

LAND COURT
FILED

COMMONWEALTH OF MASSACHUSETTS 23 JUL 27 AM 11:31

SUFFOLK, ss.

LAND COURT DEPARTMENT
DOCKET NO. 23MISC000338 (Vhay, J.)

MISSION ASSOCIATES, LLC,)
)
Plaintiff,)
)
v.)
)
BUILDING COMMISSIONER FOR THE)
CITY OF BOSTON, and BOSTON)
LANDMARKS COMMISSION,)
)
Defendants.)

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Now come the Defendants, the Building Commissioner for the City of Boston, (hereinafter, the "Commissioner") and the Boston Landmarks Commission (hereinafter, the "BLC") to respectfully request this Court to deny Plaintiff's Motion for Preliminary Injunction. As grounds therefore, Defendants state that the Plaintiff has failed to exhaust its administrative remedies, thus depriving this Court of jurisdiction, and its request fails to meet the threshold requirements necessary to obtain a preliminary injunction. Accordingly, the Motion for Preliminary Injunction must be denied.

FACTUAL BACKGROUND AND RELEVANT LEGAL FRAMEWORK

In September of 2004, the BLC officially designated 80, 90, and 100 Smith Street as a historic landmark¹ pursuant to the requirements of Chapter 772 of the Acts of 1975 (hereinafter, the "Historic Preservation Act" or "Act"). A true and accurate copy of the designation, recorded

¹ BLC designated the entire Mission Church Complex as a historic landmark, which includes other structures not owned by the Plaintiff and not relevant to this matter.

with the Suffolk County Registry of Deeds at Book 39951, Page 264, is attached hereto as **Exhibit 1**. Any structures designated as historic landmarks are excluded from the procedures outlined in Article 85 of the Boston Zoning Code. Attached as **Exhibit 2** to this opposition is a true and accurate copy of Article 85.² Article 85 exempts from its provisions any building “designated as a Landmark by the Landmarks Commission pursuant to said Chapter 772.” Article 85, § 85-3(2)(b)(2). The Act creates a special process for the alteration and demolition of historic structures unique from Article 85. The Act mandates that “[n]o permit shall be issued by the building commissioner for any reconstruction, restoration, exterior or interior replacement or alteration *or demolition* of any landmark” unless the permit application is accompanied by a certificate from the Boston Landmarks Commission authorizing the changes. Historic Preservation Act, § 5(a) (emphasis added). The BLC may approve an alteration or demolition plan for a historic structure by issuing a “Certificate of Design Approval” pursuant to Section 7 of the Act. In cases where a deteriorating landmark poses a threat to public safety, a property owner may apply for a “Certificate of Exemption” from the BLC, which the BLC is required to issue if “the building commissioner shall have certified as being required to remove or rectify a condition dangerous to the public safety.” *Id.* at § 8(ii). In practice, a necessary demolition often occurs before the BLC issues a certificate of exemption, but the clear purpose of the Act is to involve the BLC in any decision of the Commissioner to demolish a historic structure so that the Commissioner may balance the necessity of any demolition against the historic preservation interest codified by the Act.

On June 6, 2005, the BLC authorized Plaintiff to demolish the structures on Smith Street subject to Plaintiff’s preservation of certain historically significant design elements. Pl’s.

² A current version of the Boston Zoning Code is maintained in an online repository by the Boston Planning and Development Agency at https://library.municode.com/ma/boston/codes/redevelopment_authority. Defendants’ downloaded Exhibit 2 from that repository on July 25, 2023.

First-Amended Verified Compl. (hereinafter, “Pl’s. Compl.”) Ex. 1. By its own terms, that certificate of design approval expired after two years. See id. Attached to this opposition as **Exhibit 3** is a true and accurate copy of the regulations of the BLC adopted pursuant to its authority under Section 3 of the Historic Preservation Act. Article 4.7 of those regulations identifies that all certificates of design approval expire after two years. The regulations have existed in their current form since 1986. After allowing the 2005 approval to lapse, Plaintiff sought to extend the relief from the BLC in 2009, and the BLC reauthorized the demolition of the structures on August 26, 2009. A true and accurate copy of that decision is attached hereto as **Exhibit 4**. Plaintiff did not carry out that demolition, and that relief expired in 2011. In the intervening years since the renewed approval, the City of Boston Inspectional Services Department (hereinafter, “ISD”), which is led by the Commissioner, has documented the deterioration of the historic structures under Plaintiff’s care.

On February 17, 2011, ISD issued a violation notice to Mission Associates concerning major cracks in the brick facade at 100 Smith Street. Plaintiff applied for a building permit to remedy the issue, and its engineer submitted a report to ISD certifying that the repairs were appropriate. Attached as **Exhibit 5** are certified, true, and accurate copies of those records on file with ISD. Plaintiff eagerly completed these repairs in anticipation of further demolition approvals from the BLC, and its engineer concluded that, in 2011, 100 Smith Street was not in danger of collapse. See Exhibit 5. It also explained that Plaintiff could, given that it completed necessary maintenance, preserve the structure and prevent further deterioration. It is clear from this action that Plaintiff ignored those recommendations.

In 2022, Plaintiff sought permission from the Boston Planning and Development Agency (hereinafter, “BPDA”) to resurrect their development of 80 and 100 Smith Street under a new

design. Pl's. Compl., ¶ 21. It was not until then that Plaintiff retained an engineer to evaluate the structures despite retaining ownership of the properties in the intervening years. Based upon the concerns raised by the newly acquired engineer, ISD sent building inspectors to 80 and 100 Smith Street to evaluate the public safety risk. The inspectors visited each property twice and issued violations identifying that the existing conditions made the properties unsafe and dangerous. Pl's. Compl., ¶ ¶ 27, 28, 35, 36. Neither inspector ordered Plaintiff to demolish the structures, instead they required that Plaintiff make all necessary repairs. See Pls. Compl, Exs. 6, 7, & 9. It is within the discretion of local building officials to determine whether an unsafe structure must be made safe by the owner or demolished. See G.L. c. 149, §§ 6 to 9. A property owner may challenge the order of a local inspector by appealing to the Superior Court under the terms of G.L. c. 139, § 2. See G.L. c. 149, § 10. Plaintiffs now request that this Court order a demolition of the historic structures rather than the repairs requested by the inspectors.

On April 18, 2023, the Commissioner forwarded a chain of emails between himself and the BLC to Plaintiff's agent, David MacKay, and asked if the structures at 80 and 100 Smith Street could be saved for restoration due to their historical significance. See Pl's. Compl., Ex. 8. Plaintiff did not respond to that request. Nevertheless, on May 19, 2023, ISD issued a demolition permit to Plaintiff purportedly to correct the unsafe and dangerous conditions at the property. See Pl's. Compl., Ex. 11. On June 6, 2023, the Commissioner issued a stop work order before Plaintiff could demolish the historic structures because Plaintiff had not submitted the required contractor license documentation for the demolition permit. See Pl's. Compl., Ex. 14. Plaintiff admits that it failed to submit the required documents for the permit, but nevertheless characterizes the stop work order as "arbitrary." Pl's. Compl., ¶ 48.

On July 21, 2023, Plaintiff attempted to file an administrative appeal of the stop work order with the Boston Zoning Board of Appeal pursuant to Section 8 of Chapter 665 of the Acts of 1956.³ The Board of Appeal rejected the filing erroneously. See Pl.’s. Compl., ¶ 58. Attached as **Exhibit 6** to this opposition is a true and accurate copy of the Board of Appeal record indicating that the appeal of the stop work order was docketed on July 24, 2023. On July 21, 2023, Plaintiff filed its First-Amended Verified Complaint and its Motion for Preliminary Injunction. It did not wait even a single day to allow the Board of Appeal to correct its administrative mistake.

