

FINAL REPORT
of the
CAMBRIDGE HISTORICAL COMMISSION
regarding the proposed
HARVARD SQUARE CONSERVATION DISTRICT
with
AMENDMENTS TO CHAPTER 2.78 OF THE GENERAL ORDINANCES,
AMENDMENTS TO THE HARVARD SQUARE OVERLAY DISTRICT
and
GUIDELINES FOR DEVELOPMENT AND HISTORIC PRESERVATION

The concept of the public welfare is broad and inclusive . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.
(U.S. Supreme Court, *Berman vs. Parker*, 1954)

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November 29, 2000

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SUMMARY OF THE PROPOSED HARVARD SQUARE CONSERVATION DISTRICT

On July 31, 1995, the City Council requested that the Historical Commission "submit a plan . . . for a Harvard Square Historic District which would preserve and protect all remaining historical buildings in Harvard Square." The Commission constituted itself as an historic district study committee under the Historic Districts Act, Chapter 40C of the General Laws, and in January 1997 the City Manager appointed a citizen advisory committee to represent the community during the discussions.

The Harvard Square Historic District Study Committee, which included the members and alternates of the Historical Commission and the ten-member advisory committee, met fifty-two times in less than three years to study the character of Harvard Square, the adequacy of existing means of guiding change, and the need for additional historic preservation protection. After reviewing the alternatives, the Committee voted 14-2 in October 1998 to explore the creation of a Harvard Square Historic District. This proposal was presented at six community meetings in June and July, 1999. The Preliminary Report was approved by the Study Committee on August 4, and was circulated for review by the Cambridge Planning Board and the Massachusetts Historical Commission.

On October 7, 1999 the Cambridge Historical Commission held a public hearing to consider the recommendation of the Study Committee. As a result of public testimony, the Commission amended the proposed historic district ordinance with regard to membership and the terms of the sunset clause, and made several technical changes in the proposed zoning amendment. The Commission then voted unanimously to recommend that the City Council enact both the proposed district and the accompanying zoning amendment.

The recommendation of the Historical Commission was transmitted to the City Council, which referred it to the Ordinance Committee. The Committee referred the historic district proposal to the full Council without recommendation, and it remains on the table. On June 5, 2000, the Council adopted an order requesting that the City Manager "direct the Historical Commission . . . to prepare an alternative version of the proposed Harvard Square Historic District ordinance using the neighborhood conservation district model, utilizing to the extent practicable the Final Report of the Harvard Square Historic District Study Committee dated October 7, 1999 as the study for, and the basis for the administration of, a neighborhood conservation district for the area."

In accordance with Ch. 2.78.160 of the City Code, the City Manager then appointed a Study Committee consisting of three members of the Historical Commission and four representatives of the proposed district. This committee first met on September 27, 2000, and has prepared this Preliminary Report for consideration by the community.

Existing Development Review Procedures

In a climate of extreme pressure for development and equally strong public desire to resist the adverse consequences of change, the city needs to send a strong message that

preservation of the historic character and fabric of Harvard Square has a high priority when development decisions are made. The existing development review process in Harvard Square is confusing and not always effective in protecting historic buildings and community character. The Harvard Square Historic District Study Committee found that the conflicting messages communicated by the zoning code and the patchwork of available preservation tools causes misunderstanding and needless conflict, and the Harvard Square Neighborhood Conservation District Study Committee concurs with this assessment.

Development reviews in Harvard Square are currently conducted under the provisions of the Cambridge Zoning Code, although a number of properties are also protected by various historic preservation procedures. The Harvard Square Overlay District was enacted in 1979 to allow the Planning Board to consider the broad urban design issues raised by large development proposals. In 1986, the effectiveness of the Overlay District was enhanced by the creation of the Harvard Square Advisory Committee and the incorporation of incentives for preserving contributing buildings in the Harvard Square National Register District.

However, the Advisory Committee primarily reviews large projects that require a special permit. Under the zoning code, some small projects also receive an advisory review by Community Development staff. Depending on the unique circumstances of each property, some projects may also be reviewed by the Historical Commission. Demolition of a building over fifty years old may require Commission review under the City's demolition delay ordinance. This ordinarily brings only a six-month respite although it can lead to a designation study under the landmark ordinance. Some properties are already protected as landmarks, and others are subject to preservation easements. Harvard properties that are contributing structures in the National Register district are subject to Historical Commission staff review under a protocol between the Commission and Harvard that was entered into in 1986.

On June 29, 2000, the Cambridge Historical Commission gained interim jurisdiction over the proposed Harvard Square Conservation District by initiating the process of designating the area as a Neighborhood Conservation District under Ch. 2.78, Article III, of the City Code. The Commission will exercise binding review of all applications for building and demolition permits for up to one year while a recommendation for designation is prepared for the City Council. During the interim period, a building or demolition permit may not be issued in the proposed district unless the Commission has first reviewed the publicly-visible exterior appearance of the project and issued a Certificate of Appropriateness, Nonapplicability or Hardship to the applicant.

The Harvard Square Conservation District Proposal

The Harvard Square Historic District Study Committee considered many options for enhancing historic preservation in Harvard Square. Strategies fell into two categories: either 1) strengthen the Harvard Square Overlay District or 2) enact a Harvard Square Historic District. That Committee felt that an historic district was preferable because it

would establish an important presumption about the historic character of the community; activate a comprehensive process for reviewing demolition, new construction, and alterations; and allow greater flexibility than possible under zoning alone to seek appropriate changes in development proposals.

The Harvard Square Neighborhood Conservation District (NCD) Study Committee feels that a neighborhood conservation district can be as effective in Harvard Square as an historic district. While NCDs are established under city ordinance rather than under state statute, the objectives, procedures, and levels of review can be very similar to that of an historic district. The City Council has adopted orders establishing three neighborhood conservation districts since the enactment of Ch. 2.78, Article III in 1978, and approximately 2,500 buildings are now protected in this manner. While Cambridge's Neighborhood Conservation District approach to historic preservation has not been tested in court, the city's NCD commissions have successfully administered approximately 2,200 cases involving alterations, demolitions, and new construction.

The proposal of the Harvard Square NCD Study Committee includes both the establishment of a neighborhood conservation district under Ch. 2.78, Article III of the City Code and the enactment of zoning amendments to maintain the existing density allowed in the Harvard Square Overlay District. The recommendations of the Study Committee are summarized in the proposed City Council order establishing the Harvard Square Conservation District and the amendment to the Zoning Code immediately following the Summary of this report.

The Study Committee's recommendation for a Harvard Square Conservation District can be summarized as follows:

A Neighborhood Conservation District established under Ch. 2.78, Article III of the City Code and administered by the existing Cambridge Historical Commission, in conjunction with zoning amendments that would maintain current FAR provisions in Harvard Square, clarification of the appeals procedure, and expansion of the membership of the Historical Commission, can be as effective as an historic district in preserving and protecting the remaining historical buildings in Harvard Square while encouraging the architectural diversity that characterizes the area.

As in an historic district, the Cambridge Historical Commission would have binding review over demolition, new construction, and publicly-visible exterior alterations to existing buildings, and could, in appropriate cases, impose dimensional and set-back requirements in addition to those required by zoning. The existence of binding conservation district review would make it feasible to insulate the existing base zoning in Harvard Square from city-wide rezoning initiatives.

The Study Committee's proposed order places the new neighborhood conservation district under the Cambridge Historical Commission, which would continue to collaborate with the Harvard Square Advisory Committee on large projects.

Under the neighborhood conservation district ordinance as implemented in Cambridge, applicants must be given an initial response within five days, and hearings must be concluded (unless voluntarily extended by the applicant) within 45 days. (A proposed amendment to Ch. 2.78.230 would allow the Commission to extend the review period by an additional 45 days when necessary to facilitate a determination.) Commission staff would conduct administrative reviews of building permit applications in order to expedite approval of routine projects. It is anticipated that the majority of applications, including all of those for work not visible from a public way, could be approved on the same day that they are submitted.

In making its determinations, the Historical Commission would operate under guidelines designed by the Study Committee to preserve historic resources while encouraging the social, economic, and architectural diversity that characterizes the Square. As in historic districts, the Historical Commission would have binding review over demolition, new construction, and publicly visible exterior alterations to existing buildings, and could, in appropriate cases, impose dimensional and set-back requirements in addition to those required by zoning.

The existence of binding conservation district review would make it feasible to retain the existing base zoning in Harvard Square, and the Study Committee proposes that enactment of the zoning amendment drafted by the Community Development Department for this purpose be linked to implementation of the conservation district.

The continued vitality of Harvard Square depends as much on fostering architectural creativity and excitement as it does on protecting significant buildings and references to our past. However, the power of a neighborhood conservation district commission, like that of an historic district commission, extends only to the appearance of things that are visible from a public way. It is important to recognize that neither a neighborhood conservation district commission nor an historic district commission can preserve particular uses and the character they generate.

A Harvard Square Conservation District established under the City Code provisions relating to neighborhood conservation districts would afford a more flexible method of accomplishing the same goals as an historic district. It would incorporate the guidelines and levels of protection originally envisioned by the Harvard Square Historic District Study Committee, and would be administered by the existing Cambridge Historical Commission. The proposed order establishing the conservation district also includes a provision for a mandated public review of the effectiveness of the district after it has been in effect for four years. In some respects, a neighborhood conservation district can be considered more appropriate for Harvard Square than an historic district because it would allow more flexibility to expedite approval of alterations to storefronts and signs by

establishing clear standards for approvals and delegating authority to the Executive Director.

This report describes existing development and preservation regulations in Harvard Square, evaluates approaches for review procedures, presents goals and guidelines for design review, and describes the unique qualities and goals for each subdistrict. Proposed amendments to the City's Ordinances relating to establishing the district and amending the zoning code follow this summary.

Harvard Square Neighborhood Conservation District Study Committee
M. Wyllis Bibbins, Chair

*Members of the
Cambridge Historical Commission*

- William B. King, Chair
- Allison Crump, Vice Chair
- M. Wyllis Bibbins

• *Members of the public*

- John P. DiGiovanni
- Frank Kramer
- Gary Hammer
- Jinny Nathans

An Order Establishing the Harvard Square Conservation District

There is hereby designated and established under the provisions of the Chapter 2.78, Article III of the City Code a neighborhood conservation district to be known as the Harvard Square Conservation District (the "District"), an area bounded as shown on the map entitled "Harvard Square Conservation District 2000," attached to this Order and incorporated into this Order in full. However, this Order shall not take effect until the effective time of an amendment to Section 11.50 of the Cambridge Zoning Code to create a Harvard Square Historic Overlay District.

I. Reasons for Designation

Harvard Square is Cambridge's historic core and reflects the distinctive architectural, cultural, political, economic, and social history of the city. Founded as Newtowne in 1630 and intended to be the capital of Massachusetts, Cambridge was the first planned town in English North America. Harvard Square still retains its 17th-century street plan, but has evolved into a distinctive mixed-use community containing significant buildings of many periods and styles and characterized by its commercial and social vitality. Pressures for change threaten the District's diverse architectural character, which this measure seeks to preserve, conserve and protect from adverse environmental influences. The Order will accomplish this purpose by establishing a process for guiding changes to properties in the District while ensuring that additions and alterations to properties are compatible with the character of the District, by offering a forum for community dialogue about proposed changes to properties in the District, by providing technical assistance to District property owners on issues of conservation and preservation, and by fostering wider public appreciation of the District, and will thereby promote the public welfare by making the District a more attractive and desirable place in which to live, work, and visit.

II. District Established

As authorized in Paragraph A, Section 2.78.160 of Article III of the City Code, the neighborhood conservation district hereby established shall be administered by the Cambridge Historical Commission. The District shall be known as the Harvard Square Conservation District.

III. Statement of Goals and Standards and Guidelines for Review

The goal of the District as a whole and of this order is to guide change and encourage diversity in order to protect the distinctive characteristics of the District's buildings and public spaces, and to enhance the livability and vitality of the District for its residents and all Cambridge residents, students, visitors, and business people. The Historical Commission should seek to preserve and enhance the unique functional environment and visual form of the District; preserve its architecturally and historically significant structures and their settings, and encourage design compatible therewith; mitigate any adverse impact of new development on adjacent properties and areas; and discourage homogeneity by maintaining the present

diversity of development and open space patterns and building scales and ages. The District must remain a pedestrian-friendly, accessible, human-scale, mixed-use environment that complements nearby neighborhoods and maintains the history and traditions of its location.

The following secondary goals for the District are intended to provide general guidance to the Historical Commission in a wide variety of situations, and are not intended to be applied to every project that will come before it. They are statements of policy, not prescriptive measures that must be applied equally in each situation.

