



CAMBRIDGE HISTORICAL COMMISSION

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March 1, 2017

To: Members of the Historical Commission

From: Sarah Burks, Preservation Planner

Re: Petitioners' Appeal of Decision of Case L-125 (1-7 John F. Kennedy Street)

On February 6, 2017, the staff received a petition appealing and requesting reconsideration of the Commission's January 5, 2017 vote, the result of which was the Commission did not accept a landmark study petition for the Abbot Building at 1-7 John F. Kennedy Street.

On February 16, 2017, the members of the Commission voted to acknowledge the receipt of the petition and confirm a staff decision to schedule a public hearing on the matter for March 2, 2017. The Election Commission validated the petition on February 21, 2017 by confirming that the petition was signed by at least ten registered voters.

The petition states that 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," and in Attachment A (the signature page) requests the 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."

Appeal Provisions of the Ordinance

Cambridge City Code, Section 2.78.240 outlines the appeal provisions of the ordinance. Relevant provisions are highlighted.

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.

The request made on the signature page of the petition (Attachment A) is that the Historical Commission reconsider its decision of January 5, 2017. The ordinance provides the following language regarding reconsideration procedures,

2.78.180.D - Designation procedures.

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. **The Historical Commission shall not reconsider a proposed designation, amendment or rescission of designation within one year of its previous hearing thereon, unless two-thirds of all its members vote to do so. ...**

The petition also cites Ch. 40C Sections 12 and 12A of the Massachusetts General Laws with respect to appeals by an aggrieved party.

Discussion

The appeal provision of Cambridge City Code, Section 2.78.240 does not include the right to appeal a decision of the Historical Commission regarding failure to accept a petition.

If the Commission was inclined to reconsider its decision of January 5, the language in the ordinance indicates that it would require a vote of 2/3 of the members who voted on the initial petition (5 of 7 voting members).

Staff Recommendation

The Commission cannot discuss the substance of the petition for appeal and reconsideration in an open session as it is related to the case known as Gifford, Gladys P., et al. v. Cambridge Historical Commission, et al., Middlesex Superior Court C.A. No. 1781CV00372, and discussing it in open session may have a detrimental effect on the litigating position of the Commission. Accordingly, the staff recommends a vote on whether to accept the petition for reconsideration without any further discussion.

Attachments

cc: William Brown, Equity One
James Rafferty, Esq.