CAMBRIDGE HISTORICAL COMMISSION

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October 26, 2026

To: Members and Alternates of the Cambridge Historical Commission

From: Sarah Burks, Preservation Planner

Re: Appeal of Case MC-7613: 106 Ellery Street

On October 1, 2026, Cambridge Historic Commission ("CHC") staff received a petition and cover letter from the Justin Saif on behalf of the petitioners appealing the decision of the Mid Cambridge Neighborhood Conservation District (NCD) Commission (the "Commission") to approve a Certificate of Appropriateness in Case #MC-7613. On October 1, all fifteen signatures on the petition 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 October 27, 2026, which falls within the thirty day response time required by the ordinance, Ch. 2.78.240 of the Municipal Code. Staff then compiled the accompanying record of the case, including the application for a Certificate of Appropriateness, architectural plans, public notices, approved minutes, and the Certificate of Appropriateness. The case file is available for review at the Historical department office.

Appeals of NCD Decisions to the Historical Commission

Pursuant to Article III, Section 2.78.240 of the Cambridge Municipal Code, provides for an appeal to the CHC by any applicant aggrieved by a determination of an NCD commission or ten registered voters of the City opposing a determination. In reviewing a NCD commission's determination, the CHC 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.[1]

The appeal procedure described in Chapter 2.78.240 of the Cambridge Municipal Code are as follows,

> Section 2.78.240 Appeal procedure.
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> … 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

[1] Collins v. Historic District Commission of Carver, 73 Mass. App. Ct. 388, 393, fn. 13 (2008)

> 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 CHC, 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 CHC 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 CHC 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 M.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.[2]

Context of the Appeal

On August 17, 2026, Historical department staff received the application of Keith Flaherty (a trustee of the 106 Ellery Street Realty Trust) for a Certificate of Appropriateness to renovate the existing house at 106 Ellery Street including demolition and reconstruction of a two-story deck and to

[2] 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, 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.

construct a new building at the rear of the existing house. The case was heard and decided at a regular meeting of the Mid Cambridge NCD Commission on September 8, 2026.

On September 8, the Commission voted to approve the application with the condition that the applicant provide photo renderings to be delegated to staff for review and approval and with the recommendation that the developer work with abutters to try to preserve the mature red oak adjacent to the property. The certificate was issued by staff and filed with the City Clerk on September 11, 2026.

The house at 106 Ellery Street is a frame house with two full stories and a Mansard-roofed third story. The house is situated on a 8,891 square foot lot measuring 60’ wide by 150’ deep. The house was constructed as a single-family home in 1867 and has more recently been assessed as a three-family.

The hearing on September 8 was lengthy, with a presentation of approximately 40 minutes and another 50 minutes of questions, comments and deliberation. Presenters included CHC staff member Allison Crosbie, with a brief historical summary, developer Matt Hayes, architect Kyle Sheffield and landscape architect Katya Podsiadlo. Mr. Hayes said he was the buyer and developer, had resided on Ellsworth Avenue and had done prior development and renovation projects in the district. Mr. Sheffield described the site considerations including a covenant between the properties at 104 and 106 Ellery Street and the impact that had on the design proposal, the restoration details for the existing building and the design of the new building at the rear. Ms. Podsiadlo presented the landscape plan for the property. Questions and comments covered a range of issues including architectural renderings, fenestration, energy conservation, building materials, impacts on an adjacent mature oak tree, the importance of the tree to the shade and climate of the immediate area, unit count. Commissioner deliberations discussed fenestration. The deliberations following public comment were relatively brief, reiterated the request for photo renderings to be reviewed by staff, and recommendations to make good-faith effort to protect the health of the oak tree. A motion to approve the application, with those conditions was made, seconded and passed unanimously.

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 1985 and 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 passing upon cases 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)).
- Commissions shall consider current City Council goals including the need to provide additional housing, affordable and otherwise, and to promote the sustainable use of energy and capacity for climate resilience. (2.78.220(C))
- Commissions shall have only advisory review of ADA compliance measures, accessibility, climate resiliency, and renewable energy features (2.78.190(F) and (G)).

Claims of the Appeal Petition and Response of CHC Staff

Mr. Saif presented the appellants' arguments in his letter dated September 28, 2026, which was submitted with the petition signature sheets. The petitioners ask that the CHC overrule the decision of the NCD Commission and remand it back for reconsideration.

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

A. *Petitioners claim that NCD Commissioner Tice did not hear the evidence in its entirety and should not have participated in the vote or amended the motion by adding a condition.*

The meeting started at 6:03 P.M. 6 minutes into the recording (after the preliminary reading of procedures by the chair) Allison Crosbie began her introduction to the case. The developer, Matt Hayes, made opening remarks at 7m:45s into the recording. His architect, Kyle Sheffield, began the presentation of the proposed changes to the property at the 8m:30s mark. According to the Zoom attendance report, Commissioner Tice entered the meeting at 6:19 P.M., approximately 8 minutes after the hearing on case MC-7613 had begun. The proponent's presentation lasted approximately 41 minutes, at which point, the hearing continued with questions of fact, public comment and deliberations. The Commission voted and concluded the hearing on this case at the 1h:32m:43s mark of the recording. Ms. Tice remained present for the remainder of the meeting for a total of 162 minutes.

The applicant's presentation was not interrupted at the moment to announce the arrival of Commissioner Tice, but her presence was acknowledged at the end of the presentation by staff, and Ms. Tice asked the first questions during the time given for questions of fact by members of the Commission.