1. Preserve historically or architecturally significant buildings and structures as well as those that contribute to the distinctive visual character or historical significance of the District.
2. Sustain the vitality of the commercial environment by preserving architecturally-significant or original building fabric where it currently exists. When this is not possible, support creative, contemporary design for storefront alterations and additions.
3. Support creative, contemporary design for new construction that complements and contributes to its immediate neighbors and the character of the District. Recognize and respect creativity of design during the review process and mitigate the functional impacts of development on adjacent areas.
4. Build on and sustain the diversity of existing building form, scale and material. Preserve and encourage flowers, green yards and courtyards and small, free-standing and wood-frame buildings where that character prevails. Encourage streetwall buildings where that character has been set. Encourage ground-level, small-scale storefronts to preserve the vitality and character of the streets.
5. Expand the high quality public environment established in the heart of the District with attractive and compatible materials, lighting, and street furniture.
6. Expand the network of pedestrian walkways and paths wherever they can conveniently provide alternate routes through the District. Increase public access to alleys and interior spaces where appropriate, and upgrade paving and landscaping of such pathways and spaces. Enhance accessibility and safety for pedestrians throughout the District.
7. Encourage new residential projects in the District, especially in mixed-use buildings, and support existing residential uses.
8. Encourage projects that will maintain a wide diversity of uses serving the needs of surrounding neighborhoods, students, and visitors from around the world.

9. Encourage creative solutions to the District's parking and transportation issues, including the problem of on-street deliveries. Discourage loading docks, which do not generally contribute to the historic character of the street.

The foregoing goals also recite the standards for preservation and change within the District. In addition to the factors specified in Section 2.78.220, and subject to any specific provisions of this Order, in exercising its authority with respect to the District and in considering applications for certificates of appropriateness, hardship, or nonapplicability, the Historical Commission shall be guided by the preceding general goal for the District as a whole and by such of the preceding secondary goals as it determines to be applicable to the project or situation before it. The Historical Commission shall also be guided by the standards and guidelines described in the "Final Report of the Harvard Square Neighborhood Conservation District Study Committee," dated November 29, 2000, which after public hearing the Historical Commission may adopt as regulations and thereafter amend from time to time.

As permitted by Chapter 2.78.190.B, the Historical Commission may determine from time to time after public hearing that certain categories of exterior architectural features, structures, or signs may be altered without review by the Commission; provided, however, that every such alteration shall be determined by the Executive Director of the Historical Commission to conform to the regulations adopted by the Commission for the administration of the District.

IV. Review Procedures

The authority of the Historical Commission shall extend to the review of all construction, demolition, or alteration that affects exterior architectural features, other than color, within the District, except as otherwise provided in this Order. The determinations of the Commission shall be binding.

A. Exclusions from Review

As permitted by Ch. 2.78.190.B, the authority of the Historical Commission shall not extend to the following categories of structures or exterior architectural features and such structures or features may be constructed or altered without review by the Historical Commission.

- Storm doors and storm windows.
- Signs that conform to Section 7.000, "Signs and Illumination" of the Zoning Ordinance of the City of Cambridge, as the same may be amended with respect to Section 11.50, "Harvard Square Overlay District."

B. Certificates of Nonapplicability

The following categories of alterations shall be issued a Certificate of Nonapplicability provided they conform to the applicable standards and guidelines of the District:

- Roof repairs and HVAC equipment not visible from a public way.

- Replacement windows pursuant to regulations that after public hearing the Historical Commission may adopt for this purpose.
- Alterations that the Executive Director of the Historical Commission determines do not alter, enclose, or extend further than the decorative or structural framework of the building or retail space originally intended to surround a storefront. The framework consists of such elements as piers, columns, cornerboards, quoins, cornices, and similar structural or decorative features.
- Storefront alterations that the Executive Director of the Historical Commission determines do not obscure, remove, relocate, or replace historic or original exterior architectural features. Exterior architectural features include, but are not limited to, such features as brackets, window and door casings, fascia, hoods, bays, and window sash.

V. Protected Storefronts

Notwithstanding the other provisions of this Order, all alterations to storefronts at the following addresses shall require review in accordance with Ch.2.78, Article III:

1304 Massachusetts Avenue
 1316 Massachusetts Avenue
 1320 Massachusetts Avenue
 30-30A Plympton Street

VI. Coordination with Other Agencies and Boards

The Historical Commission, Board of Zoning Appeals, Inspectional Services Department, and other City boards, agencies, and officials are directed to coordinate all review, hearing, permitting and other procedures relative to physical changes within the District to the extent practicable, consistent with their respective responsibilities.

VII. Public Notice

In addition to the notice requirements in Ch. 2.78.230, applicants scheduled to appear before the Historical Commission in a public hearing shall place a public notification placard on the premises that are the subject of the application. Placards shall be posted not less than seven days prior to the meeting and shall be maintained in public view and legible condition until the Historical Commission's determination is filed with the City Clerk. Placards shall be obtained by the applicant from the Historical Commission and shall be located as indicated on a plan provided by the Historical Commission. Placards shall be securely mounted on the subject premises at the street line or within the property, but not more than 20 feet from the street line, so as to be legible to persons passing on the public street without the necessity of trespassing. Stolen, destroyed, or illegible placards shall be promptly replaced and placards shall be promptly removed after the filing of the Historical Commission's determination. Information to be placed by the applicant on the placard shall indicate the address of the property; the date, time, and place of the public hearing; the nature of the action requested; and the application case number.

VIII. Time Limit for Commission Action

When taking action under the provisions of this Order and Sections 2.78.190, 2.78.200, 2.78.210, and 2.78.220 of Article III of Chapter 2.78, the Historical Commission shall make its determinations within forty-five days after the filing of a complete application for a certificate of appropriateness, non-applicability, or hardship, or within such further time as the applicant may in writing allow or the Historical Commission may determine in accordance with regulations that the Commission may adopt consistent with Section 2.78.230 of said Article III.

IX. Recommendation to City Council

During the twelve-month period prior to the fifth anniversary of the effective date of this Order the Historical Commission shall hold a public hearing to discuss the effectiveness of the Harvard Square Conservation District and to make a recommendation to the City Council, based upon its findings following such public hearing, as to whether this Order should continue in effect, continue in effect with amendments, or be repealed. In the event that the City Council repeals this Order, except as the repealing order otherwise directs, both the Harvard Square Conservation District and the Harvard Square Historic Overlay District shall cease to be in effect, but all valid certificates, permits, orders and determinations of any City board, commission or agency issued prior to such cessation shall continue in effect.

**Amendments to the General Ordinances of Cambridge
Expanding the Membership of the Cambridge Historical Commission,
Extending the Time Within Which A Commission Must Act,
and Clarifying the Basis for Appeals
in Neighborhood Conservation Districts**

- I. Chapter 2.78 is amended by deleting the first paragraph of section 2.78.010 and substituting the following paragraph. However, this substitution shall not take effect until the effective time of an amendment to the Cambridge Zoning Ordinance to create a Harvard Square Historic Overlay District.
- "The Cambridge Historical Commission established under the Historic Districts Act, General Laws Chapter 40C, with all the powers and duties of an historic district commission, shall consist of seven members and four alternate members to be appointed by the City Manager with the approval of the Council, including one member from two nominees submitted by the Cambridge Historical Society, one member from two nominees submitted by the chapter of the American Institute of Architects covering Cambridge, one member or alternate from two nominees submitted by the Boston Society of Landscape Architects, and one member from two nominees of the Board of Realtors covering Cambridge. One or more members so appointed shall be a resident of an historic district established in the City pursuant to the Historic Districts Act, at least one member or alternate shall be a lawyer, and, while there is in existence the Harvard Square Conservation District, one member or alternate shall be either (i) a resident of, (ii) the owner of property in, or (iii) the duly authorized representative of a non-individual owner of property in the Harvard Square Conservation District."
- II. Chapter 2.78 is further amended by adding the following sentence at the end of Section 2.78.230:
- Such rules may include authority for such commission to extend the period under which the commission is to make a determination on an application for a certificate of appropriateness hardship, or nonapplicability for up to a further forty-five days, without the consent of the applicant, if the commission, on its own motion or at the written request prior to such determination of ten land owners within or registered voters residing in the relevant neighborhood conservation district, concludes that such extension is desirable to facilitate the commission making its determination."
- III. Chapter 2.78 is further amended by deleting the current Section 2.78.240 and substituting the following paragraph:
- "Any applicant, abutter, owner of land directly opposite on any public or private street or way, or abutter of an abutter within three hundred feet of the property line of the subject property who is aggrieved by the grant or denial of a certificate of hardship, appropriateness, or nonapplicability of a neighborhood conservation district commission may, within twenty days after the filing of the notice of such determination with the City Clerk, appeal to the Historical Commission. The Historical Commission may review the determination and affirm it or vacate and remand it for reconsideration consistent with its finding. The Historical

Commission shall file a notice of affirmation of any determination of a neighborhood conservation district commission within five days of such affirmation. Any applicant, abutter, owner of land directly opposite on any public or private street or way, or abutter of an abutter within three hundred feet of the property line of the subject property who is aggrieved by the Historical Commission's affirmation of a neighborhood conservation district commission's determination may, within twenty days after the filing of the notice of such affirmation with the City Clerk, appeal to the superior court, requesting the court to annul the determination of the neighborhood conservation district commission as affirmed by the Historical Commission if it finds the determination of the neighborhood conservation district commission to be unsupported by the evidence in the record or to have exceeded the authority of the neighborhood conservation district commission, or to remand the case for further action by the neighborhood conservation district commission or to make such other decree as justice and equity may require.

Any applicant, abutter, owner of land directly opposite on any public or private street or way, or abutter of an abutter within three hundred feet of the property line of the subject property who is aggrieved by a determination of the Historical Commission with respect to any designated landmark or with respect to any determination of the Historical Commission when it is administering a neighborhood conservation district, may, within twenty days after the filing of the notice of such determination with the City Clerk, appeal to the superior court, requesting the court to annul the determination of the commission if it finds the determination to be unsupported by the evidence in the record or to exceed the authority of the commission, or to remand the case for further action by the commission or make such other decree as justice and equity may require.

The grounds for any person to appeal the determination of a neighborhood conservation commission or the determination of the Historical Commission with respect to any designated landmark, or with respect to any determination of the Historical Commission when it is administering a neighborhood conservation district, shall be limited to specifying in what respects the determination of the particular commission exceeds its authority or is inconsistent with the goals, standards, and criteria applicable to the designation of the particular landmark or applicable to the designation of a particular neighborhood conservation district, as set forth in the order designating or establishing that landmark or district, and in what respects such person is aggrieved by that determination. The provisions of this section shall exclusively govern all such appeals."

Amendments to the Zoning Ordinance Affecting the Harvard Square Overlay District - Section 11.50

Amend the text of the Zoning Ordinance of the City of Cambridge by making the following changes to Section 11.50 - Harvard Square Overlay District (additions to text are highlighted in Bold, deletions are indicated thus: ~~deletion~~.)

A. Delete the existing line that reads “Section 11.50 - Harvard Square Overlay District” and substitute therefore the line “Section 11.50 - Harvard Square Overlay District and Harvard Square Historic Overlay District”.

B. Delete Section 11.51 and substitute therefor the following:

11.51 Establishment and Scope. There is hereby established the Harvard Square Overlay District and the Harvard Square Historic Overlay District which shall be governed by the regulations and procedures specified in this Section 11.50. It is the intent of this section that these regulations shall apply to an ~~single~~ area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

C. Create a new Section 11.51.1 to read as follows:

11.51.1 The Harvard Square Overlay District shall be that overlay district established on the Zoning Map of the City of Cambridge by Section 3.20. The Harvard Square Historic Overlay District shall be that portion of the Harvard Square Overlay District that is encompassed by any historic district duly established by the City Council under the authority granted to the City of Cambridge by Chapter 40C of the General Laws of the Commonwealth of Massachusetts **or any Neighborhood Conservation District established by the City Council under the provisions of Chapter 2.78 of the Cambridge Municipal Code.** All provisions of the Harvard Square Overlay District and all references to it in this Ordinance shall apply equally to the Harvard Square Historic Overlay District except as set forth below.

D. Delete Section 11.52 in its entirety and substitute therefore the following:

11.52 General Purpose. It is the purpose of this Section 11.50 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square Area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square Area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional environment and visual character of Harvard Square; to mitigate the functional impacts of new development on adjacent residential neighborhoods; to maintain the present diversity of development and open space patterns and building scales and ages; **to protect and enhance the historic resources of the Harvard Square area;** and to provide sufficient regulatory flexibility to advance the general purposes of this Section 11.52. **The additional flexibility granted to development within the Harvard Square Historic Overlay District is intended to facilitate the protection and enhancement of the historic resources and character of Harvard Square while**

not unreasonably limiting the opportunities for appropriate contemporary changes to the built environment in the Harvard Square area.