DISCUSSION

Plaintiff cannot demonstrate that it is entitled to a preliminary injunction ordering the Commissioner to allow it to demolish a historic structure for several reasons. First, Plaintiff has failed to exhaust its administrative remedy of appeal to the Board of Appeal prior to filing this lawsuit. Second, Plaintiff cannot demonstrate that the Commissioner “arbitrarily” stopped work under its demolition permit where it admits that it failed to submit all required permit documents. Third, Plaintiff cannot demonstrate that it will suffer any irreparable harm by having to follow the statutorily prescribed process required to receive a building or demolition permit for a historic structure. Fourth, the guaranteed harm to the City and its residents by demolition of these historic buildings far outweighs the speculative harm to the Plaintiff in this case. And finally, it is not in the public interest to allow Plaintiff to circumvent the historic preservation and development process by means of an injunction where its own neglect has resulted in the existing conditions of the buildings at 80 and 100 Smith Street.

³ Also known as the Boston Zoning Enabling Act, Chapter 665, Section 8 allows “any person aggrieved by reason of being refused a permit by any administrative official under the provisions of the state building code or by reason of any order or decision of the building commissioner or other administrative official in violation of any provision of the state building code or any zoning regulation or amendment thereof adopted under the state building code [to] appeal to said board of appeal within forty-five days after such refusal. . .”

I. This Court Lacks Jurisdiction to Hear Plaintiff's Request for a Preliminary Injunction Because the Plaintiff Has Not Exhausted its Administrative Remedies

“As a general rule, where an administrative procedure is available, we require a party seeking declaratory relief first to exhaust the opportunities for an administrative remedy.” Space Bldg. Corp. v. Comm'r of Revenue, 413 Mass. 445, 448 (1992). “Exceptions to the exhaustion requirement are sometimes made in extraordinary circumstances, as when the administrative remedy is inadequate (e.g., the administrative board does not have jurisdiction to hear the plaintiff's complaint), or the issues in the case are of such public significance that the outcome will affect numerous persons in addition to the plaintiffs, or where there is no dispute about the facts, and the issue involves merely a question of law.” Balcam v. Town of Hingham, 41 Mass. App. Ct. 260, 266-67 (1996).⁴

Here, as explained above, Plaintiff can appeal any decision of the Commissioner to the Board of Appeal pursuant to Section 8 of Chapter 665 of the Acts of 1956. Although Plaintiff's appeal was initially rejected due to a clerical error, the Board remedied its error on the next business day. Plaintiff's sole argument that an appeal to the Board is “inadequate” is that the Board lacks the ability to offer a “sober analysis” of the Commissioner's actions and so could never find that he acted in an arbitrary fashion. Pl's. Memorandum in Support of its Preliminary Injunction (hereinafter, “Pl's. PI MoL”), p. 12-13. Plaintiff does not offer a legal citation on this point, and they cannot because it is well established that in challenges to permits unrelated to the validity of zoning by-laws the “exhaustion of administrative remedies is required.” Id. at 267. To the extent that Plaintiff claims that an appeal to the Board would be futile, futility is an exceedingly narrow exception to standard requirement to exhaust administrative remedies. See

⁴ There are also certain statutory exemptions to this requirement where the “validity or extent” of a zoning law is in question. Id. at 267. Here, as explained above, Article 85 does not apply to the demolition of a historic structure. Instead, “[t]he gravamen of this argument concerns the effect of the permit, rather than any interpretation of the by-law. In such circumstances, exhaustion of administrative remedies is required.” Id.

Athol Mem'l Hosp. v. Comm'r of Div. of Med. Assistance, 437 Mass. 417, 426 (2002). It requires virtual certainty that the relevant venue would render a particular decision. See Daddario v. Cape Cod Comm'n, 56 Mass. App. Ct. 764, 770 (2002). Here, a speculative allegation that the Board lacks sufficient independence to challenge the actions of the Commissioner is insufficient to invoke the futility exception.

II. Plaintiff Cannot Show it is Entitled to a Preliminary Injunction Ordering the Demolition of its Buildings

The party seeking a temporary restraining order or preliminary injunction must show “(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the [moving party’s] likelihood of success on the merits, the risk of irreparable harm to the [moving party] outweighs the potential harm to the [nonmoving party] in granting the injunction.” Loyal Order of Moose, Inc., Yarmouth Lodge #2270 v. Board of Health of Yarmouth, 439 Mass. 597, 601 (2003) (quoting Tri-Nel Mgt., Inc., v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001)).

Where a party seeks to enjoin government action, the court must also “determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” Loyal Order of Moose Inc., Yarmouth Lodge #2270, 439 Mass. at 601 (quoting Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984)). The standard used to consider a request for a temporary restraining order is the same as that used for a preliminary injunction. G6 Hospitality Property LLC, v. Town of Braintree Board of Health, WL 11565471 (Mass. Super. 2017) (citing Quincy Cablesystems, Inc. v. Sully’s Bar, Inc., 640 F.Supp. 1159 (D.Mass. 1986)). Within this analytical framework, this Court should deny Plaintiff’s request for a preliminary injunction.

A. Plaintiff Cannot Demonstrate a Likelihood of Success on the Merits

In order to succeed in its request for a preliminary injunction, the Plaintiff must demonstrate a likelihood of success on the merits. Packaging Indus. Grp., Inc. v. Cheney, 380 Mass. 609, 617 (1980). Specifically, in challenging the revocation of a permit, Plaintiff must show that the building official acted in defiance of the “independent judgment [and] good faith to which [it] was entitled[.]” Castelli v. Bd. of Selectmen of Seekonk, 15 Mass. App. Ct. 711, 714 (1983), or in an otherwise arbitrary and capricious manner. See Jadowe v. Town Of Dartmouth, 74 Mass. App. Ct. 1127 (2009) (unpublished).

Here, Plaintiff admits that it failed to submit all required documents needed for its demolition permit. Pl’s. Compl., ¶ 48. Revocation on that basis is not arbitrary. To the extent that Plaintiff also contends that the Commissioner’s failure to reinstate the permit after they submitted the required documentation was arbitrary, Plaintiff does not identify anything that would entitle them to a demolition permit in this instance. Indeed, the Commissioner may *only* issue a demolition permit for a historic structure upon *their* determination that the structure is a threat to public safety. Historical Preservation Act, § 8 (ii). Determination of whether a structure poses a threat to public safety is reserved to the Commissioner by statute. See G.L. c. 149, §§ 6 to 9; Nichols Coll. v. Bldg. Inspector of Dudley, No. 051134, 2005 WL 2009665, at *2 (Mass. Super. June 30, 2005). Here, where the decision to permit the demolition of a historic structure is reserved to the Commissioner’s judgment, it is not an act that can be compelled by the order of mandamus sought by Plaintiff. See Mederi, Inc. v. City of Salem, 488 Mass. 60, 66 (2021); see also Davis v. Zoning Bd. of Chatham, 52 Mass. App. Ct. 349, 355 (2001) (explaining that denial of zoning relief even if the applicant meets statutory requirements is not arbitrary where the zoning board retains discretion to deny permit). Furthermore, even if this Court disagrees that the Commissioner retains discretion over issuing a demolition permit in this instance, “relief in the

nature of mandamus is extraordinary and may not be granted except to prevent a failure of justice in instances where there is no other adequate remedy.” Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n, 397 Mass. 341, 344 (1986). As discussed above, Plaintiff may appeal the Commissioner’s decision to the Board of Appeal.

B. Plaintiff Cannot Demonstrate Irreparable Harm as a Result of the Commissioner’s Actions

Should the Court find that there is a reasonable likelihood that Plaintiff will succeed on the merits, the Court must then find that the moving party has demonstrated that it will suffer irreparable harm not capable of remediation by a final judgment in law or equity. Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001). The Plaintiff does not make this requisite showing of irreparable harm.