In calling for a motion, Chair Fahey Sandell noted the request that Ms. Tice had previously made in her comments that the renderings of the proposed conditions be added to photographs of the surrounding context and abutting buildings. Commissioner Corstens then made a motion to approve the application presented for 106 Ellery Street. Commissioner Van Praagh seconded the motion. Ms. Tice voted first and reiterated that photo renderings should be submitted to staff. The members approved the motion in a roll call vote of 7-0, without further discussion about the stated condition and if it was part of the motion. No one raised Tice's late arrival as an issue during the vote. The minutes of the meeting, which were approved at a subsequent meeting were not corrected to remove the condition for photo renderings or to correct the motion as recorded in the draft minutes.

Ms. Tice reviewed the application materials and was present for the majority of the presentation, for all public discussion and deliberations. Staff recommend that her participation in the vote was not out of order and was based on sufficient evidence.

B. *Petitioners claim that Kyle Sheffield's role as architect and presenter of the case to the NCD Commission was a violation of the Conflict of Interest law due to the fact that NCD cases are subject to possible appeal to the CHC, on which board Mr. Sheffield serves as a member.*

After review, the Conflict of Interest law does not apply as Mr. Sheffield, as a member of the Historic Commission, is a special municipal employee. On April 3, 1989 the Cambridge City Council voted to designate board members of the Cambridge Historic Commission as special municipal employees pursuant to G.L. c. 268A, §1(n). Generally, municipal employees are prohibited from representing or acting as an agent for a private party before municipal boards or departments in connection with any matter of direct and substantial interest to their city or town. However, special

municipal employees may represent private parties before municipal boards other than their own body, provided that they have not officially participated in the matter and the matter is not now (and was not within the past year) within their official responsibility.

Therefore, as a special municipal employee, Mr. Sheffield is permitted to represent private parties before municipal boards other than his own. Here, the Mid Cambridge NCD Commission is a separate distinct body from the Cambridge Historic Commission, and this matter has not been before the Historic Commission prior to this appeal.

As a special municipal employee, Mr. Sheffield was not presenting a case before the Historic Commission on which he serves, but rather to the Mid Cambridge NCD Commission. As a result, the precedent cited by the appellants, Public Enforcement Letter 99-2: William J. Devlin, does not apply in this instance, as the architect who was cited in that matter had taken an architectural commission for an applicant before the board on which he served. In contrast, the matter before the CHC now is an appeal, not a *de novo* hearing on the NCD application for certificate. The parties to the appeal are the petitioners and the Mid Cambridge NCD Commission. Furthermore, it is our understanding that Mr. Sheffield will not be present, make any presentations on behalf of his architectural client, participate in discussions or vote on the appeal.

Therefore, there is no conflict of law issue here.

C. *Petitioners claim that the NCD Commission based its decision in part on the existence of a restrictive covenant, but the covenant was not entered into the record, and the decision was therefore unsupported by the evidence.*

The terms of the mutually restrictive covenant were described in detail to explain the site study, limitations on changes to the existing building, placement of the new building on the lot and massing of the new construction. As with a private easement or right of way, an NCD Commission does not have the authority to enforce, waive, or alter property agreements between two private parties. Other evidence was presented at the hearing including a staff report, the architect's design logic, restoration scope, general design, arrangement, texture and materials, landscape design and sustainability choices. The Commission had sufficient information on which to base its decision that the proposed project was not incongruous to the historic aspects, architectural significance or the distinctive character of the neighborhood. Further information or a copy of the covenant was not necessary to provide sufficient evidence in this case.

D. *Petitioners claim the NCD Commission exceeded its authority and behaved in an arbitrary and capricious manner by considering the appropriateness of the size and shape of the new structure, by acknowledging the dimensional aspects of the project on the Certificate of Appropriateness, and by ignoring the City Council goal to increase the city's housing supply.*

In general, the "review criteria to be considered by the commission" are not mandatory. 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 property, the existing building and its similarity to 104 Ellery Street. The design of the proposed replacement building was presented and discussed at length. The Commission appropriately considered the entirety of the project (renovation of the existing building and construction of a new building) in the context of the enabling ordinance and the Mid Cambridge Order and approved the project as a whole and delegated review of additional renderings to staff.

The Certificate of Appropriateness, issued by staff after the hearing, included a finding of fact that the size and shape as well as the dimensions and setbacks were acknowledged and were claimed by the applicant to conform to current zoning regulations. Acknowledgement of these facts is intended as a statement that the decision does not change the size or shape of the structure. The enabling ordinance does not allow NCD commissions to be more restrictive than the zoning code in terms of dimensional aspects of the construction, so staff has made it a practice to include this as a regular statement of fact on certificates issued for residential construction projects. Further, the enabling ordinance does not require that size and shape cannot be spoken of or acknowledged but does require that those criteria may not be the basis for determining the appropriateness or incongruity of an addition or new structure.

The topic of housing supply was brought up during the public question and comment period. Ms. Elena Saporta asked about the number of dwelling units. It did not receive a lot of discussion, but it was considered during the hearing. City Council goals, such as the sustainable use of energy and capacity for climate resilience, were also discussed as part of the presentation and deliberations of this case.

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. The meeting was held remotely via Zoom in accordance with the remote meeting regulations of the Open Meeting Law adopted and extended by the state legislature. Members of the public participated in all meetings, as reflected in the minutes, and all communication to the NCD Commission was 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 meeting 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. The applicants were commended for the thoroughness of the submitted application materials and presentation.

C. Authority

As reflected in the minutes, the Commissioners expressed a familiarity with the goals and guidelines of the enabling ordinance and the Mid Cambridge NCD Order and 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: Jacqueline Fahey Sandell, Acting Chair, Mid Cambridge NCD Commission
Megan Bayer, City Solicitor
Justin Saif, Esq.
Paul Raccuglia, lead petitioner