E. In Section 11.53.2, delete the phrase "*Harvard Square Development Guidelines, Community Development Department, July 1, 1986*" and substitute therefore the phrase "*Harvard Square Development Guidelines, -----,1999*".

F. In Section 11.54.1 (4) (a), delete Subparagraph 1 in its entirety and substitute therefor the following and add a new subparagraph 8 to read as follows:

11.54.1 (4) (a) *Membership*

1. At least one ~~two~~ members having recognized qualifications as an architect or landscape architect.
8. One member representing the Cambridge Historical Commission.

G. Add a new Section 11.54.6 to read as follows:

11.54.6 *Maximum Ratio of Floor Area to Lot Area (FAR) in the Harvard Square Overlay District.*

Notwithstanding the FAR limits set forth in Article 5.000 or elsewhere in this Ordinance, the maximum FAR applicable in the Harvard Square Overlay District shall be as follows: Business B district: 4.0; Office 3 district: 3.0; Office 2 district: 2.0; Residence C-3 district: 3.0; Residence C-2B district 1.75; Residence C-1 district: 0.75; Business A district: 1.0, 1.75 for dwellings. This Section 11.54.6 shall be in effect through (sunset date) inclusive.

H. Add a new Section 11.57 to read as follows

11.57 *Sign Regulations in the Harvard Square Historic Overlay District*

All provisions of Article 7.000 shall apply in the Harvard Square Historic Overlay District, except as modified below. It is the intent of these modifications to allow greater flexibility in the size, location and illumination of signs in order to encourage more thoughtful design of individual signs, to encourage greater respect for the building and visual context within which new signs are erected, and thereby add interest and character to the shopping environment in Harvard Square.

1. In Section 7.16.22 - Signs in all Business, Office and Industrial Districts, Paragraphs A, B, and C shall not apply in office and business base districts. However, no sign on the outside of a building may extend higher than 20 feet above grade.
2. Section 7.16.3 - Application of the Sign Frontage Formula, shall not apply.
3. In the Residence C-2B base district the provisions of Section 7.16.22 shall apply to permitted or legally established non conforming office and retail uses.

This Section 11.57 shall be in effect in effect through (sunset date) inclusive.

FINAL REPORT
of the
HARVARD SQUARE NEIGHBORHOOD CONSERVATION
DISTRICT STUDY COMMITTEE
regarding the proposed
HARVARD SQUARE CONSERVATION DISTRICT

November 29, 2000

INTRODUCTION TO THE HISTORY AND SIGNIFICANCE OF HARVARD SQUARE

Harvard Square originated in 1630 as the village of Newtowne, a settlement that was intended by the Proprietors of the Massachusetts Bay Colony to be their capital. Today, the Square retains landscape features and buildings from every period of its development, and displays a rich mix of architectural forms and historical sites in a dynamic commercial and residential setting.¹

Alone among the early colonial towns, Newtowne was laid out on a grid plan of straight streets intersecting at right angles; befitting a capital, houses were required to “range even”, with uniform setbacks. Many of the Proprietors fulfilled their pledge to build houses in the village, which also became the site of the colony’s first printing press.

Although the capital was moved to Boston in 1634, in 1636 the General Court located the Colony’s first college in Newtowne; the town obligingly changed its name to Cambridge in 1638. Harvard College was founded in a former cattle yard north of the village center, which was clustered on a hilltop closer to the river. Gradually the center of the village moved toward the college, and present-day Harvard Square became the administrative center of both the town of Cambridge and Middlesex County. Still surviving from the 17th century are the original street plan, with Winthrop Square, the early town marketplace, at its center, and the stone retaining walls along Winthrop and South Streets.

During the Revolution, Cambridge became the first headquarters of the American Army. General Washington was quartered at Wadsworth House, and then at the present Longfellow House on Brattle Street. The William Brattle House at 40 Brattle Street (1726), the Rev. East Apthorp House (1760), and the John Hick House at 64 J.F. Kennedy Street (1762) are important survivors of this period.

The construction of the West Boston Bridge in 1793 shortened the overland route to Boston from 8 to 3½ miles, and opened Cambridge to suburban development. In the first decades of the 19th century Harvard became an agent for change, providing faculty with the means to construct large homes and contributing to the enclosure of the Common as a public park. In the village proper, modest frame houses such as 98 Winthrop Street (ca. 1795), 17 South Street (1826), and 69 Dunster Street (1829) sheltered families who worked on the College Wharf, at the gas works, or on the omnibus lines that provided frequent transportation to Boston. As the century progressed, more elaborate Greek Revival houses were constructed, including 53 Dunster Street (1841) and 41 Winthrop Street (1845).

After the Civil War, Harvard Square became a transportation hub for suburban towns west of Boston. The omnibus lines were supplanted by horse-drawn streetcars in 1854, and these were electrified in 1892. An important remnant of the horse-car period is the Union Railway stable at the corner of Mount Auburn and Dunster Street (1860). This building continued in transportation use as an automobile battery-charging station and then as a parking garage

¹ The Final Report of the Harvard Square Historic District Study Committee, upon which this report is based, contains an extensive discussion of the history and significance of the Square.

before becoming a shopping mall in the 1970s. Another survivor of this period is the former police station on Church Street (1864)

The transformation of Harvard University into an institution of national standing, coupled with the University's policy of encouraging undergraduates to find their own housing, led private investors to construct a number of private dormitories beginning in 1876. Gradually the most expensive of these concentrated on Dunster, Linden, Plympton, and Bow streets, while the construction of exclusive student clubs caused Mount Auburn Street from Dunster to Plympton Street to be called the Gold Coast. Some of the larger private dormitories from this period, such as Claverly Hall (1892), The Craigie (1897), Randolph Hall (1897), the first Cambridge Savings Bank building (1897), Westmorely Hall (1898), and Hamden Hall (1902) contained amenities such as elevators, squash courts, and swimming tanks that were rivaled only in Manhattan apartment houses. In the rush to cash in on the demand for student housing, older buildings were converted to private dormitories. The most prominent of these, The Fairfax (1869-1885) contains the most significant storefront in Harvard Square, the Art Nouveau facade at 1304 Massachusetts Avenue (1907).

The Harvard finals clubs were an integral part of the Gold Coast and introduced some of Harvard Square's most sophisticated architecture. Most, such as the Delphic Club (1902), the Iroquois (1916), and the Spee (1931), are small brick buildings fashioned after English clubs, but the Fox Club (1906) is a frame building in the Georgian Revival style. Other clubs, such as the Signet Society (1820, 1902) and the Pi Eta (1846), adapted much older buildings. The original Pi Eta club on Winthrop Square (1908) has since been converted entirely to commercial use.

The construction of the Cambridge Subway between 1909 and 1912 cemented Harvard Square's relationship with downtown Boston, but also swept most transfer passengers into the underground station. Some merchants lost business, but the subway stimulated construction of the Abbot Building (1909) and the Brattle Building (1913), and, after World War I, the Cambridge Savings Bank (1923) and the Harvard Coop (1924). During the Depression, local real estate entrepreneur George L. Dow assembled properties in Brattle Square and remodeled a miscellaneous group of 19th-century stores into an Art Deco shopping block (1936-1941). Until the 1970s the Dow family managed their properties to provide shopping opportunities for suburban West Cambridge families, and the trust Dow founded continues to provide stability in a rapidly-changing retail environment.

Preservation became a priority in Harvard Square in the late 1960s, after Harvard University demolished several private dormitories, a club, and some commercial buildings to put up Holyoke Center (1961-1965). The Cambridge Historical Commission undertook the Survey of Architectural History in Cambridge in 1964, and published *Report Four: Old Cambridge*, which included Harvard Square, in 1973. A demolition delay ordinance was enacted in 1979, and in the same year an overlay district (which was substantially strengthened in 1986) was established to review applications for special permits. Finally, Harvard Square was placed on the National Register of Historic Places in 1988.

In the 1970s, the intense controversy which arose over the proposed John F. Kennedy library and museum did not abate when the Charles Hotel and the Kennedy School of Government were built on the site instead. Harvard Square became a nationally-known tourist destination during this decade, and successive real estate booms brought pressure on under-utilized sites. New buildings at 1280 Massachusetts Avenue (1985) and One Brattle Square (1988-1992) illustrated the possibilities of contextual design in the former case and the dangers of over-development in the latter. Proposals for the redevelopment of the Read Block (1780-1896) in 1996 and four properties on Winthrop Square (1876-1927) in 1997 were encountered in a stronger regulatory environment and resulted in new construction and facade restoration in one case and adaptive reuse in the other.

Harvard Square contains numerous buildings and places that are important for their architecture and historical associations on a local, state, and national level. Public interest in preserving Harvard Square is evidenced by the intense controversy that accompanies almost any change in the fabric of the community. The Square is worthy of preservation because it is a rare urban environment that is valued by all who visit it.

Chapter I. Existing Preservation and Development Controls in Harvard Square

Preservation and development activities in Harvard Square are currently guided by a variety of municipal ordinances and boards that sometimes allow significant changes to proceed with little or no review. Only projects in the Harvard Square Overlay District that constitute new construction of over 2,000 square feet in floor area, or that entail applications for variances or special permits, are reviewed by the Harvard Square Advisory Committee and are subject to approval by the Cambridge Planning Board and/or the Board of Zoning Appeal. Apart from some individually-protected buildings, only projects that involve demolition of a building over fifty years old are reviewed by the Cambridge Historical Commission, and even this may result in only a six-month delay. While the staff of the Community Development Department reviews some small projects, the effect of this arrangement is that neither zoning nor existing local historic preservation ordinances can adequately protect the broad range of character-defining elements that comprise Harvard Square. No public body reviews alterations, new construction projects below the Overlay District threshold, or demolition of buildings less than fifty years old for possible adverse effects on the character of the Square. As-of-right projects currently may proceed without public review of their potential for destructive alterations.

On June 29, 2000, the Cambridge Historical Commission gained interim jurisdiction over the proposed Harvard Square Conservation District by initiating the process of designating the area as a Neighborhood Conservation District under Ch. 2.78, Article III, of the City Code. The Commission will exercise binding review of all applications for building and demolition permits for up to one year while a recommendation for designation is prepared for the City Council. During the interim period, a building or demolition permit may not be issued in the proposed district unless the Commission has first reviewed the publicly-visible exterior appearance of the project and issued a Certificate of Appropriateness, Nonapplicability or Hardship to the applicant.

To facilitate administration of the proposed district, the Commission adopted the *Final Report of the Harvard Square Historic District Study Committee. . . with Guidelines for Development and Historic Preservation*, dated October 7, 1999. In reviewing the applications which have come before it since June 29, the Commission has specifically referred to Chapter V, "Preservation and Development Goals for the Harvard Square Historic District" and Chapter VI, "Guidelines for Demolition, Construction, and Alterations in the Harvard Square Historic District."

A. Zoning

Municipalities use zoning to govern how land may be used and buildings constructed in each zoning district. In Massachusetts, M.G.L. Ch. 40A enables communities to establish dimensional regulations that specify maximum gross floor area, density, height, setbacks, and open space. Projects meeting these basic criteria may be constructed "as-of-right," or without any public discussion of design, materials, or appearance. Other projects may require a variance (which may be granted if there are unique conditions of the lot that create a hardship for the owner) or a special permit. In overlay districts, which are areas of special planning concern, additional special permits may be required by from the Planning Board. The design

of such projects may be negotiated to bring them into compliance with the specific criteria established for the overlay district, which is an important benefit to the public. However, detailed review of a project's design is only undertaken when a special permit is required.

Zoning in Cambridge was instituted in 1924, and it initially dictated land use and building density in Business, Residential, and Unrestricted (industrial) zones. Harvard Square, Central Square, and the Massachusetts Avenue corridor connecting them were placed in the business zone with greatest density, while residential zones immediately abutted them. The major impetus for zoning was resistance to the spread of apartment houses into established residential neighborhoods after the completion of the Cambridge Subway in 1912. This conflict continued until about 1976, when the emergence of condominium ownership, the adoption of rent control, and the enactment of zoning provisions to encourage townhouses ended construction of rental apartment buildings.

In the post-war period, concern about the decline of cities led to a remarkable loosening of zoning restrictions. In 1943, the 1924 code was revised into its present format, but almost immediately, development interests pressed for a further loosening of restrictions on apartment houses. In 1960, as urban economies went into free fall, the Planning Board proposed that height and density restrictions be loosened or eliminated to allow the population in residential zones and the floor area in business and industrial zones to be doubled over current levels "to allow the free market to operate."