The only harm Plaintiff identifies is a potential risk of liability as the result of a collapsed building. PI’s. PI MoL, p. 13. Those potential liabilities are speculative at best. Plaintiff’s engineer documents serious conditions of disrepair at 80 and 100 Smith Street. However, his 2022 reports are replete with speculative language indicating that he cannot determine whether the conditions will result in the collapse of the structures in the near future. PI’s. Compl., Exs. 3, 4, & 5. His 2023 letters further highlight the speculative nature of his findings. He concludes, for both 80 and 100 Smith Street, that “there is no way of telling when a catastrophic collapse can occur.” PI’s. Compl., Ex 10. Granting a preliminary injunction requires an “injury that is not remote or speculative, but is actual and imminent.” Exeter Grp., Inc. v. Sivan, No. 20050628BLS2, 2005 WL 1477735, at *6 (Mass. Super. Mar. 24, 2005), quoting Sierra Club v. Larson, 769 F.Sup. 420, 422 (D .Mass. 1991). The speculative “liability” Plaintiff faces is most likely a reference to judgments in potential tort litigation, which is solely an economic loss. Typically, economic loss alone is insufficient to demonstrate irreparable harm. See Hull Mun.

Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 643 (1987).

Moreover, demolition of the buildings is not the only way that Plaintiff could avoid liability: it could repair or reinforce them as directed by ISD on multiple occasions. Where Plaintiff has a reasonable alternative to demolishing the structures, it cannot claim any harm, let alone irreparable harm, just because it does not get to pursue its desired (and presumably more cost effective) remedy.

C. Defendants Face Irreparable Harm if the Historic Structures are Demolished

In assessing the Plaintiff's request for an injunction, the Court must also consider the potential for harm against the Defendants. Tri-Nel Mgmt., Inc. 433 Mass. at 219. Here, Defendants face the substantial and irreparable harm of the demolition of historic structures that may be saved or otherwise preserved through appropriate remedial measures by Plaintiff.

When faced with a similar situation, the Superior Court determined that it could not issue a preliminary injunction ordering the local building inspector to issue a demolition permit prior to an evaluation of the structure's historical significance. See Nichols Coll., 2005 WL 2009665, at *2. The Court concluded that any potential risk of "collapse of the building and the risk of harm to persons on the college campus" did not exceed "the obvious irreparable harm that immediate demolition of this structure would cause to the town and the interests represented by the defendants in seeking a delay of demolition (i.e., the immediate loss of the opportunity to identify and consider alternatives to demolition)." Id. This Court is faced with the same situation, and it should deny Plaintiff's request on the same basis. Indeed, here, the historic preservation interest is stronger than in Nicholls Coll. because the BLC has appropriately designated the structures as historic landmarks pursuant to state law. The Superior Court in Nicholls Coll. denied the preliminary injunction on the basis that the town would be injured if it did not have

the *opportunity* to evaluate the historical significance of the structure pursuant to the town's zoning by-law. *Id.* Here, the historical significance of the structures is not in question, so the risk of irreparable harm to Defendants is substantial, immediate, and clearly defined should Plaintiff complete their demolition.

D. Consideration of the Public Interest Weighs against Granting the Injunction

The final factor requires that the Court consider, if any, the adversarial impact the injunctive relief may have on the public interest. *Tri-Nel Mgmt., Inc.* 433 Mass. at 219. Here, the public interest would not be served by this Court ordering the immediate demolition of these historic structures.

Plaintiff has owned the structures at 80 and 100 Smith Street since the BLC originally approved their demolition in 2005. In the intervening years, Plaintiff has engaged in a policy of demolition by neglect. Plaintiff only appears to care about these structures and their speculative threat to public safety when it suits its interests in furtherance of its development project. As admitted in its Complaint, Plaintiff is currently presenting an amended development project to the BPDA in the hopes of constructing new apartment buildings containing more than 200 units of new housing on the site of the existing historic structures. Pl's. Compl., ¶ 21. Plaintiff retained an engineer to conduct a structural evaluation, purportedly, to conduct a neutral evaluation of the structures in furtherance of that development project. However, Plaintiff cannot feign awareness that the structures that it has owned for 18 years and neglected have now fallen into a state of disrepair. Especially where Plaintiff's own engineer identified in 2011 that it could preserve the condition of, at least, 100 Smith Street with adequate maintenance and repairs.

Now, in 2022, Plaintiff retained an engineer precisely with the intent of forcing the Commissioner to approve their request for demolition in order to avoid the BLC historic

preservation process that Plaintiff had successfully completed on two prior occasions. Undoubtedly, a demolition that requires attention to the preservation of historically significant architectural elements of the structures would be more costly and time consuming than a standard demolition. The sudden and overwhelming concern for public safety that Plaintiff expresses in its request for preliminary injunction dovetails nicely with its economic interest. Its concern is also belied by 18 years of neglect, its failure to follow its own engineer's 2011 recommendations that could have preserved 100 Smith Street, and its failure to demolish the structures on two prior occasions when BLC had authorized the demolition through the historic preservation process. Allowing Plaintiff to evade the requirements of the Historic Preservation Act, which codifies the public's interest in the preservation of historic structures in Boston, is not in the public interest. See Nichols Coll., 2005 WL 2009665, at *2.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request this Court to DENY Plaintiff's Motion for Preliminary Injunction.

Respectfully submitted,

DEFENDANTS,

By their attorney,
Adam N. Cederbaum
Corporation Counsel

/s/ Thomas J. Broom
Thomas J. Broom BBO# 703136
Assistant Corporation Counsel
City of Boston Law Department
One City Hall Square, Room 615
Boston, MA 02201
(617) 635-4477
thomas.broom@boston.gov

/s/ Edward Coburn

Edward Coburn BBO# 655916
General Counsel
Boston Inspectional Services Dept.
Boston, MA 02118
(617) 961-3465
Edward.Coburn@boston.gov

Dated: July 27, 2023

Certificate of Service

I, Thomas Broom, certify that on July 27, 2023, the foregoing document was e-filed in the Land Court and was also served upon the Plaintiff.

/s/ Thomas J. Broom
Thomas J. Broom

EXHIBIT 1

#200
Copy - orig. w/ book
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**REGISTRATION OF DESIGNATION BY THE
BOSTON LANDMARKS COMMISSION**



Bk: 39951 Pg: 264 Doc: VOTE
Page: 1 of 5 07/06/2006 03:22 PM

Property: Mission Church Complex, 1525 and 1545 Tremont Street, 100 St. Alphonsus Street, and 80, 90, and 100 Smith Street, Roxbury (Ward10, Parcel 12)

Owner: Mission Associates, LLC
c/o Mark Donahue, Weston Associates
170 Newbury Street
Boston, MA 02116

Suffolk County Registry of Deeds:

Book 33032, Page 306

Voted: That on August 10, 2004, the Boston Landmarks Commission designate the Mission Church Complex at 1525 and 1545 Tremont Street, 100 St. Alphonsus Street, and 80, 90, and 100 Smith Street, Roxbury, a Landmark under Chapter 772 of the Acts of 1975, as amended.

General Standards and Criteria to be Applied:

See: "Boston Landmarks Commission General Standards & Criteria" and "Exteriors— Specific Standards and Criteria," both included in the study report for the subject property (copies on file at the Boston Landmarks Commission, Room 805, Boston City Hall, Boston, MA 02201).

General Characteristics of the Property:

The Mission Church complex occupies a roughly rectangular, 162,482 square foot parcel (approximately 3.73 acres). The basilica faces southwest onto Tremont Street and sits on the highest point on the site. The rectory to its west also faces Tremont Street. The grammar school fronts St. Alphonsus Street. The site drops dramatically towards its northern boundary, where the convent, the Mission School, and St. Alphonsus Hall are situated fronting Smith Street. An eight foot puddingstone retaining wall runs from the eastern side of the basilica down the hill towards St. Alphonsus Hall, dividing the property, and separating the Mission Church complex from the adjacent park and baseball field. A wrought iron fence lines the property on both Tremont and St. Alphonsus Street, terminating at the grammar school. The upper campus buildings on the southern portion of the site form a "U" around a formally landscaped courtyard. Asphalt paving provides parking and service areas around the lower campus buildings on the northern portion of the site.

