historical Commission:

- Grant the ESOA's appeal of the Certificate of Appropriateness based on a review of the Neighborhood District Commission's record and for the reasons stated herein.
- In addition, determine that the building at 60 Ellery Street is significant under Chapter 2.78, Article II;
- Determine that it is preferably preserved;
- Impose the full twelve-month demolition delay authorized by the Ordinance; and
- Schedule a public hearing and site visit to evaluate the building and the easement configuration in context.

## Response

The petitioners' claims and allegations can be combined and summarized as follows:

A. Petitioners allege that the project interferes with the easement rights of the abutters (Claims I and V).

An NCD Commission does not have the authority to enforce easement rights of abutters. The plan approved by the Commission maintains an open passage along the easement. If the petitioners are dissatisfied with the proposed plan as it relates to their alleged easement rights, the courts are the appropriate venue for their claim.

B. Petitioners claim that the Commission improperly applied the criteria for evaluating demolition in the Mid Cambridge NCD Order (Claim II).

In general, the “review criteria to be considered by the commission” are not mandatory. A claim of hardship was not submitted by the applicant and it is not a mandatory part of an Application for Certificate. An NCD Commission has discretion to follow or disregard the review criteria in reaching a decision.

The Commission heard a report by Allison Crosbie describing the architecture and history of the existing building at the first hearing. The design of the proposed replacement building was presented, discussed at length, amended and re-evaluated at the subsequent hearing and architects committee meetings. Furthermore, the Commission was not considering demolition of 60 Ellery Street in a vacuum. It appropriately considered the entirety of the project (demolition and new construction) in the context of the enabling ordinance and the Mid Cambridge Order and approved the project as a whole, subject to approval of design details by the Architects Committee.

NCD Commissions are governed by both the enabling ordinance, Ch. 2.78, Art. III, and their establishing Order, but the provisions of the enabling ordinance must prevail.

C. Petitioners argue that the provisions of 2.78, Art. III (the Demolition Permit Review Ordinance) should apply (Claims III, IV, and VI)

The provisions of the Demolition Permit Review Ordinance have no applicability in a neighborhood conservation district. Section 2.78.260 - Limitation on applicability – applies:

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.

### Conclusion

In addition to considering the claims of the petitioners and determining whether the requirements of state law and the municipal code governing appeals have been met, the Commission must consider a) whether due process requirements were met; b) whether the NCD Commission had sufficient evidence to support its decision (i.e., the decision was not arbitrary or capricious); and c) whether the NCD Commission acted within its authority, as provided in the local ordinance and in light of the guidelines and criteria provided in the order establishing the district.

#### A. Due Process

The CHC staff member responsible for administration of the Mid Cambridge Neighborhood Conservation District Commission, Allison Crosbie, complied with requirements for notification of the parties at interest. All meetings but one were held remotely via Zoom in accordance with the Governor’s COVID-19 emergency proclamation. Members of the public participated in all meetings, as reflected in the minutes, and all communication to the NCD Commission were shared with commissioners.

CHC staff conclude that due process requirements were met through provision of the required public notice and conduct of hearings and meetings in accordance with the Open Meeting Law, as documented by the meeting notices, agendas, application materials, minutes, correspondence to the commissioners, and the recorded decision (certificate of appropriateness) that constitute the record of the case. Considerable time was allocated to questions, public comment, and deliberations of the Commission. Application materials of the online meetings were made available to the public on the city website.

#### B. Sufficient Evidence

The applicants provided the Commission with adequate information to judge their proposal. Testimony and deliberations consumed about eight (8) hours over five (5) public hearings and meetings. A close reading of the minutes indicates that the Commissioners were thoughtful and deliberative, and acted on the evidence before them. They considered all the testimony and were neither arbitrary nor capricious in making their decision.

CHC staff conclude that sufficient evidence was provided to and considered by the Commission in conducting its review and rendering its decision. The Commission discussed the goals, review criteria, and limitations to the Commission's authority as provided in the district order and as modified in the amended enabling ordinance. The staff concludes that the Commission neither neglected nor exceeded its authority in the course of making its decision.

#### C. Authority

As reflected in the minutes, the Commissioners expressed a thorough familiarity with the goals and guidelines of the enabling ordinance and the Mid Cambridge NCD Order and repeatedly discussed the project in light of those provisions.

#### Recommendation

I recommend that the Historical Commission deny the appeal for the reasons stated above and uphold the action of the Mid Cambridge NCD Commission.

cc: Tony Hsiao, Chair, Mid Cambridge NCD Commission  
Megan Bayer, City Solicitor  
Adam T. Kurth, Esq.  
Seth Barnett, Esq.  
Ronald Mortara, lead petitioner