The 1962 zoning revisions established an office district category to accommodate businesses and research laboratories, in part carved out of business and industry zones but also from some transitional residential zones, such as the blocks immediately west of Brattle Square. The new code also loosened height and density provisions, and entirely eliminated height limits in the C-3 Residence zone and in all business and industry zones. In the 1962 code, Harvard Square was zoned Business B at its core, Residence C-3 along the Gold Coast, and Office along Bow, and Arrow Streets and University Road. The Business zone allowed a floor area ratio (FAR) of 4.0, and in the other zones the FAR was 3.0. There were no height limits in any Harvard Square zone.

The urban design implications of the 1962 code were consistent with the Corbusian principles then in vogue among city planners and architects, and encouraged isolated towers surrounded by open plazas. However, little thought was given to zoning as an urban design tool until the 1970s, when Cambridge first adopted planned unit development (PUD) and overlay districts in areas of special planning concern, such as East Cambridge, Alewife, and Harvard and Central Squares.

The first overlay district in Harvard Square was established in 1979 after a period of intense debate over the future of the area. This amendment to the zoning code was intended "to channel the extreme development pressures in ways which will preserve and enhance the unique functional environment and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods." Although it left the underlying zoning map in place, the overlay district "set height limits where none had existed, created a

rudimentary design review process, and encouraged what were thought to be desirable design features for the Square as a whole."

It was apparent within a few years that the overlay district needed refinement. Some of the design features that earned a developer additional height, such as split-level retail frontage (as at 1105 Massachusetts Avenue) and street-level open space (as at Holyoke Center), were now considered undesirable. The Planning Board considered the design review process to be burdensome; no consideration could be given to preservation of historic buildings; and height limits and floor-area ratios were considered too generous.

The amended Harvard Square Overlay District, enacted in 1986, established an advisory committee to the Planning Board to review new projects, following guidelines that encourage diversity in the material and scale of new buildings and respect for the immediate urban context. The height limit throughout the Square was reduced from 110 to 80 feet, and much of the Gold Coast was rezoned from B-B to C-1 to protect this low-rise area from property tax assessments based on the higher-density zoning.

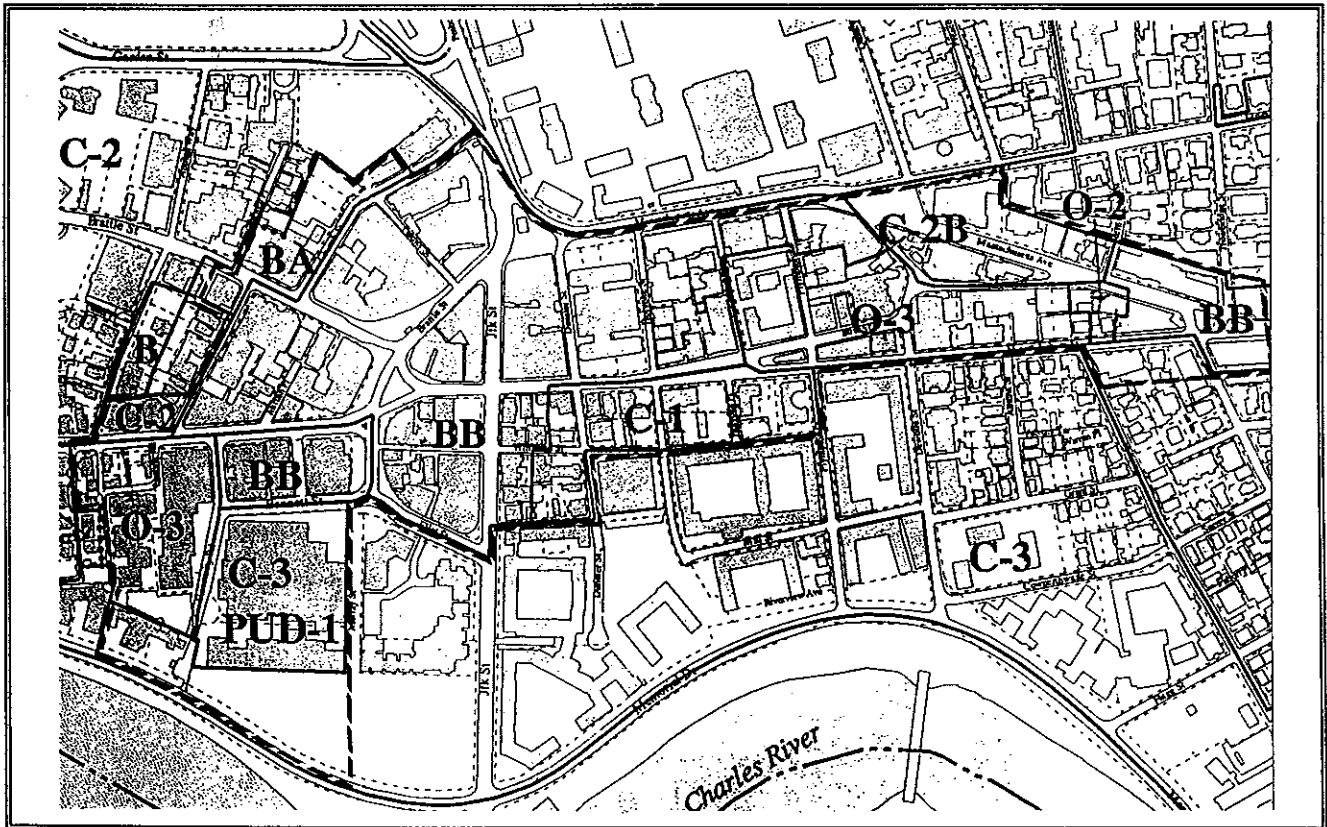


Figure 1. Zoning Map of Harvard Square, with Overlay District boundary.

In conjunction with the 1986 zoning amendments, the Historical Commission nominated an area roughly equal to the overlay district to the National Register of Historic Places (see Fig. 2). The overlay district amendments incorporated the Harvard Square National Register district into the ordinance and adopted bonuses and penalties intended to preserve "contributing" buildings in the National Register district.

At the same time, the Historical Commission gave public assurances that it would not seek to establish a local historic district in Harvard Square. The Harvard Square Historic District Study Committee recognized that commitment at the beginning of its study, but decided to evaluate historic districts among several other possible preservation and development measures in recognition of the City Council's 1995 order.

B. Historic Preservation

Historic preservation, as practiced by municipalities, is an activity that promotes the public welfare by preserving the distinctive characteristics of places and buildings that are significant for their history or architecture. Preservation tools available in Cambridge include the National Register of Historic Places, a Federal listing administered by the Massachusetts Historical Commission; historic districts and preservation restrictions enabled by the Massachusetts General Laws; and local ordinances allowing review of demolitions and designation of landmarks and neighborhood conservation districts.

Historic preservation regulation in Harvard Square is a patchwork of initiatives involving a mixture of federal, state, and local activities. Many buildings are protected to some degree, but area-wide regulation currently exists only through the Harvard Square Overlay District, which cannot prevent demolition or preserve significant features of contributing buildings unless special permit requirements have been triggered.

I. National Register of Historic Places

The National Register of Historic Places is a list of buildings, sites, structures, and objects, as well as districts, that are important in American history, culture, architecture, or archeology. It is a Federal designation that is administered by the Massachusetts Historical Commission. Properties on the National Register are also on a companion list, the State Register of Historic Places. Listing on the Register recognizes the importance of the site to the community, state, or nation, and allows property owners to take advantage of tax incentives for renovation or donation of preservation easements. National Register listing provides state historic preservation officers an opportunity to comment on projects that are funded or permitted by the state or federal governments. Unless a project involves such funds or permits, an owner's plans for a National Register property are not restricted in any way.

In Harvard Square, the National Register has three important applications in historic preservation. As noted above, the Harvard Square National Register District was incorporated into the Harvard Square Overlay District provisions in 1986, affording incentives to preserve buildings that are considered "contributing" to the historic character of the Square. In addition, under M.G.L. Ch. 184 owners of contributing National Register buildings are allowed to take a charitable deduction from their Federal income tax for the value of a preservation restriction donated to a public or non-profit preservation organization (see below). Finally, a Harvard University-Cambridge Historical Commission protocol of 1986 protects approximately twenty Harvard-owned National Register buildings in Harvard Square, as described below.

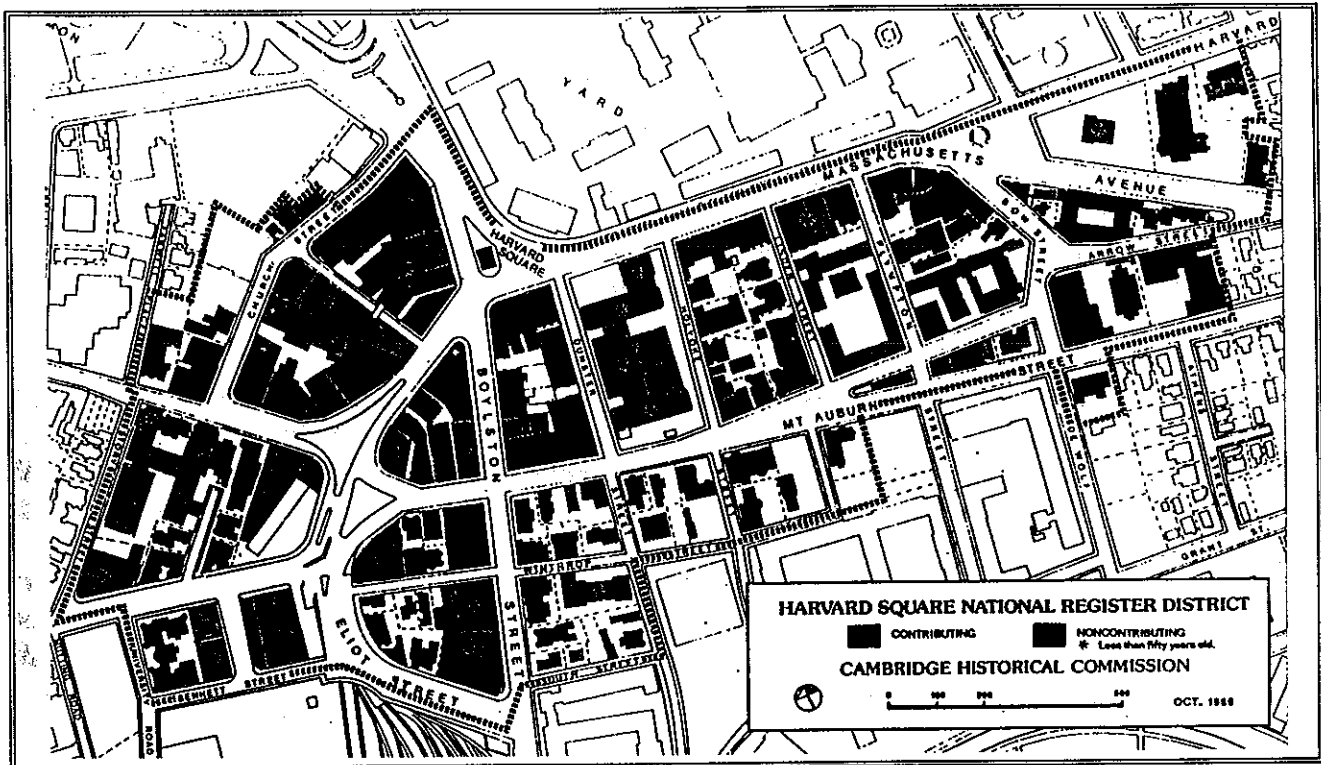


Figure 2. Harvard Square National Register District, with contributing and non-contributing buildings (less than fifty years old as of 1986).

2. Historic Districts

The fundamental tool for historic preservation in Massachusetts is Chapter 40C of the General Laws, which authorizes cities to establish local historic districts by a two-thirds vote of the City Council. An historic district commission such as the Cambridge Historical Commission has authority to review all new construction, additions, and alterations to structures within the district and visible from a public way.

The Cambridge Historical Commission administers two Chapter 40C historic districts. The Old Cambridge Historic District, which included part of Harvard Yard, the Old Burying Ground, and the First Parish Church when it was established in 1963, has been enlarged several times and now extends along Mason and Brattle streets from Church Street to Fresh Pond Parkway. The district includes several stores on the north side of Church Street. These properties were included primarily to protect the setting of the cemetery, but alterations to their storefronts have been reviewed in their commercial context by the Cambridge Historical Commission since 1976.

a. Objectives

The purpose of historic districts is stated in the enabling legislation, Ch. 40C of the General Laws. The Act is intended

to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the Commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.¹

The first Massachusetts historic districts, on Beacon Hill and in Nantucket, were established by special Acts in 1955 following an opinion of the Massachusetts Supreme Judicial Court that such legislation was a constitutional use of the State's power to promote the public welfare. The Massachusetts Court cited a United States Supreme Court decision in the case of Berman vs. Parker (1954).