Boundaries of the Designated Property:

Attested hereto
Francis M. Roache
Francis M. Roache
Register of Deeds

Boston Landmarks Commission
Boston City Hall, Room 805
Boston, MA 02201

Attn: Roysin Bennett Younkin

The Mission Church Complex is bound by Tremont Street, St. Alphonsus Street, Smith Street, and a baseball field on City of Boston Property. The boundaries of the site correspond to ward 10, parcel 12 as depicted on the city of Boston Assessor's map as of July, 2004.

Vote of Designation:

See Attached.

**VOTE OF DESIGNATION BY THE
BOSTON LANDMARKS COMMISSION**

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VOTING IN FAVOR:

Amodeo	Hawkes
Brown	Herman
Ellenson	Pond
Field	Pranger
Green	

VOTING IN OPPOSITION:

None

GENERAL CHARACTERISTICS OF THE SITE:

The Mission Church complex occupies a roughly rectangular, 162,482 square foot parcel (approximately 3.73 acres). The basilica faces southwest onto Tremont Street and sits on the highest point on the site. The rectory to its west also faces Tremont Street. The grammar school fronts St. Alphonsus Street. The site drops dramatically towards its northern boundary, where the convent, the Mission School, and St. Alphonsus Hall are situated fronting Smith Street. An eight-foot puddingstone retaining wall runs from the eastern side of the basilica down the hill towards St. Alphonsus Hall, dividing the property, and separating the Mission Church complex from the adjacent park and baseball field. A wrought iron fence lines the property on both Tremont and St. Alphonsus Street, terminating at the grammar school. The upper campus buildings on the southern portion of the site form a "U" around a formally landscaped courtyard. Asphalt paving provides parking and service areas around the lower campus buildings on the northern portion of the site.

GENERAL BOUNDARIES OF THE SITE:

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**VOTE OF DESIGNATION BY THE
BOSTON LANDMARKS COMMISSION**

GENERAL STANDARDS AND CRITERIA TO BE APPLIED:

As described in the attachments entitled:
"Boston Landmarks Commission Standards & Criteria" and "Specific Standards & Criteria," both included in the study report for the subject property.

APPROVED BY THE BOSTON LANDMARKS COMMISSION:

Date approved: August 10, 2004
Attest: [Signature]
(Secretary to the Commission)

PRESENTED TO THE MAYOR:

August 17, 2004
(Date)

APPROVED BY THE MAYOR:

Date approved: 8/18/04
Signature: [Signature]
(Mayor)

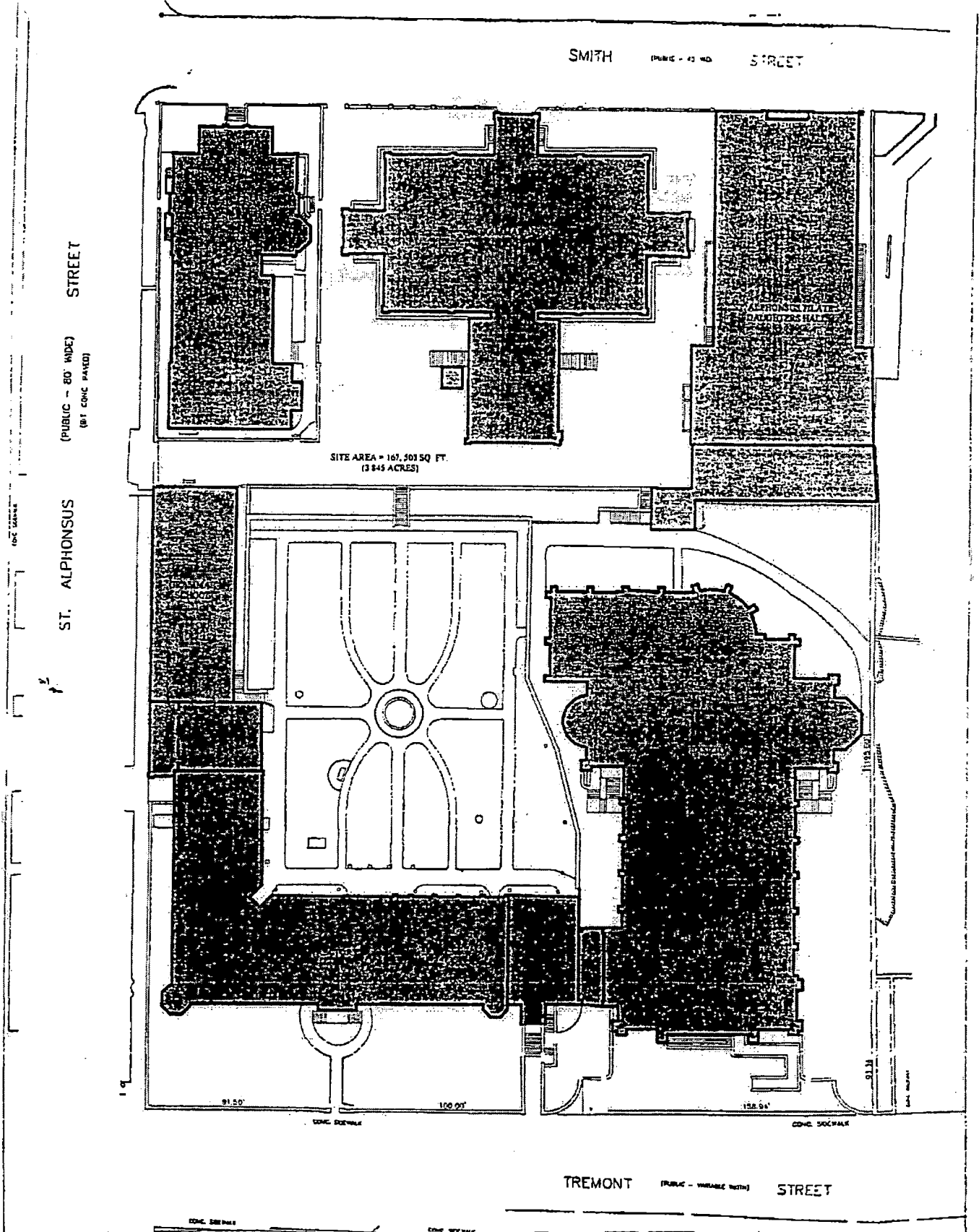
PRESENTED TO THE CITY COUNCIL:

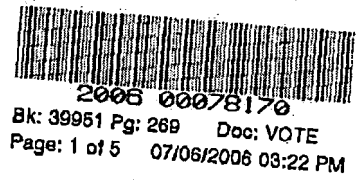
SEP 15 2004
(Date)

APPROVED BY CITY COUNCIL:

Date approved: SEP 15 2004
Signature: [Signature]
Act. y. Asst. (City Clerk)

1.5 Map Showing Location





**REGISTRATION OF DESIGNATION BY THE
BOSTON LANDMARKS COMMISSION**

Property: Mission Church Complex, 1525 and 1545 Tremont Street, 100 St. Alphonsus Street, and 80, 90, and 100 Smith Street, Roxbury (Ward10, Parcel 12)

Owner: Boston Society of Redemptorists
1545 Tremont Street
Roxbury Crossing, MA 02120

Suffolk County Registry of Deeds:

Book 1067, Page 89

Voted: That on August 10, 2004, the Boston Landmarks Commission designate the Mission Church Complex at 1525 and 1545 Tremont Street, 100 St. Alphonsus Street, and 80, 90, and 100 Smith Street, Roxbury, a Landmark under Chapter 772 of the Acts of 1975, as amended.

