



CAMBRIDGE HISTORICAL COMMISSION

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February 19, 2008

To: Members of the Historical Commission

From: Charles Sullivan

Re: Statement of procedures for photographic evidence for Commission hearings,
as adopted by vote of the Commission on February 7, 2008

Under M.G.L. Ch. 40C, historic district commissions have jurisdiction over “exterior architectural features,” defined as “such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water” (Section 5). Commissions are authorized to make determinations at public hearings, based on applications “in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information ... as may be reasonably deemed necessary by the commission to enable it to make a determination on the application” (Section 6).

From 1963 to 1974, the Commission considered only evidence submitted by applicants; members were expected to make themselves familiar with each site, a practice that was not always observed.

Since 1974, the staff has consistently taken 35mm slides of each site and projected them at hearings for the benefit of the Commission and the public. The staff takes slides that illustrate the public’s view of the property and its relevant exterior architectural features from vantage points within the public way. Where necessary for clarity, slides taken with the usual wide-angle lens may be supplemented with slides taken with a telephoto lens. Slides taken in this manner and views taken from within a private property with the owner’s permission are announced as such during the staff presentation. The staff initiated this practice to ensure that the Commissioners have a consistent view of a property, beyond their personal experience of it, and to provide a reference point for discussion during hearings.

Photography has been a CHC activity since it was founded in 1963, when it was directed in part “to conduct a survey of Cambridge buildings for the purpose of determining those of historic significance” (City Code Section 2.78.020). Between 1964 and 1977 the Commission staff photographed all 13,000 buildings in Cambridge, and continues to update its

photographic records. We estimate that we now have about 30,000 images of Cambridge buildings, scenes, and people, plus many thousands of slides. Most historic preservation agencies, including the National Park Service, do architectural survey photography, including closeup views when necessary.

Laws and Practices Concerning Photography

While there are no statutes that broadly and explicitly govern photography, it is generally accepted that the First Amendment allows a photographer standing in a public way to take photographs of anything visible to him or her. As one authority states, “you are free to photograph anything on someone’s property that is in public view even though you may be prohibited from entering the property itself” (Krages, 19). The same authority notes that there are some limitations on this right, and cites a “tort of intrusion upon seclusion ... a fairly limited right that allows people to recover damages when someone intentionally intrudes on their seclusion or private affairs in a way that an ordinary person would find highly offensive” (Krages, 26).

In general, however, there is no presumption of personal privacy regarding photographs taken from a public way, and where limitations have been imposed, such as recently in California, they have been in response to the actions of paparazzi endangering the safety of individuals. The only relevant Massachusetts statute that I am aware of, M.G.L. Ch. 272, Section 104, provides criminal penalties for taking photographs of a person “who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy in not being so photographed ... and without that person’s knowledge and consent.” This is not a circumstance that is likely to occur when taking photographs from a public way in daylight and with normal camera equipment.

Technical Matters

In photography “a normal lens is a lens that generates images that ... have a ‘natural’ perspective similar to human eyesight, compared with lenses with longer or shorter focal lengths” (http://en.wikipedia.org/wiki/Normal_lens). With a film camera shooting 35mm film, a normal lens is a lens with a focal length of about 50mm. Architectural photographers use a wide-angle lens with a shorter than normal focal length, commonly between 18 and 35mm, while a telephoto lens with a longer focal length (more than 70mm) has a narrower field of view but can be used to acquire details without changing the position of the camera. A zoom lens has an adjustable focal length.

An example of how lens choice affects angle of view. The photos below were taken by a [35 mm](#) camera at a constant distance from the subject.



28 mm lens



50 mm lens



70 mm lens



210 mm lens

http://en.wikipedia.org/wiki/Photographic_lens

The effect of a telephoto lens can be also be produced by projecting the slide from a greater distance, or by manipulating the telephoto lens on the slide projector. Also, a digital image can be enlarged from the laptop while It is being projected; all such images may have been taken from the same spot, but may show very great differences in detail.

Almost all slides shown to the Historical Commission are taken with a 35mm film camera using a wide-angle, perspective control (35mm, f 2.8) lens. For about the last ten years, a 70-300mm telephoto lens has been used for close-up views; previously, a 105mm lens was used for this purpose. The projector uses a zoom lens with a focal length of 4" to 6".

Discussion

In my opinion the type of images shown to the Commission should not be an issue as long as they are taken from a public way, don't show the interior of a home, and the nature of the image is explained and compared to a 'normal' image - which has been the staff practice for decades. The Commission routinely considers all kinds of evidence, including elevation drawings and renderings showing perspectives that would never be visible to any member of the public. There is little or no presumption of privacy in cases where photos are taken from or in a public way, but if there were it should be balanced against the Commission's need for

impartial evidence that will allow it to make reasoned judgments on a common basis in each case.

Procedures Adopted 2/7/08

The Commission adopted the following as a statement of its practices.

Photographic Evidence for Commission Hearings

The practice of taking photographs of private property by Commission staff, in daylight and with ordinary camera equipment, serves a broad public purpose by enabling the documentation of publicly visible conditions and supporting the quasi-judicial functions of the agency.

Prior to each hearing on applications for certificates of appropriateness, hardship, or nonapplicability, for review of demolition permit applications, for consideration of grant applications, or for any other matter where visual images would aid the Commission in considering the matter before it, the Executive Director of the Commission or his or her designee shall endeavor to prepare film transparencies or digital images for projection at the hearing. The purpose of preparing such photographic evidence shall be to enable the Commission and the public to share a common view of buildings and exterior architectural features that fall under its jurisdiction.

- The content of images should represent the view from the public way, in sufficient detail for the Commission and the public to understand the nature of the matter before them. The nature of the camera equipment used to produce the images shall be determined by the Executive Director.
- Images shall be taken only from a public place unless the property owner specifically authorizes the photographer to enter the property. Such images shall be identified as such when presented.
- Close-up views may be provided when necessary, but should not show the interior of a home. Close-up views shall be identified as such when presented.

Sources:

Ames, David L. *A Primer on Architectural Photography and the Photo Documentation of Historic Structures*. Center for Historic Architecture and Design, University of Delaware
 (<http://dspace.udel.edu:8080/dspace/bitstream/19716/2831/1/A%20primer%20on.pdf>)
 Krages, Bert. *Legal Handbook for Photographers*. Amherst Media, Inc. Second edition, 2007
 Krages, Bert. The Photographers Right (<http://www.rages.com/ThePhotographersRight.pdf>)
 Various Wikipedia sites, including http://en.wikipedia.org/wiki/Photographic_lens

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