The concept of the public welfare is broad and inclusive . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.²

Subsequently, the Massachusetts Supreme Judicial Court ruled, in connection with the right of a municipality to prohibit billboards, that "aesthetics alone may justify the exercise of the police power," and quoted Article 97 of the Amendments to the Massachusetts Constitution, which established the right of the people to "the natural, scenic, historic, and aesthetic qualities of their environment."³

The courts have also upheld historic districts on the grounds of their contribution to the economic well-being of a community. The Supreme Judicial Court in the Nantucket opinion noted that "the erection of a few wholly incongruous structures might destroy one of the principal assets of the town."⁴ The courts have noted that these benefits may accrue to the individual property owner as well as to the community at large, but have considered that public purposes are served if the public good, measured in terms of increased property value or business volume, outweighs private costs.⁵ It has been judicially determined that historic district designation does not necessarily constitute a taking of private property without compensation, and it has been noted that many zoning ordinances are as demanding in their application.⁶ Once again, the public benefit is held superior to a reasonable degree of private

¹ Chapter 373, Acts of 1960, §2

² 348 U.S. 25 (1954).

³ John Donnelly & Sons vs. Outdoor Advertising Board (1975).

⁴ 333 Mass. 773, 780 (1955).

⁵ T. J. Reed, Land Use Controls in Historic Areas, 44 Notre Dame Lawyer 3, 387.

⁶ 333 Mass. 773, 778 (1955).

sacrifice, a principle that was upheld by the Appellate Division of the New York Supreme Court in confirming the landmark designation of Grand Central Terminal.⁷ In upholding this designation, the U.S. Supreme Court also ruled that "states or cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city."⁸

Historic districts cannot be enacted easily or quickly. Chapter 40C requires a thorough survey and report on the areas proposed for protection, review and comment by other public agencies, a public hearing with notification of all affected property owners, and passage of the historic district ordinance by the City Council by a two-thirds majority. Once a district has been established, the historic district commission holds the power to review all construction and alterations of structures that will be visible from a public street, sidewalk, or park.

The authority of an historic district commission cannot be arbitrarily exercised. The legislation requires that a commission "shall not make any recommendations or requirement except for the purpose of preventing developments incongruous to the historic aspects or architectural features of the . . . district." The Supreme Judicial Court, in reviewing the Nantucket ordinance in 1955, warned that enforcement actions would need to be carefully circumscribed, since in some instances decisions of an historic district commission might give rise to "peculiar hardship and remoteness from the legitimate purpose of the act" which would amount to unconstitutional applications of it. Accordingly, the legislation establishes a time limit requiring a commission to act on a petition within a given period, and provides for appeal of commission decisions.

b. Administration of Historic Districts

The administration of historic districts is guided by the provisions of Chapter 40C, except as specially provided for in the local ordinance creating the district, or as established as a regulation by an historic district commission.

All buildings of whatever size or function, as well as all structures, including signs, fences, walks, terraces, driveways, walls, light fixtures, or the like, which are "open to view from a public street, public way, public park or public body of water", may fall within the review of an historic district commission.⁹ Building projects that must be reviewed include construction, reconstruction, alteration, erection, demolition, and removal as they affect exterior features of a structure visible from a public street, way, or park. Such features may include the kind, color, and texture of exterior building materials, the color of paint or materials used on exterior surfaces, and the type and style of windows, doors, lights, signs, and other fixtures, unless exempted by the ordinance or by regulation. An historic district commission may also impose dimensional and setback requirements more stringent than required by the zoning code.

⁷ 50 A.D. 2nd 265, 377 N.Y.S. 2nd 20 (1975).

⁸ Penn Central Transportation Co. vs. New York City, 438 U.S. 104 (1978).

⁹ M.G.L. Ch. 40, Section 5.

After reviewing the proposed work, a commission must issue a Certificate of Appropriateness, a Certificate of Hardship, or a Certificate of Nonapplicability, as the case may be. No building or demolition permit for work in a district can be issued by a building department until a certificate has been issued by an historic district commission, unless more than 45 days has elapsed without commission action.¹⁰

The authority of an historic district commission is limited by statute:

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.¹¹

If a commission disapproves an application, it must give its reasons to the applicant in writing. However, commissions are specifically authorized to make recommendations for changes which would make the application acceptable. If the applicant modifies the application to conform to a commission's suggestions, a certificate must then be issued. Appeals from historic district commission decisions may be made to the Superior Court, or, if the ordinance provides, initially to a panel appointed for the purpose. Standing is granted to "the applicant, an owner of adjoining property, an owner of property within the same historic district as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts."¹²

If the ordinance provides for an initial review of an historic district commission's decisions prior to an appeal to the Superior Court, the statute provides that such review is to be made by "a person or persons of competence and experience" appointed by a regional planning agency (in the case of Cambridge, the Metropolitan Area Planning Council). The scope and content of such reviews is not defined by the statute, but in practice such reviews are typically limited to an examination of the procedural aspects of the case; review panels have been reluctant to substitute their judgement for that of the historic district commission. Findings must be rendered within 45 days of the appeal, and are binding unless appealed to Superior Court. Cambridge's existing historic district ordinance does not contain a provision for this type of initial review, although the Harvard Square Historic District Study Committee did propose it for the Historic District. As noted below, there is no comparable initial review with respect to an NCD case.

When an appeal is made to the Superior Court, all "pertinent evidence" shall be heard and the court "shall annul the determination of the commission if it finds the decision . . . to be

¹⁰ Chapter 40C permits as much as 60 days. Section 2.78.060 of the City Code establishes the 45 day period in Cambridge.

¹¹ Chapter 40C, Section 7.

¹² Chapter 40C, Section 5. The City Solicitor has interpreted this definition of standing as including the applicant, any abutter, any owner of property within 100 feet of the applicant's property, and charitable corporations as described. (Letter of Russell B. Higley, March 10, 1999.)

unsupported by the evidence or to exceed the authority of the commission."¹³ In practice, the courts have supported historic district commission decisions unless they have found evidence of arbitrary or capricious actions.

c. Establishment of Historic Districts

Procedures for establishing or expanding an historic district are dictated by Chapter 40C. An historic district study committee must prepare a report on the historical and architectural significance of the buildings, structures or sites to be protected, a map showing the boundaries of the area to be included in the historic district, and an ordinance for consideration by the City Council.

The report must be submitted to the local planning board and the Massachusetts Historical Commission. A public hearing, for which all affected property owners must be given two weeks written notice, must be held no less than sixty days after the report has been released. After the hearing, the historic district commission prepares a final report which takes into account the comments received at the public hearing and the recommendations of the planning board and the state Historical Commission. The report may then be submitted to the City Council, where a two-thirds majority vote is required for adoption. The district or district extension goes into effect when a map showing the boundaries is filed with the registry of deeds.

3. Landmark Designation

Protection of individual buildings in Cambridge is exercised under the authority of Chapter 2.78, Article III of the City Code, which was adopted in 1981 under the City's home rule authority. The ordinance allows individual properties to be designated as protected landmarks using the goals and procedures of Chapter 40C. (It was generally assumed at the time that Chapter 40C did not permit designation of individual buildings as historic districts; although some communities in Massachusetts now designate individual buildings under Chapter 40C, Cambridge continues to designate landmarks under its own ordinance.)

Under the landmark ordinance, the Historical Commission may recommend for designation as a landmark any structure,

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.¹⁴

In most respects, a landmark is designated and administered in a manner similar to an historic district, although the ordinance allows greater flexibility in tailoring the terms of the

¹³ Chapter 40C, section 12A.

¹⁴ Cambridge City Code, §2.78.180.A

designation to accommodate the particular circumstances of the landmarked property. A designation study may be initiated by a petition of ten registered voters, or by the Commission acting on its own. Under an amendment to the ordinance adopted in 1995, the commencement of a landmark designation study allows the Commission to protect the structure from inappropriate change for up to one year to allow preparation of a report and a recommendation to, and action by, the City Council. Landmark designations are implemented by order of the City Council, requiring a simple majority vote, and incorporate, by reference, the Commission's report on the standards and objectives by which applications for changes are to be judged.

A landmark study can be terminated without a recommendation to the City Council if the Commission decides that designation is not warranted. Sometimes, a property owner will decide that it would be more advantageous to donate a preservation easement to the Commission than to have the Commission and the City Council continue with the procedure for landmark designation. As discussed below, a preservation easement granted to the City is ordinarily functionally equivalent to a landmark designation.

Buildings protected as landmarks in Harvard Square include the Read Block, 96 and 98 Winthrop Street, 12 Bow Street, the William Brattle House, and the Blacksmith House (See Fig. 3).

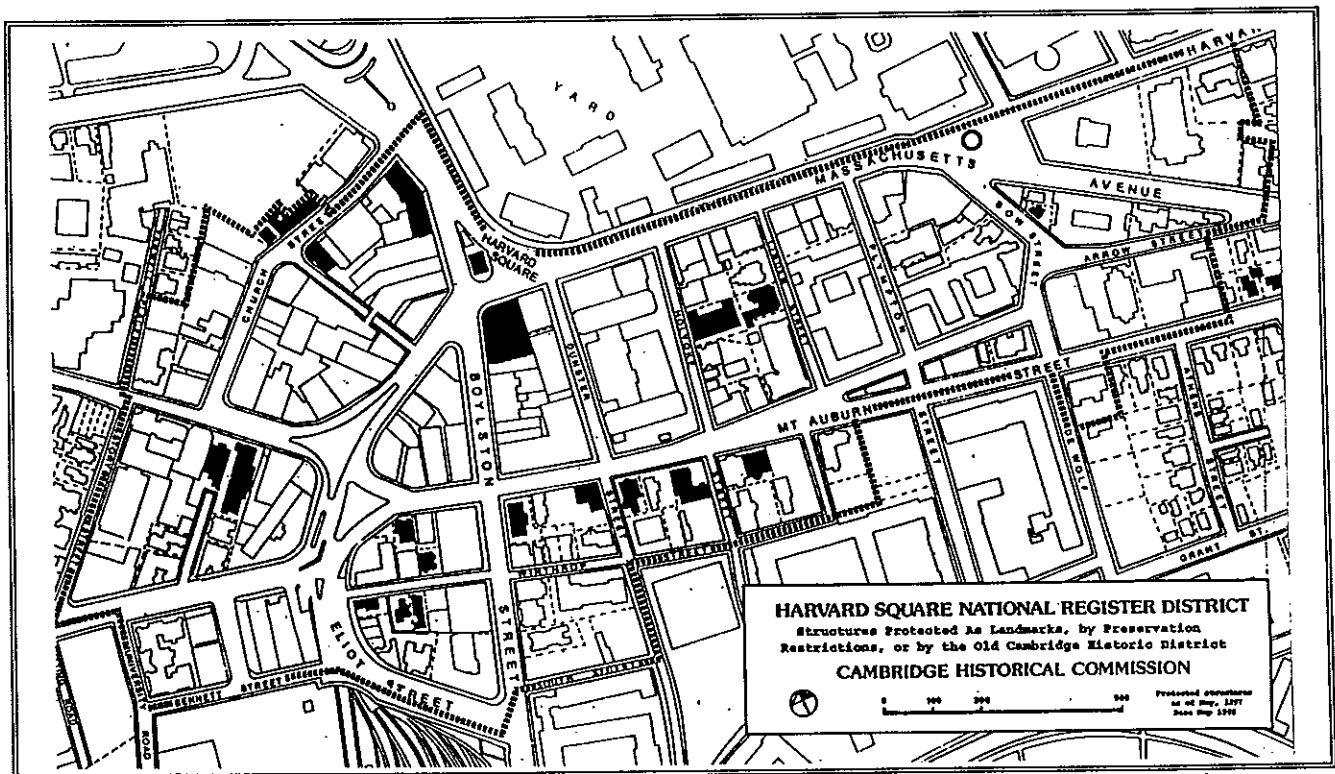


Figure 3. Harvard Square National Register District, with buildings protected as landmarks, by preservation restrictions, or by the Old Cambridge Historic District.

4. Neighborhood Conservation Districts

Neighborhood conservation districts (NCDs), which are established under the same Cambridge ordinance as landmarks, were intended to provide more flexible protection than could be accomplished in an historic district under Chapter 40C. Chapter 2.78, Article III provides a legislative framework within which proposals for NCDs can be drafted by a study committee, evaluated by the Historical Commission, and adopted by the City Council. Districts have been established to serve a wide range of objectives, from preventing excessive infill in Mid Cambridge to reviewing all publicly visible exterior features of buildings in most of the Avon Hill NCD. NCDs can be administered by a commission of neighborhood residents, or by the Historical Commission itself. Harvard Square is now bracketed by two other NCDs, the Half Crown NCD on the southwest and the Mid Cambridge NCD on the northeast.

a. Objectives

The authority to designate neighborhood conservation districts is contained in Chapter 2.78, Article III of the Cambridge City Code, which was enacted by the City Council on March 23, 1981 under the Home Rule amendment to the Massachusetts Constitution.