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Attested hereto

Francis M. Roche

Francis M. Roche
Register of Deeds

Boston Landmarks Commission
Boston City Hall, Room 805
Boston, MA 02201

Attn: Roysin Bennett Younkin

[Handwritten initials]

Boundaries of the Designated Property:

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As described in the attachments entitled:
"Boston Landmarks Commission Standards & Criteria" and "Specific Standards &
Criteria," both included in the study report for the subject property.

APPROVED BY THE BOSTON LANDMARKS COMMISSION:

Date approved:

August 10, 2004

Attest:

[Signature]
(Secretary to the Commission)

PRESENTED TO THE MAYOR:

August 17, 2004
(Date)

APPROVED BY THE MAYOR:

Date approved:

8/18/04
[Signature]
(Mayor)

Signature:

PRESENTED TO THE CITY COUNCIL:

SEP 15 2004

(Date)

APPROVED BY CITY COUNCIL:

Date approved:

SEP 15 2004

Signature:

[Signature]
Acting Asst. (City Clerk)

1.3 Map Showing Location

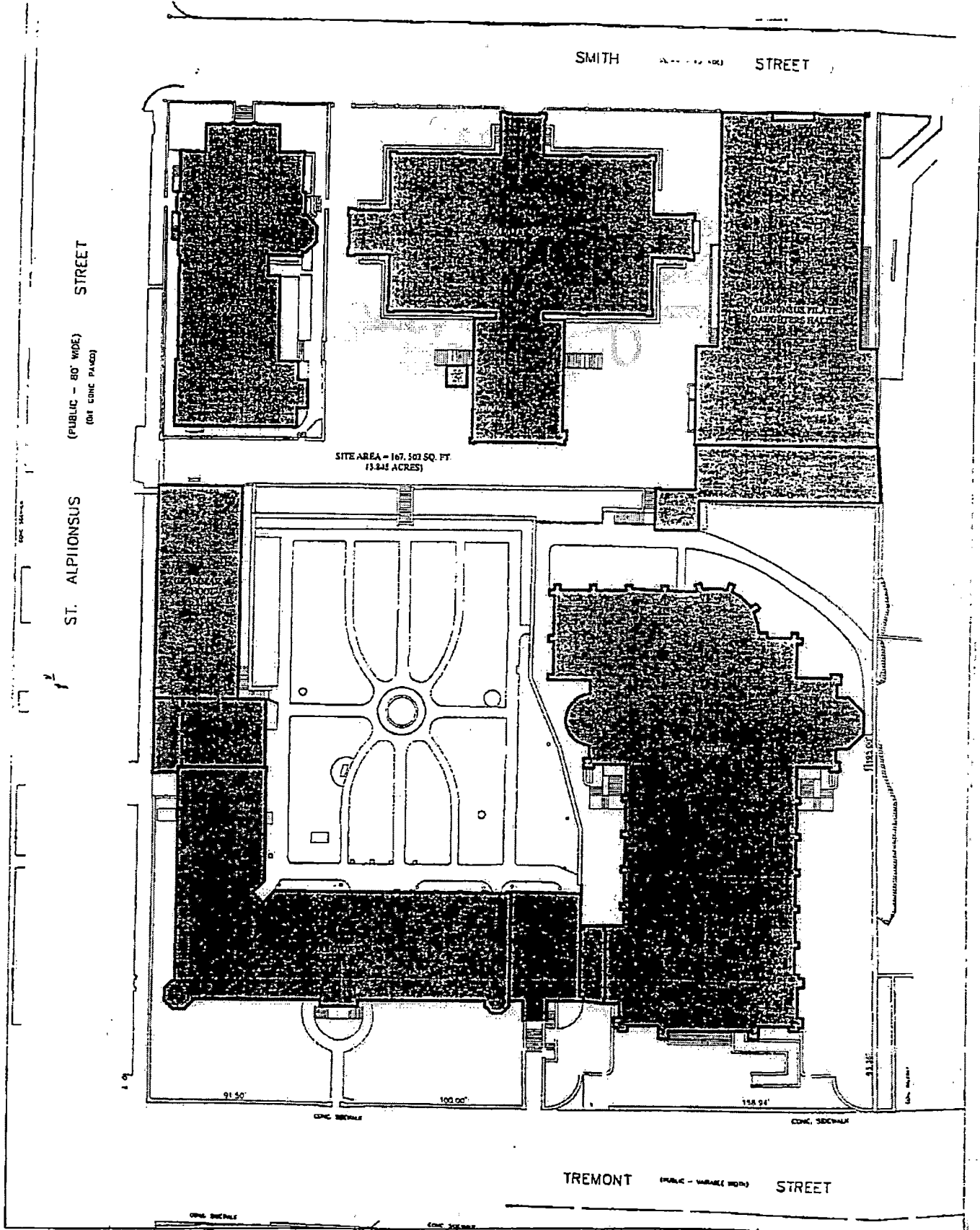


EXHIBIT 2

ARTICLE 85 - DEMOLITION DELAY

Footnotes:

Section 85-1. - Statement of Purpose.

The purpose of this Article is to establish a predictable process for reviewing requests to demolish certain buildings in order to: (1) establish an appropriate waiting period during which the City and the Applicant can propose and consider alternatives to the demolition of a building of historical, architectural, cultural or urban design value to the City; (2) provide an opportunity for the public to comment on the issues regarding the demolition of a particular building; and (3) minimize the number and extent of building demolitions where no immediate re-use of the site is planned.

Section 85-2. - Definitions.

For the purposes of this Article only, the following words and phrases, whether or not capitalized, shall have the following meanings:

Applicant means the person or persons filing an application for review under this Article.

Application means an application for review under this Article filed pursuant to Section 85-5.1.

Application filing date means the date on which the application was filed with the Landmarks Commission, pursuant to paragraph (b) of Section 85-5.1, or with the Inspectional Services Department, pursuant to paragraph (c) of Section 85-5.1.

Commissioner of Inspectional Services means said Commissioner or his or her designated representative.

Day means any day, including Saturdays, Sundays, and holidays, except where otherwise specified in this Article.

Demolition means any act of pulling down, destroying, razing, or removing a building, or the commencement of such work with the intent to complete the same.

Demolition permit means a permit issued by the Commissioner of Inspectional Services authorizing the demolition of a building pursuant to an application therefor.

Downtown means the area located east of the centerline of Massachusetts Avenue and north of the northern boundaries of the Massachusetts Turnpike Extension, and Fort Point Channel, but not including the Harborpark, as defined in this Section 85-2.

Harborpark means the areas governed by the zoning district identified as the Harborpark District in Section 3-1(f) of this Code.

Landmarks Commission means the Boston Landmarks Commission, as established by Chapter 772 of the Acts of 1975, as amended, and any successor organization thereto.

Neighborhoods means all the areas of the City not included in the Downtown or Harborpark, as defined in this Section 85-2.

Significant building means a building with respect to which the Landmarks Commission staff has made a determination, pursuant to Section 85-5.2, that further examination, including the public hearing required by Section 85-5.4, is warranted to determine whether a delay in demolition should be required, pursuant to Section 85-5.6.

State Building Code means the Massachusetts State Building Code, 780 CMR, as amended.

Section 85-3. - Buildings Subject to Review.

The following buildings are subject to review by the Landmarks Commission staff for the purpose of determining whether such buildings are significant, pursuant to Section 85-5.2.

1. **In the Downtown and Harborpark.** Any building located in the Downtown or Harborpark, as defined in Section 85-2.
2. **In the Neighborhoods.** Any building located in the Neighborhoods, as defined in Section 85-2, if:
 - (a) such building, or the portion thereof to which the application relates, is at least fifty (50) years of age; or
 - (b) such building is located in a Neighborhood Design Overlay District, as established by the provisions of this Code applicable to the building's location.