Chapter 2.78, Article III was enacted to provide a mechanism and framework to decentralize the protection of neighborhoods in Cambridge in a manner beyond that contemplated by Chapter 40C of the Massachusetts General Laws. In drafting the ordinance, the Commission found precedent in Chapter 772 of the Acts of 1975, the act establishing the Boston Landmarks Commission. This act authorized the City of Boston to designate architectural conservation districts, protection areas, and protected landmarks. In drafting the ordinance that became Article III of the Cambridge City Code, the Historical Commission drew on Chapter 772 for many concepts and definitions, but wherever possible drew from the language of Chapter 40C, adapting procedures and authority designed for historic districts to the new task of decentralizing neighborhood protection under neighborhood conservation district procedures.

The purposes of Article III are:

to preserve, conserve and protect the beauty and heritage of the City of Cambridge and to improve the quality of its environment through identification, conservation and maintenance of neighborhoods . . . 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 . . . ; and by furthering these purposes to promote the public welfare by making the city a more attractive and desirable place in which to live and work.

b. Establishment of Neighborhood Conservation Districts

Procedures for the establishment of a neighborhood conservation district are contained in Article III and substantially parallel provisions for establishment of historic districts under Chapter 40C. Any ten registered voters can petition the Historical Commission to request the City Manager to appoint a study committee. Alternatively, the Historical Commission may initiate the study independently. The study committee must prepare a preliminary report which considers the options set forth in Article III for the conservation district's review authority, outlines the exact boundaries of the area to be designated, presents a full architectural and historical justification for the area, and includes an order to implement the district.

The preliminary study report must be submitted to the Historical Commission, the Planning Board, the City Manager, and the City Clerk. A public hearing, for which all affected property owners must be given fourteen days notice, must be held within 45 days of the transmittal of the report.

After the public hearing, the Historical Commission makes a recommendation to the City Council with regard to the designation, which is transmitted with the final designation report to the City Manager and the City Clerk. The order designating the conservation district can be adopted by a simple majority of five votes. The designation becomes effective when a map setting forth the boundaries of the district has been filed with the City Clerk and recorded at the Middlesex County Registry of Deeds. Unless the order provides that the Historical Commission itself will administer the district, it will be administered by a neighborhood conservation district commission consisting of five members and three alternates appointed by the City Manager.

Neighborhood Conservation Districts were established for Mid Cambridge in 1984, for the Half Crown area in 1985, and for Avon Hill in 1998. Though this type of district has worked well in these residential neighborhoods, the Harvard Square Historic District Study Committee decided not to pursue an NCD as a preservation tool for Harvard Square, primarily because the authority of neighborhood conservation districts, established under local ordinance has not been tested in court to the same extent as the authority of historic district commissions established under the General Laws. On the other hand, the inherent flexibility of the NCD concept better accommodates the Study Committee's recommended approach of streamlining the permitting of certain alterations.

c. Administration of Neighborhood Conservation Districts

The administration of neighborhood conservation districts is guided by the provisions of Chapter 2.78, Article III, except as specially provided for in the order creating the district, or as established as a regulation by the commission administering the district.

As in historic districts, all buildings of whatever size or function, as well as all structures, including signs, fences, walks, terraces, driveways, walls, light fixtures, or the like, which are "open to view from a public street, public way, public park or public body of water", may fall

within the jurisdiction of a neighborhood conservation district commission.¹⁵ Building projects that must be reviewed include construction, reconstruction, alteration, erection, demolition, and removal as they affect exterior features of a structure visible from a public street, way, or park. Such features may include the kind, and appearance of exterior building materials, and the type and style of windows, doors, lights, signs, and other fixtures, unless exempted by the order or by regulation. A neighborhood conservation district commission may also impose dimensional and setback requirements more stringent than required by the zoning code.

After reviewing the proposed work, a commission must issue a Certificate of Appropriateness, a Certificate of Hardship, or a Certificate of Nonapplicability, as the case may be. No building or demolition permit for work in a district can be issued by the building department until a certificate has been issued by a conservation district commission, unless more than 45 days has elapsed without commission action.¹⁶

A Certificate of Appropriateness will be issued when a commission has determined that a project is not incongruous with the preservation of the district; this is the most frequently-issued certificate. A Certificate of Nonapplicability is issued for a project which a commission determines involves normal maintenance or does not involve an exterior feature, or one not visible from a public way. Finally, a Certificate of Hardship may be issued when refusal to issue a Certificate of Appropriateness or Nonapplicability would cause the applicant substantial hardship, financial or otherwise, as long as there is no substantial detriment to the district.

Applications for a certificate are made by completing an application form, which includes a description of the proposed alteration, and submitting the application with "such plans, elevations, specifications, material and other information . . . as may be deemed necessary by the Commission to enable it to make a determination."¹⁷ As in historic districts, a commission must determine within fourteen days of an application whether a certificate is required.

In passing on applications for certificates, a commission is required to consider, among other things, the historic and architectural value and significance of the site, building, or structure, the general design, arrangement, texture, material and color of the features involved, and the relationship of these features to similar features of buildings in the surrounding area. In the case of new construction or additions to existing buildings, a commission must consider the size and shape of the building, in relation to both its site and surrounding buildings.¹⁸ A commission can also establish appropriate designs or lists of materials or the like for the guidance of property owners, and can adopt a policy to exclude certain features from control after the district is established.

¹⁵ M.G.L. Ch. 40, Section 5, and similar language in Ch. 2.78.150B.

¹⁶ Chapter 40C permits as much as 60 days. Section 2.78.060 of the City Code establishes the 45 day period in Cambridge. Chapter 2.78, Article III does not specify a time limit for action, but incorporates the procedures outlined in Ch. 40C, Section 11.

¹⁷ Ch. 2.78.210.C.

¹⁸ Chapter 2.78.220A.

A conservation district commission cannot prevent alterations to interior arrangements or architectural features not subject to public view, even though such alterations may still be within a district.¹⁹ Furthermore, landscaping with plants, trees or shrubs is specifically excluded from review, and a commission is not concerned with ordinary maintenance, repair, or replacements that do not involve a change in exterior appearance.²⁰

Finally, it should be noted that the authority of a neighborhood conservation district commission is limited by statute:

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects, architectural significance, or the distinctive character of the landmark or neighborhood conservation district.²¹

Enactment of a neighborhood conservation district in no way requires owners to alter their properties, nor requires restoration of a structure to any historical period. Work must be reviewed only if it involves a change from that which exists upon enactment of the ordinance; maintenance or replacement of an existing feature that is incongruous with the historic or architectural qualities of the district may take place without a certificate as long as there is no change in exterior appearance.

Applications for certificates are first reviewed by the staff to establish jurisdiction. If the matter is beyond the authority of the staff to resolve it is placed on the agenda of the next meeting of the Commission. Most applications are reviewed in a public hearing, with notice given to interested parties. If the application involves an alteration which is considered insubstantial in its effect, however, the commission may approve the matter subject to a ten-day period for comment or objection.

If a commission disapproves an application, it must give its reasons to the applicant in writing. However, commissions are specifically authorized to make recommendations for changes which would make the application acceptable. If the applicant modifies the application to conform to a commission's suggestions, a certificate must then be issued.

d. Appeals in Neighborhood Conservation Districts

Chapter 2.78, Article III, Section 240 applies to all existing neighborhood conservation districts and landmarks and provides for appeals from three types of action: from the designation of a landmark or NCD by the City Council; from a determination of a neighborhood conservation district commission; and from a determination of the Historical Commission. Standing is granted in the first instance to "any person aggrieved;" in the second, to the applicant or ten registered voters; and in the third, to the applicant alone. Appeal of a designation is made to the superior court; appeal from a determination of an NCD commission to the Historical Commission; and appeal from a determination of the Historical

¹⁹ Chapter 2.78.220A.

²⁰ Chapter 2.78.200.

²¹ Chapter 2.78.220.B. This section tracks the language of M.G.L. Ch.40C, Section 7.

Commission to the superior court. The provision of Ch. 40C that allows appeals to a panel appointed by the regional planning agency is not available under the neighborhood conservation ordinance.

5. Demolition Review

The Cambridge demolition delay ordinance, Ch. 2.78, Article II of the City Code; was adopted in 1979, also under the authority of the Home Rule Amendment, to provide interim protection for significant buildings threatened by inappropriate demolition. The ordinance provides that any application for demolition of a building that is fifty years or more old must be referred to the Historical Commission. When the Commission determines that a building is both "significant" (within the definitions contained in the Ordinance) and "preferably preserved," it can delay demolition for up to six months. The six-month delay provides an opportunity to explore the possibility of long-term preservation by landmark designation, donation of a preservation easement, or some other method.

The ordinance applies to all applications for demolition permits for buildings over fifty years old. If the Executive Director makes an initial determination that the building is significant, he refers the application to a public hearing before the Historical Commission. If the Commission finds that the building is both significant and "preferably preserved" in comparison to the replacement project, the Building Commissioner must withhold the demolition permit for six months. This period is intended to allow preservation alternatives to be developed, but no specific measures are required.

Ordinarily, at the conclusion of the delay period the demolition permit will be issued without further review, provided that the property owner has all the necessary permits for the replacement building. The Commission, however, has the option of initiating a landmark designation study for the building. This has the effect of preserving the building for up to one year while a recommendation is prepared for the City Council. The demolition review ordinance does not apply in historic districts or neighborhood conservation districts.

The Study Committee observes that both the recently concluded Read Block and Winthrop Square projects in Harvard Square initially came before the Historical Commission as a result of the demolition delay ordinance, but believes that the years of review of each project would have been significantly reduced if there had been either an historic district or a neighborhood conservation district in effect at the time.

6. Preservation Easements

Chapter 184 of the General Laws allows an owner of a contributing building on the National Register to record a preservation easement or restriction that will protect the structure from demolition or inappropriate alteration. The Cambridge Historical Commission has actively sought preservation easements as an alternative to landmark designation. In Harvard Square, buildings protected by preservation easements include College House, the Brattle Theater, the Pi Eta Club (Grendel's Den), the former Tweeter store on Winthrop Square, and many of the Harvard undergraduate club buildings (see Fig. 3). Preservation easements remain in effect

when an historic district or neighborhood conservation district is enacted. While the specific restrictions contained in a preservation easement may vary from building to building, the more restrictive jurisdiction would apply in the event of an inconsistency between the easement and a district.

7. Harvard-CHC Historic Preservation Protocol

In 1986, Harvard University and the Cambridge Historical Commission adopted a protocol allowing Commission review of alterations to significant Harvard buildings not already included in an historic district or designated as landmarks. This understanding, which was expressed in an exchange of letters on February 10-11, 1986, was reached after eight years of discussions and studies concerning the Commission's plans to nominate a large number of Harvard buildings to the National Register of Historic Places. In resolving these discussions, the University dropped its objections to the nomination of over 200 of its properties to the National Register.

The protocol established the University's intent "to rely on the National Register in [its] planning process" and to consult the Commission about "fundamental changes . . . that would alter the nature of the districts." In response, the Commission recognized the University's "concern that implementation of [the] nominations might lead to designation of the same properties as historic districts, neighborhood conservation districts, or local landmarks," and offered assurances that it did "not foresee the need to pursue local designations" in view of Harvard's support for the nominations.²²

Since 1986, the University has incorporated preservation objectives into its facilities planning and maintenance and has routinely consulted with the Executive Director of the Commission before undertaking alterations, demolition, and new construction affecting National Register properties. While the Commission reserves the right to use other preservation tools to protect significant buildings and areas threatened by unacceptable change, this has never been necessary. The Commission has not moved to designate any Harvard properties without the University's consent, and has exempted Harvard-owned National Register properties from a subsequent expansion of the jurisdiction of the Mid Cambridge Neighborhood Conservation District Commission. Both the Commission and the University have reaffirmed their desire to avoid actions that might diminish the effectiveness of the procedures established under the protocol.

Alterations to many of the buildings in Harvard Yard (outside the Old Cambridge Historic District), as well as at the Law School, Divinity School, and the River Houses have been among the dozens of projects that have been reviewed by the Commission staff under this protocol. The scope of projects has ranged from window replacement and security grill installation to complete renovation of the Harvard Union, Divinity Hall, and the Biology Laboratories. In only one case, the initial proposal for Hauser Hall at the Law School, was it necessary to involve the members of the Commission themselves, and that matter was subsequently resolved to the satisfaction of all parties.

²²

The letters exchanged by the Commission and the University are reproduced in the appendix.

Harvard indicated that it would support the proposal of the Harvard Square Historic District Study Committee and that it would suspend the protocol with regard to its properties within the Harvard Square Historic District, placing its buildings under the jurisdiction of the Cambridge Historical Commission (Fig. 4). The University has not yet taken a position on the proposed Harvard Square Conservation District.

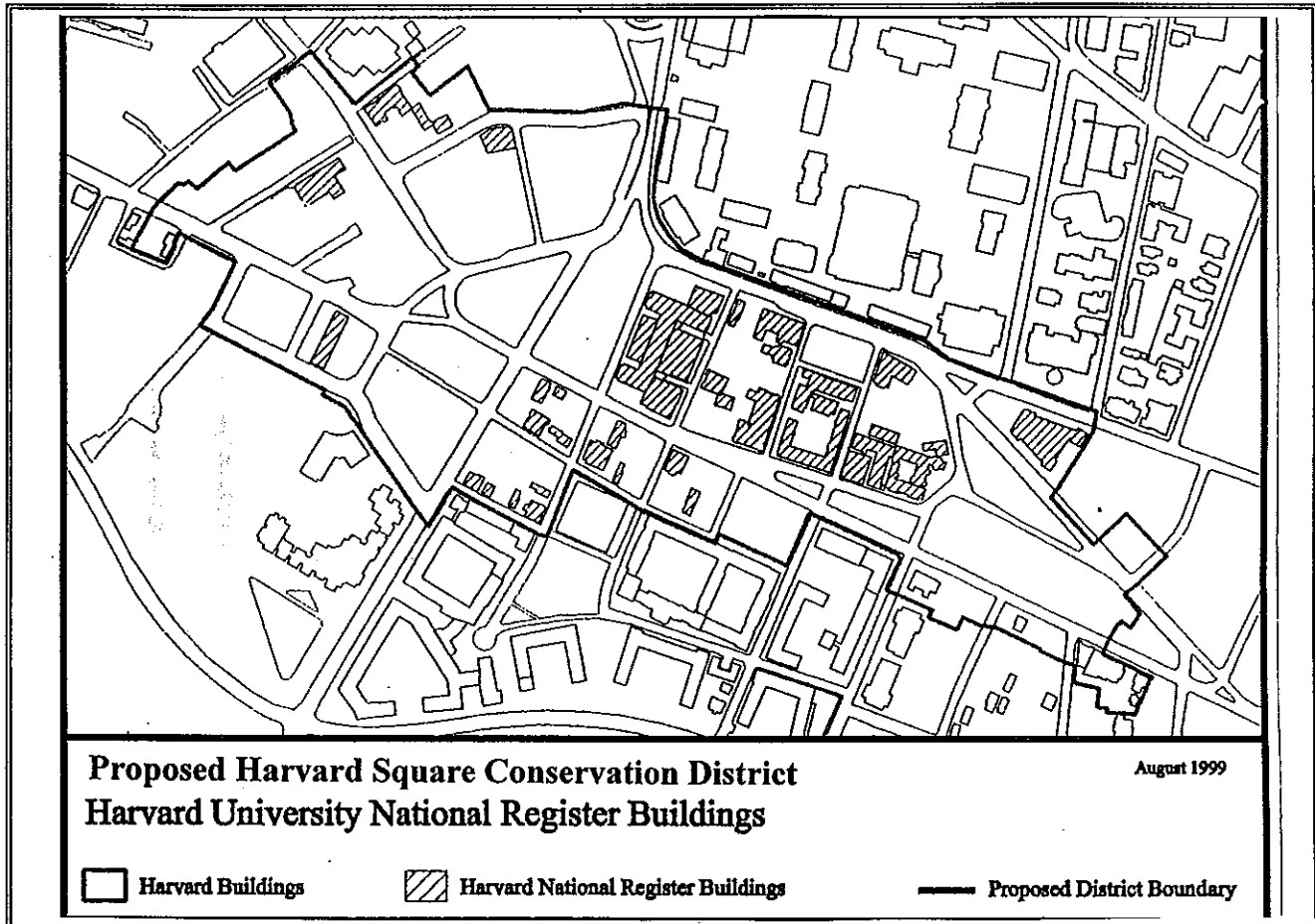


Figure 4. Harvard University properties within the proposed Harvard Square Conservation District.

While Cambridge has an extensive array of historic preservation tools, in practice most preservation initiatives are taken to preserve buildings with obvious historic significance or in response to specific development proposals. While many of Harvard Square's most important buildings are regulated in some way (and almost all are subject to the fifty-year threshold for demolition review), the Square's many modest but still significant contextual structures are likely to remain unprotected until they are in imminent danger. Contextual buildings are sometimes difficult to designate as landmarks, but their loss can adversely affect the character of the urban fabric.

Chapter II.

Alternative Historic Preservation Measures for Harvard Square

On July 31, 1995, the City Council requested that the Historical Commission "submit a plan . . . for a Harvard Square Historic District which would preserve and protect all remaining historical buildings in Harvard Square." The Commission constituted itself as an historic district study committee under the Historic Districts Act, Chapter 40C of the General Laws, and in January, 1997, the City Manager appointed a citizen advisory committee to represent the community during the discussions.

The Historic District Study Committee met fifty-two times during two and a half years to study the character of Harvard Square, the adequacy of existing procedures for guiding change, and the need for additional historic preservation protection. The Committee took a broad view of its role and evaluated many alternatives for preserving Harvard Square buildings before deciding to pursue the establishment of an historic district under the jurisdiction of the Cambridge Historical Commission.

The Historic District Study Committee was also aware of the 1986 protocol between Harvard University and the Cambridge Historical Commission, which provides administrative protection for Harvard-owned contributing buildings on the National Register of Historic Places as described in Chapter II. This protocol includes the Commission's assurance that it will not unilaterally move to place these buildings under local landmark or historic district jurisdiction.

A. Alternatives Considered by the Harvard Square Historic District Study Committee

The following analysis summarizes the main features of each alternative considered by the Historic District Study Committee without going into detail on the many possible permutations of administration scenarios and zoning amendments. The options are presented in their most direct form for the purposes of clarity.

Option A. Strengthen the Harvard Square Overlay District to provide greater emphasis on historic preservation and a lower threshold for projects requiring review.

Option A called for amending the Overlay District to give greater emphasis to historic preservation concerns. Because historic preservation often involves small projects and detailed review of materials and design, such amendments would have to lower the threshold for large project review below the current level of 2,000 square feet and, if possible, broaden the requirements for projects needing special permits to include alterations to contributing buildings. The Harvard Square Development Guidelines would need to be revised to include historic preservation on an equal level with urban design considerations, and to include criteria for review of alterations of original and/or historic building fabric.

Under this option, the Historical Commission's jurisdiction in the Square would not change. The HU-CHC protocol granting review of alterations to Harvard's National Register properties to the Executive Director would remain in effect.

This option was rejected by the Historic District Study Committee because it was apparent that, under the Massachusetts statute, zoning can not be used to provide the close control over alterations to existing buildings that is possible in an historic district.

Option B. Create a "Harvard Square Enhancement District Commission" by establishing a Chapter 40C historic district and reducing or eliminating the jurisdiction of the Harvard Square Overlay District and its Advisory Committee.

This proposal would have combined an historic district with substantial amendments to the Harvard Square Overlay Zone so as to reduce the number of special permits required of developers and property owners. While the base zoning would remain in place, special permit requirements that pertain solely to the Harvard Square Overlay District, such as sky exposure plane, waiver of yard requirements, and parking, would no longer be reviewed by the Harvard Square Advisory Committee and the Planning Board. Instead, these and other design elements would come under the jurisdiction of a new Enhancement District Commission. This commission would review such applications under the Ch. 40C provisions for granting Certificates of Appropriateness, Nonapplicability, or Hardship.

An Enhancement District Commission established under Ch. 40C could make binding decisions that impose dimensional requirements more restrictive than those allowed by zoning. Changes of use and alterations not visible from a public way would be outside of the commission's jurisdiction. Jurisdiction over use issues and non-visible alterations requiring special permits would continue to be reviewed by the Harvard Square Advisory Committee. The provisions of Chapter 2.78 of the City Code regarding demolition review and landmark designation would no longer be in effect in the historic district. The HU-CHC protocol could be renegotiated to place Harvard National Register properties under historic district jurisdiction, or could remain in effect.

The Enhancement District option initially appealed to the Historic District Study Committee because it appeared to offer greater efficiency by concentrating most review authority in one body. However, it was eventually rejected because the concentration of authority might lead to a reduction in venues for public debate over controversial projects.

Option C. Establish a Chapter 40C historic district under the Cambridge Historical Commission while amending zoning regulations to protect current as-of-right FAR provisions in Harvard Square and to allow greater flexibility in review of signs.

This alternative, which was chosen by the Historic District Study Committee, was considered to be the most direct method of increasing historic preservation protection for Harvard Square. A Chapter 40C district would place all new construction, demolition, and most

publicly-visible alterations (except those specifically exempted from review) under the jurisdiction of the Cambridge Historical Commission. Jurisdiction over new development would continue to be shared with the Planning Board, because existing zoning regulations, including the Harvard Square Overlay District, would be left substantially in place (see discussion of possible zoning amendments below). The provisions of Chapter 2.78 of the City Code regarding demolition review and landmark designation are not operative in an historic district. In the context of this option, Harvard University agreed to renegotiate the HU-CHC protocol to place their properties in the proposed district under the jurisdiction of the historic district commission.

Option D. Pursue landmark designation of significant structures on a case-by-case basis and/or in reaction to demolition permit applications

This approach would perpetuate the status quo. While it would require no new legislation, this approach to preservation is reactive, cumbersome, unpredictable to property owners, and labor-intensive. It also lacks the comprehensive nature of a zoning amendment or enactment of an historic district. Existing zoning and demolition review ordinances would remain in effect, as would the HU-CHC protocol.

The status quo approach was considered difficult to implement in a manner consistent with the goals of the Historic District Study Committee because development in Harvard Square is difficult to predict. While some properties could be protected in advance of development, in most cases the commission's actions would only be reactive to development proposals.

After reducing the choices to Options A (Strengthen the Harvard Square Overlay District to provide greater emphasis on historic preservation) and C (Establish a Chapter 40C historic district under the Cambridge Historical Commission), the Historic District Study Committee voted 14-2 to explore the creation of a Harvard Square Historic District. This recommendation was incorporated into the Final Report of the Study Committee and was submitted by the Historical Commission to the City Council in October, 1999.

B. Recommendations of the Harvard Square Neighborhood Conservation District Study Committee

The recommendation of the Historic District Study Committee was sent to the City Council in January, 2000, but the Council took no action. Instead, in July 2000 the Council asked the Historical Commission to study the possible designation of Harvard Square as a Neighborhood Conservation District (NCD) under Chapter 2.78, Article III, of the City Code. The Council requested the Historical Commission "to prepare an alternative version of the proposed Harvard Square Historic District ordinance using the neighborhood conservation district model, utilizing to the extent practicable the *Final Report of the Harvard Square Historic District Study Committee* dated October 7, 1999, as the study for, and the basis of, a Neighborhood Conservation District for the area." On the basis of this request, the City Manager appointed a Harvard Square Neighborhood Conservation District Study Committee, which began to meet in September, 2000.

Ch. 2.78, Article III, establishes an interim protection period for a maximum of one year during the course of an NCD study. During this period, which began on June 29, all applications for building permits are being reviewed by the Historical Commission as though the proposed district were already in effect. The interim guidelines for review are those proposed in the *Final Report*.

The Harvard Square Historic District Study Committee recommended that the City Council "preserve and protect all remaining historical buildings in Harvard Square" by enacting an historic district under Chapter 40C of the General Laws. The *Final Report* defined the boundaries of the proposed district and set forth goals and guidelines that would clarify and facilitate the review of new construction, demolition, and alterations in ways that would respect the Square's commercial vitality while preserving its significant buildings.

A Harvard Square Conservation District established under the City Code provisions relating to neighborhood conservation districts would afford a more flexible method of accomplishing the same goals as an historic district. It would incorporate the guidelines and levels of protection originally envisioned by the Harvard Square Historic District Study Committee, and would be administered by the existing Cambridge Historical Commission. The proposed order establishing the conservation district also mandates a public review of the effectiveness of the district in the fifth year. In some respects, a neighborhood conservation district can be considered more appropriate for Harvard Square than an historic district because it would allow more flexibility to expedite approval of alterations to storefronts and signs by establishing clear standards for approvals and delegating authority to the Executive Director.

Chapter III.

The Proposed Harvard Square Conservation District

The Harvard Square Neighborhood Conservation District Study Committee was charged with adapting the proposed Harvard Square Historic District to the requirements of a neighborhood conservation district. A large part of its task has been to review the previous committee's findings in detail to ensure that historic preservation goals can be met under this new approach.