Notwithstanding any contrary provision of this Section 85-3, a building is not subject to review if it is:

- (1) located within a District or Protection Area designated by the Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, as amended;
- (2) designated as a Landmark by the Landmarks Commission pursuant to said Chapter 772;
- (3) located within a Historic District designated by the Landmarks Commission pursuant to M.G.L. Chapter 40C;
- (4) located within the Historic Beacon Hill District created by Chapter 616 of the Acts of 1955, as amended; or

- (5) located within the Back Bay Architectural District created by Chapter 625 of the Acts of 1966, as amended.

Section 85-4. - Enforcement.

1. **Issuance of Demolition Permit.** The requirements set forth in this Article are in addition to, and not in lieu of, the requirements of any other codes, ordinances, statutes, or regulations applicable to the demolition of buildings. The Commissioner of Inspectional Services shall not issue any demolition permit relating to a building that is subject to review, pursuant to Section 85-3, unless:
 - (a) The Commissioner deems that demolition is necessary, pursuant to subsection 2 of this Section 85-4; or
 - (b) The Commissioner: (i) has received a notice issued by the Landmarks Commission staff, pursuant to Section 85-5.2, that the building is not subject to review under this Article, pursuant to Section 85-3, or is not a significant building, pursuant to Section 85-5.3; or (ii) has not received such notice within the time period set forth in Section 85-5.2; or
 - (c) The Commissioner: (i) has received a notice issued by the Landmarks Commission, pursuant to Section 85-5.4, that no demolition delay is required pursuant to this Article; or (ii) has not received such notice within the time period set forth in Section 85-5.4; or
 - (d) The Commissioner has received a notice issued by the Landmarks Commission, pursuant to Section 85-5.8, that there is no feasible alternative to demolition; or
 - (e) The demolition delay period set forth in Section 85-5.6 has expired.
2. **Required Demolition or Repair.**
 - (a) **Demolition.** Nothing in this Article shall restrict the authority of Commissioner of Inspectional Services to order the building owner, or the City, to demolish a building at any time if the Commissioner determines that the condition of a building or part thereof presents an imminent and substantial danger to the public health or safety.
 - (b) **Repair.** Nothing in this Article shall restrict the authority of the Commissioner of Inspectional Services to require the Applicant to take reasonable action to prevent the need for required demolition of a significant building, which may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public.
3. **Issuance of Building, Use, or Occupancy Permit.** If the Landmarks Commission staff has determined that a building is significant, pursuant to Section 85-5.2, the Commissioner of Inspectional Services shall not issue any building permit for the erection of a new building on the site of such significant building before issuing a demolition permit for such significant building in compliance with this Article.

If the Landmarks Commission has determined that a significant building has been voluntarily demolished in violation of this Article, the Commissioner of Inspectional Services shall not issue any building permit for new construction, or any use or occupancy permit for any use other than a park or recreational open space, with respect to the premises of such building for a period of two (2) years after the date of the Landmarks Commission's determination. As used herein, "premises" includes the parcel of land upon which the demolished significant building was located and all abutting parcels under common ownership or control.

The Applicant (or the owner of record, if different from the Applicant) shall be responsible for properly securing the building during the time that it is subject to review under this Article. If a significant building is subject to demolition delay, pursuant to Section 85-5.6, and the Applicant fails to secure the building, the loss of the building due to fire or other causes shall be considered voluntary demolition for the purposes of this Section 85-4.3.

Section 85-5. - Procedure.

1. **Application.** An application for review under this Article shall be made in the manner provided in this subsection 1. If the Applicant is not the owner of record of the building, the owner or owners of record shall co-sign the application.
 - a. **Time for Filing Application.** The Applicant (or building owner) is encouraged to apply for review under this Article as early as possible, so that any necessary review, and any delay period required by this Article, may be completed prior to, or during, any other review to which the building or its site may be subject.

If a Proposed Project, a Planned Development Area Plan (or an amendment thereof), or an Institutional Master Plan (or an amendment thereof) will involve the demolition of an existing building, the applicant for approval of such Proposed Project or Plan (or the owner of such existing building, if different from the applicant) is strongly encouraged to request review under this Article before requesting review by the Boston Redevelopment Authority and Board of Appeal, and before such applicant (or owner) incurs expenses in connection with the planning and design of the Proposed Project or Plan. If such applicant (or owner) fails to request sufficiently early review under this Article, the approval by the Boston Redevelopment Authority of the Proposed Project or Plan, and the grant of any permission by the Board of Appeal, shall not limit the discretion of the Landmarks Commission or its staff to require a delay in demolition pursuant to this Article, and expenses incurred in connection with such Proposed Project or Plan shall not be considered hardship for purposes of evaluating the feasibility of alternatives to demolition.

- b.

Application for Early Review. At any time prior to filing an application for a demolition permit, the Applicant may apply for review under this Article by submitting a request in writing to the Landmarks Commission. Such request shall indicate that review is sought under this Article for the demolition of a building and shall specify the building's address and its ward and parcel number.

c. **Application for Review in Connection with Application for Demolition Permit.** If the Applicant has not requested early review under this Article, pursuant to paragraph (b) of this subsection 1, application for review under this Article shall be made in connection with an application for a demolition permit from the Inspectional Services Department. Within three (3) days after receipt of an application for a demolition permit, the Inspectional Services Department shall transmit a copy of such application to the Landmarks Commission, and such permit application shall constitute the application for review under this Article.

2. **Staff Determination: Applicability of Review and Significance of Building.** After its receipt of an application, pursuant to subsection 1 of this Section 85-5, the Landmarks Commission staff shall determine: (1) whether the building is subject to review under this Article, pursuant to Section 85-3, and (2) whether the building is a significant building, pursuant to the criteria set forth in subsection 3 of this Section 85-5.

The Landmarks Commission staff shall issue a notice of its determination within ten (10) days after the application filing date. If the Landmarks Commission staff determines that the building is significant, such notice shall:

- (a) indicate that the Landmarks Commission will hold a public hearing within the time period required by subsection 4 of this Section 85-5; and
- (b) invite the Applicant to submit any information that the Applicant believes will assist the Landmarks Commission in: (i) determining whether the building is subject to demolition delay according to the criteria set forth in subsection 5 of this Section 85-5, and (ii) evaluating alternatives to demolition, pursuant to subsection 7 of this Section 85-5.

3. **Criteria for Determining Significance.** The Landmarks Commission staff shall determine that the building to which the application relates is a significant building if:

- (a) the building is listed in the Landmarks Commission's Comprehensive Preservation Survey as a building that is: (i) listed on the National Register of Historic Places; (ii) recommended for such listing; or (iii) the subject of a pending application for such listing; or
- (b) the building is the subject of a petition to the Landmarks Commission for designation as a Boston Landmark; or
- (c) the Landmarks Commission staff finds that the building is historically or architecturally significant because of period, style, method of building construction, or important association with a famous architect or builder; or

- (d) the Landmarks Commission staff finds that the building has an important association with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the City; or
 - (e) the Landmarks Commission staff finds that the building is one whose loss would have a significant negative impact on the historical or architectural integrity or urban design character of the neighborhood.
4. **Landmarks Commission Hearing to Determine Whether Significant Building is Subject to Demolition Delay.**
- a. **Hearing Requirement; Time for Issuance of Determination.** If the Landmarks Commission staff has determined that a building is significant, pursuant to subsection 2 of this Section 85-5, the Landmarks Commission shall hold a public hearing to determine whether the building is subject to the demolition delay required by subsection 6 of this Section 85-5. At such hearing, the Landmarks Commission also may consider alternatives to demolition, as provided in paragraph (c) of this subsection 4. The Landmarks Commission shall issue its determination pursuant to such hearing within forty (40) days after the application filing date.
 - b. **Criteria for Requiring Demolition Delay.** The Landmarks Commission shall make its determination concerning the requirement of demolition delay according to the criteria set forth in subsection 5 of this Section 85-5. The Applicant is encouraged to present any information the Applicant believes will assist the Landmarks Commission in making its determination.
 - c. **Early Determination of No Feasible Alternative.** At the hearing required by this subsection 4, the Applicant may present any information the Applicant believes will assist the Landmarks Commission in evaluating alternatives to demolition, pursuant to subsection 7 of this Section 85-5. If, at such hearing, the Landmarks Commission finds that demolition delay is required, and also finds that the information presented at such hearing is sufficient for the Commission to issue a determination that there is no feasible alternative to demolition, pursuant to subsection 8 of this Section 85-5, the Landmarks Commission shall issue such determination within the time period set forth in this subsection 4 for the issuance of the Landmarks Commission's hearing determination.
 - d. **Hearing Notice and Procedure.** Except where otherwise specified in this Article, the conduct of any public hearing held pursuant to this subsection 4, including public notices, hearing procedures, votes, records, and the like, shall be governed by the rules and procedures established by the Landmarks Commission through its duly adopted regulations and by-laws.
 - e.