The Harvard Square Historic District Study Committee felt that an historic district was desirable because it would best "preserve and protect all remaining historical buildings in Harvard Square," in the words of the 1995 Council Order. A Harvard Square Historic District would establish an important presumption about the historic character of the community; initiate a comprehensive process for reviewing demolition, new construction, and alterations; and allow greater flexibility than possible under zoning alone to seek appropriate changes in development proposals. Decisions of historic district commissions are binding: demolitions and inappropriate alterations can be prevented, and proposals for new construction can be reviewed in the context of the historic district. Finally, the Study Committee noted that the Massachusetts Historic Districts Act has been in effect for over 35 years, and has been used in Cambridge since 1963. It is a familiar and proven method for protecting historic areas.

The Harvard Square NCD Study Committee feels that a neighborhood conservation district can be as effective in Harvard Square as an historic district. While NCDs are established under city ordinance rather than under state statute, the objectives, procedures, and levels of review can closely parallel those of an historic district. The City Council has adopted orders establishing three neighborhood conservation districts since the enactment of Ch. 2.78, Article III in 1981, and approximately 2,500 buildings are now protected in this manner. While Cambridge's Neighborhood Conservation District approach to historic preservation has not been tested in court, the city's NCD commissions have successfully administered approximately 2,200 cases involving alterations, demolitions, and new construction.

The Harvard Square NCD Study Committee recommends both the establishment of a neighborhood conservation district under Ch. 2.78, Article III of the City Code and amendments to (i) the zoning ordinance to maintain the existing density allowed in the Harvard Square Overlay District and (ii) the NCD ordinance to clarify and rationalize its appeal provisions and to extend the time within which action must be taken and (iii) the Historical Commission ordinance to provide for a Harvard Square representative on the Commission. The recommendations of the Study Committee are summarized in the proposed City Council order establishing the Harvard Square Conservation District and the amendment to the Zoning Code immediately following the Summary of this report.

A. Harvard Square Conservation District

The Study Committee's recommendation for a Harvard Square Conservation District can be summarized as follows:

A Neighborhood Conservation District established under Ch. 2.78, Article III of the City Code and administered by the existing Cambridge Historical Commission, in conjunction with zoning amendments that would maintain current FAR provisions in Harvard Square, clarification of the appeals procedure, and expansion of the membership of the Historical Commission can be as effective as an historic district in preserving and protecting the remaining historical buildings in Harvard Square while encouraging the architectural diversity that characterizes the area.

As in an historic district, the Cambridge Historical Commission would have binding review over demolition, new construction, and publicly-visible exterior alterations to existing buildings, and could, in appropriate cases, impose dimensional and set-back requirements in addition to those required by zoning. The existence of binding conservation district review would make it feasible to insulate the existing base zoning in Harvard Square from city-wide rezoning initiatives.²³

The Study Committee recommends that the Harvard Square Conservation District be administered by the existing Cambridge Historical Commission, which would add Harvard Square to the districts already under its jurisdiction. Although the conservation district could be administered by a new commission specifically appointed for the purpose, the Study Committee felt that the existing Cambridge Historical Commission has a clear track record in equitably managing change in existing historic districts.

The Study Committee recognizes that Harvard Square is a unique mixed-use environment in which commercial vitality is an essential ingredient. Harvard Square is not the classic New England residential neighborhood that the Massachusetts historic district statute, M.G.L. Ch. 40C, seems intended to protect. Accordingly, the Study Committee recommends the adoption of the goals and guidelines described in Chapters V and VI as regulations to guide the Cambridge Historical Commission. Once adopted as regulations, the goals and guidelines may be amended from time to time following a public hearing.

The Study Committee recommends that the staff of the Historical Commission be given authority to approve applications for certain alterations that conform to the guidelines, as described in the proposed regulations. Appeals from administrative decisions will be made to the full Cambridge Historical Commission.

The Study Committee recommends that the Harvard Square Advisory Committee retain all its present responsibility for reviewing large projects and making recommendations to the

²³

See the following pages for a full discussion of the proposed changes.

Planning Board. The Cambridge Historical Commission will continue to work with the Advisory Committee on projects that are under the jurisdiction of both boards.

The Study Committee recommends that the appeals provisions of Ch. 2.78, Article III be amended to broaden standing to appeal an Historical Commission determination from the applicant alone to "the applicant, the abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the subject property."²⁴

The Study Committee also recommends that the Order designating the Harvard Square Conservation District mandate that the Historical Commission conduct a public review of the effectiveness of the district during the fifth year of its operation and, following a public hearing, report its recommendation to the City Council for continuation, revision, or repeal of the Order establishing the district. Such a mandate for review would help ensure that the district will continue to meet the objectives set forth in this report, and provide a logical opportunity for amendments to be introduced after the district has been in effect for a reasonable period of time.

B. Recommended Changes to Harvard Square Zoning.

The NCD Study Committee continues to recommend adoption of two amendments to the Harvard Square Overlay Zone in conjunction with the proposal for a Harvard Square Conservation District. Protection of existing FAR from city-wide downzoning measures would allow property owners some assurance that their rights would be preserved in a conservation district, while the authority of a conservation district commission to be more restrictive than zoning can protect the character of the district from inappropriate density.

Second, more flexibility in reviewing signs would allow retention of some important character-defining elements in Harvard Square. Guidelines for reviewing signs are discussed in Chapter IV; however, it should be noted that most signs require building permits, which are issued subject to conservation district review, and also that the Cambridge Historical Commission may be more focussed on enforcement of violations of the sign code than agencies with city-wide responsibilities.

The Study Committee feels that protection of existing FAR in the Harvard Square Conservation District would be a potentially useful urban design tool. An FAR of 4.0, with the height limits set by the Harvard Square Overlay zone, may be appropriate in some locations. The Committee understands that height and density can be appropriate in dense urban conditions, and that there may be sites in Harvard Square where even some additional height or density may be desirable.²⁵ It is equally the case that there may be other locations where the FAR allowed by the zoning code may be inappropriate in the context of a proposed development site. In such locations, the Cambridge Historical Commission could reasonably exercise its authority to impose dimensions more restrictive than allowed by zoning. In any

²⁴ See pages 18-20 for a discussion of the proposed amendments.

²⁵ Power to increase allowable FAR for specific projects would remain with the Planning Board and/or BZA, subject to approval of the Historical Commission.

event, the Commission could exercise its authority to limit rooftop mechanical structures, which are now exempt from height limits.

Recent examples of both situations exist in Harvard Square. At Winthrop Square, the Intercontinental Companies project approved by the Cambridge Historical Commission and the Planning Board in 1997 involved an increase in allowable height that all parties agreed was a reasonable trade-off for the restoration of two buildings and the inclusion of condominiums. Between Mount Auburn and Arrow streets, however, a proposed project with the same allowable FAR, but sharing property lines with several much smaller buildings, has been stalled by community opposition. In this case, a lower overall height and additional setbacks might make the project more acceptable.

The Study Committee considers the following zoning amendments to be an essential part of the Harvard Square Conservation District proposal, and recommends that the conservation district not take effect until the intent of these zoning amendments has been incorporated into the Cambridge Zoning Code.²⁶

1. Floor Area Ratio Provisions.

The current Overlay District makes no modification to the general FAR limits imposed by the Zoning Ordinance for the constituent base zoning districts that occur within the Overlay District (e.g. Business B, Office 3, Business A, etc.). Therefore, any change to those provisions on a city-wide basis results in changes to FAR limits within the Harvard Square Overlay District. To ensure that future changes in FAR for zoning districts occurring within the Overlay District are only made in Harvard Square when those changes are specifically intended to apply to the area, a new provision establishing a Harvard Square Historic Overlay District would establish FAR limits that are specific to Harvard Square (presumably the current provisions) and remain unchanged when city-wide provisions are modified.

2. Sign Regulations.

The current sign ordinance establishes a series of limitations for the size, number, and lighting for signs throughout the city, and these can only be altered by variance; those provisions are designed to be basic protection against the most clearly inappropriate signs, everywhere in the city. Those same provisions, however, prevent well-designed signs that respond creatively to their specific building context when they exceed those specified limits. With careful, enforceable review of signs within the context of an historic district, many of the inflexible, prescriptive provisions of the sign ordinance could be eliminated. This approach could encourage more interesting and creative sign design in a commercial area, where such elements can be a potentially-positive aspect of the retail environment.

The basic provisions of the sign ordinance that would be retained are: (a) the total area of signs permitted on a lot (i.e., one square foot of sign area for each foot of a building or store frontage facing a street); (b) the prohibition of signs higher than 20 feet above the sidewalk,

²⁶ The following text was provided by Lester Barber, Zoning Administrator for the Cambridge Community Development Department.

for signs on the exterior of the building, including any signs above the roof of a building; (c) sign regulations in most residential districts.

Among provisions that would be eliminated from zoning and transferred to Cambridge Historical Commission review are: (a) current limitations on the number of projecting and free-standing signs (now only one projecting sign per store and two free-standing signs per lot are allowed); (b) current limitations on the size of individual wall, projecting and freestanding signs (now freestanding signs may be, in total, 30 square feet in area, projecting signs may not be larger than 13 square feet, and wall signs, while proportional to the width of the storefront, may never be larger than 60 square feet); (c) current limitations on illumination (now freestanding and projecting signs may not be internally illuminated, and wall signs, if so illuminated, have a dimensional limitation of 30 inches in height); (d) the current restriction that limits signs on the interior of a building to a height no greater than 20 feet; (e) the current severe restriction on business signs in the Bow and Arrow Street area because they are in a residential district.

C. Recommended Amendments to Ch. 2.78

The Harvard Square NCD Study Committee determined that Ch. 2.78 of the City Code should be amended to expand the membership of the Cambridge Historical Commission, extend the time within which a commission must act, and clarify the basis for appeals in neighborhood conservation districts

With regard to appeals, the Committee observed that Section 2.78.240 was not clearly drafted and contains varying and inequitable definitions of standing to appeal determinations of commissions. The term “person aggrieved” is not defined. Ten registered voters, living anywhere in the city, should not be given standing to appeal a commission determination when their interests might not be directly affected. Although the ordinance states elsewhere that NCDs may be administered by the Historical Commission itself, the nature of appeals that might result from such jurisdiction is not specified. Finally, the Law Department questioned the appropriateness of the provision that permits an appeal to the superior court of an action by the City Council designating a landmark or a neighborhood conservation district.

The Committee’s proposed amendment of Section 2.78.240 would strike the existing section in its entirety. It includes a definition of standing based, for convenience, on the definition of “parties in interest” in the Massachusetts Zoning Act, Ch. 40A Section 11. This definition – “the applicant, the abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the subject property” – would expand the standing allowed under either M.G.L. Ch. 40C, which includes owners within 100 feet, or Ch. 2.78.240, which includes only the applicant. Standing as defined in the proposed amendments would include all those who are, by ordinary administrative practice, given notice of Commission proceedings.

The amendment also clarifies the distinction between appeals from determinations of neighborhood conservation district commissions to the Cambridge Historical Commission and appeals from determinations of the Cambridge Historical Commission to the Superior Court. In both cases, the amendments provide that a determination may be overruled if it is

unsupported by evidence in the record or exceeds the authority of the commission in question. The grounds for appeals must be specified with regard to way in which the commission has exceeded its authority or in which its determination is inconsistent with the specific goals, standards, and criteria established for the particular landmark or district.

A related amendment allows a commission to extend the time in which it must act on an application for an additional forty-five days. Currently, the Commission meets once a month, but must render a decision on an application within forty-five days of its receipt. While most applicants will grant a continuance if faced with the prospect of a denial, this deadline imposes significant pressure on commissions to act in a way that may be inconsistent with full public discussion. The proposed amendment also allows ten landowners or residents of a district to request such an extension.

Finally, another amendment expands the qualifications for membership in the Cambridge Historical Commission by requiring that one member or alternate be a resident or property owner in the proposed district.

The proposed amendment relating to appeals generated a discussion that had not been resolved by the time of the Historical Commission's public hearing on the proposed Harvard Square Conservation District on November 2nd. At a continuation of that hearing on November 16th, the Commission voted to transmit this report to the City Council with the advice that discussions on the proposed amendments would be continued until the hearing of the Council's Ordinance Committee.

D. Limitations

The Study Committee is aware of the limitations of historic preservation as a tool for preserving community character. The continued vitality of Harvard Square depends as much on fostering architectural creativity and excitement as it does on protecting significant buildings and references to our past.

In addition, the power of an historic district or neighborhood conservation district commission in Massachusetts extends only to the appearance of features that are visible from a public way. Uses, which many citizens are eager to control, are not subject to historic district or conservation district approval. It is important, therefore, to recognize that the Cambridge Historical Commission cannot be expected to preserve particular enterprises and the character they generate.