Notice of Determination. Any determination issued pursuant to this subsection 4 shall specify the reasons for such determination. Such determination shall state whether or not demolition delay, pursuant to subsection 6 of this Section 85-5, is required. If such demolition delay is required, and the Landmarks Commission has not determined, pursuant to paragraph (c) of this subsection 4, that there is no feasible alternative to demolition, such determination shall specify the date on which such delay period will expire, pursuant to subsection 6 of this Section 85-5.

5. Criteria for Determination that Building is Subject to Demolition Delay. To determine that a significant building is subject to the demolition delay required by subsection 6 of this Section 85-5, the Landmarks Commission must find that, in the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished. In making such finding, the Landmarks Commission shall consider the following criteria:

- (a) The building's historic, architectural, and urban design significance;
- (b) Whether the building is one of the last remaining examples of its kind in the neighborhood, the City, or the region; and
- (c) The building's condition.

6. Demolition Delay.

a. Delay Period. If the Landmarks Commission has issued a determination, pursuant to subsection 4 of this Section 85-5, that a significant building is subject to demolition delay, the Commissioner of Inspectional Services shall not issue a demolition permit, pursuant to paragraph (e) of Section 85-4.1, until ninety (90) days have elapsed following the close of the public hearing held pursuant to subsection 4 of this Section 85-5.

Upon expiration of the delay period required by this subsection 6, the Landmarks Commission shall issue a notice in writing stating that such delay period has expired, and the date of such expiration, unless the Landmarks Commission has issued a determination, pursuant to subsection 8 of this Section 85-5, that there is no feasible alternative to demolition.

b. Invitation to Consider Alternatives. If the Landmarks Commission has determined that a significant building is subject to demolition delay, and has not determined, at the hearing required by subsection 4 of this Section 85-5, that there is no feasible alternative to demolition, the Landmarks Commission shall invite the Applicant (or the owner of record, if different from the Applicant) to participate in an investigation of alternatives to demolition, pursuant to subsection 7 of this Section 85-5. The Landmarks Commission also shall invite the participation, on an advisory basis, of the Commissioner of Inspectional Services, the Director of the Boston Redevelopment Authority, and the

Chairperson of the Boston Civic Design Commission, as well as any individual or representative of any group whose participation the Applicant (or owner) requests, or approves, in writing.

7. **Evaluation of Alternatives to Demolition.** In evaluating alternatives to demolition pursuant to this Article, the Landmarks Commission may consider such possibilities as: the incorporation of the building into the future development of the site; the adaptive re-use of the building; the use of financial incentives for the rehabilitation of the building; the removal of the building to another site; and, with the owner's consent, the search for a new owner willing to purchase the building and preserve, restore, or rehabilitate it.

In evaluating alternatives to demolition, the Landmarks Commission shall consider, and shall invite the Applicant to present, the following information:

- (a) The cost of stabilizing, repairing, rehabilitating, or re-using the building;
 - (b) Any definite plans for the re-use of the property if the proposed demolition is carried out, and the effects such plans would have on the architectural, social, aesthetic, historic, and urban design character of the surrounding area, as well as on the economy of the area or of the City as a whole;
 - (c) Any conditions the Applicant proposes to accept for the redevelopment of the site that would mitigate the loss of the building; and
 - (d) The availability of other sites for the Applicant's intended purpose or use.
8. **Determination of No Feasible Alternative.** If, based on its evaluation of alternatives to demolition pursuant to subsection 7 of this Section 85-5, the Landmarks Commission is satisfied that there is no feasible alternative to demolition, the Landmarks Commission may issue a determination prior to the expiration of the delay period required by subsection 6 of this Section 85-5 authorizing the Commissioner of Inspectional Services to issue a demolition permit pursuant to paragraph (d) of Section 85-4.1.
9. **Notice.** Any determination or notice issued by the Landmarks Commission or its staff pursuant to this Article shall be transmitted in writing to the Applicant, with copies to the Commissioner of Inspectional Services, the Boston Redevelopment Authority, the Boston Civic Design Commission and, where applicable, to any individual or group that the Landmarks Commission has invited to participate in an exploration of alternatives to demolition, pursuant to subsection 6 of this Section 85-5.

Section 85-6. - Regulations.

The Landmarks Commission may promulgate regulations to administer this Article.

Section 85-7. - Massachusetts Historic Districts Act.

If any provisions of this Article conflict with M.G.L. Chapter 40C (the "Massachusetts Historic Districts Act"), the provisions of the Massachusetts Historic Districts Act shall govern.

Section 85-8. - Severability.

The provisions of this Article are severable, and if any provision of this Article shall be held invalid by a decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

EXHIBIT 3

REGULATIONS OF THE BOSTON LANDMARKS COMMISSION
as adopted on November 30, 1976, Amended July 20, 1977 and
April 8, 1980, and May 27, 1986

Contents:

- Article 1. General Provisions
 - 1.1 Authority
 - 1.2 Purpose
 - 1.3 Internal Management of the Commission
 - Article 2. Procedures for Designation
 - 2.1 Petitions to the Commission
 - 2.2 Preliminary Hearings
 - 2.3 Preparation of a Study Report.
 - 2.4 Availability of a Study Report
 - Article 3. Conduct of Public Hearings on Proposed Designations
 - 3.1 Purposes
 - 3.2 Notice
 - 3.3 Order of Appearances
 - 3.4 Sequence of Testimony
 - 3.5 Sworn Testimony
 - 3.6 Written Statements
 - 3.7 Exhibits
 - 3.8 Standards of Evidence
 - 3.9 Availability of Records of the Proceedings
 - 3.10 Prerogatives of the Presiding Officer
 - Article 4. Procedures of Regulation of Landmarks, Districts and Areas
 - Article 5. Amendments
 - 5.1 Form
 - 5.2 Approval
 - Article 6. Severability
 - 6.1 Severability
- Appendices
- A. By-laws of the Boston Landmarks Commission
 - B. Sample Designation Petition Form

Outline of Article 4

- 4.1 Applications for Certificates from the Commission
- 4.2 Processing of the Application
- 4.3 Administrative Review
- 4.4 Public Hearing on Applications
 - 4.4.1 Notice
 - 4.4.2 Conduct of the Hearing
- 4.5 Consideration by the Commission
- 4.6 Certificate of Design Approval
 - 4.6.1 Approval
 - 4.6.2 Approval with Provisos
 - 4.6.3 Approval with Conditions to be Covenants
 - 4.6.4 Disapproval
- 4.7 Notice of Decision
- 4.8 Certificate of Exemption
- 4.9 Certificate of Exemption Based on Hardship
- 4.10 Violations
- 4.11 Records
 - 4.11.1 Plans
 - 4.11.2 Minutes

ARTICLE 1: General Provisions

- 1.1 Authority: These Regulations are adopted pursuant to Section 3 of Chapter 772 of the General Laws of the Commonwealth of Massachusetts for 1975, hereinafter referred to as the enabling statute.
- 1.2 Purpose: These Regulations are adopted for the purpose of interpreting the enabling statute and implementing its administration and enforcement. The Regulations pertain primarily to the relationship between the Boston Landmarks Commission and the public in the conduct of the business of the Commission.
- 1.3 Internal Management of the Commission: The internal management of the Commission shall be governed by its By-laws as provided in the enabling statute. A copy of the By-laws in effect at the time of the adoption of these Regulations is appended hereto as Appendix A.

ARTICLE 2: Procedures for Designation

2.1 Petitions to the Commission

Citation: The Mayor, any ten registered voters of the city or any Commission member may petition the Commission to designate a landmark, landmark district, architectural conservation district or protection area or to amend or rescind such a designation, and the Commission shall within thirty-days next following the filing of such petition hold a preliminary hearing on such petition with the petitioners and arrange for the preparation of a report and, if required, request the appointment of a study committee.

Petitions for designation may be filed with the Executive Director/Secretary to the Commission or his or her designee at the Commission offices at the new City Hall in Boston.

In order to facilitate the processing of a petition, the Commission requires that certain information be contained in the petition, including the following:

- 2.1.1 A brief description of the property proposed for designation (by address or boundaries) and a photograph, if possible;
- 2.1.2 A map showing the location of the property;
- 2.2.3 The category of designation proposed;
- 2.1.4 A brief statement of why the property should be considered for designation.
- 2.1.5 The names, addresses, and telephone numbers of the petitioners.

The Commission shall make forms available to the public for its use in filing petitions for designation. A sample designation petition for is appended hereto as Appendix B.

The Commission may, however, at its discretion accept petitions which do not contain the information enumerated herein.

- 2.2 Preliminary Hearings: As provided in the enabling statute, the Commission shall hold a preliminary hearing within thirty days of the filing of a petition for designation. The purpose of the preliminary hearing is to present to the Commission why a property or properties should be considered for designation, and to initiate the process for preparing a study report on the proposed designation.

Whenever possible, the preliminary hearing will be conducted at the next regular business meeting of the Commission. The petitioners will be notified of the time and place of the preliminary hearing. At its discretion, the Commission may notify other interested persons or organizations of such preliminary hearings.

If, after the Commission has heard reasons why the proposed designation should be considered, the Commission finds cause to reject the petition without further study, it may do so by simple majority vote provided that its reasons for so acting are stated in the decision and are furnished in writing to the petitioners.

2.3

Preparation of a Study Report

Citation: Prior to the designation or amendment of designation of any landmark, landmark district, architectural conservation district or protection area, an investigation and report on the historical and architectural significance of the structures, sites or objects to be designated shall be made. Such report will also attempt to provide an indication of the economic status of the property or properties under consideration for designation by providing such information as assessed value, recent real estate transactions or other appropriate data. The report shall also recommend the boundaries of any proposed landmark, landmark district, architectural conservation district or protection area and recommend standards to be adopted by the Commission in carrying out its regulatory functions provided under Section Five of this act. All recommendations shall be in consideration of any master plan, zoning requirements, projected public improvements and existing and proposed renewal and development plans applicable to the section of the city to be affected by the designation or amendment of designation.

In the case of a landmark which is under consideration for designation, the report shall be prepared by the Commission with the assistance of its staff or consultants or in the case of a landmark district, architectural conservation district or protection area, the report shall be prepared by a study committee consisting of five members of the Commission and six persons who have demonstrated interest in the district or area under consideration and who shall be appointed by the Mayor and confirmed by the City Council, with the assistance of the Commission staff or consultants.

Reports on properties under consideration for designation shall be prepared according to the standards and format established by the Commission.

No report will be considered completed until, in the case of a potential district designation, the report has been adopted by a majority of the members of the study committee and accepted by the Chairperson of the Commission; and in the case of a potential Landmark designation, until the report has been approved by the Executive Director and accepted by the Chairperson of the Commission. Determinations to adopt, accept or approve a report shall be based upon criteria intended to assure a product of high professional standards, including scholarship, accuracy, completeness and related editorial concerns; such determinations shall not be unreasonably delayed or withheld.

- 2.4 Availability of the Study Report: Copies of a completed study report shall be made available to the public at the offices of the Commission at the BRA Library, and at the appropriate local public library branch nearby to the property under consideration. The Commission shall make its study reports, or facsimile copies thereof, available to the public at cost.

As required by statute, the study report will be transmitted to the Massachusetts Historical Commission and the Boston Redevelopment Authority for consideration and recommendations.

ARTICLE 3: Conduct of Public Hearings on Proposed Designations

- 3.1 Purposes: The purposes of public hearings on proposed designations are to present the findings of the study report on the potential designation, to hear testimony of persons having an interest in the potential designation, and to obtain information which may be of assistance to the Commission in arriving at its decision or designation.
- 3.2 Notice: The Commission shall give notice of such public hearing by an appropriate advertisement published in a newspaper of general circulation in the city and, if possible, in at least one periodical, if any exists, circulated in the vicinity of the proposed landmark, landmark district, architectural conservation district or protection area at least three weeks prior to the date of the hearing and by mailing a copy of such advertisement to the owner of the proposed landmark and to every owner as appearing on the then most recent tax list of property abutting the proposed landmark or within the proposed landmark district, architectural conservation district or protection area as determined from the records of the Assessing Department and to the Mayor, the Boston Redevelopment Authority, the City Clerk, the Office of Public Service, and any other person that may have filed a written request for such notice with the Commission. Such request may be made annually in December. Notice of such hearing will announce the availability of a report on the proposed designation.
- 3.2.2 Notice of public hearings on proposed designations shall be consistent with the enabling statute and Chapter 303 of the General Laws of the Commonwealth of Massachusetts of 1975. In seeking to notify the public, the Commission shall endeavor to foster interest and participation in the discussion of the matters under consideration.
- 3.3 Order of Appearances: The normal order of appearances of persons testifying at a public hearing on proposed designations shall be as follows:
- 3.3.1 Opening of the hearing by the Presiding Officer at the hearing;
 - 3.3.2 Incorporation in the record of the notice of hearing;
 - 3.3.3 Statement of the Presiding Officer summarizing the purpose of the hearing;
 - 3.3.4 Presentation of the findings and recommendations of the study report;
 - 3.3.5 Recording of appearances by counsel;
 - 3.3.6 Statements by elected officials and the executive directors of those agencies having review responsibilities as provided in the enabling statute;

- 3.3.7 Statements and presentation of evidence in support of the proposed designation;
- 3.3.8 Questions of other witnesses appearing in support by members of the Commission;
- 3.3.9 Statements and presentation of evidence in opposition to the proposed designation;
- 3.3.10 Questions of other witnesses appearing in opposition by members of the Commission;
- 3.3.11 Rebuttal, if any;
- 3.3.12 Adjournment.
- 3.4.1 Those individuals directly involved with the property under consideration (e.g., owner, managing agent, tenants, users);
- 3.4.2 Property owners from abutting and nearby areas;
- 3.4.3 Residents from abutting and nearby areas;
- 3.4.4. Representatives from interest groups, local organizations and public agencies;
- 3.4.5 Qualified individuals offering professional opinion or expert testimony;
- 3.4.6 The general public.
- 3.5 Sworn Testimony: At the discretion of the Presiding Officer, persons wishing to offer factual matters, professional opinion or expert testimony for the consideration of the Commission may be sworn.

Article 3.6 Written Statements:

Revise to read as follows: "The Commission may, at its discretion, request written statements from witnesses summarizing their testimony. Written statements in support of or in opposition to a designation, or offering additional information, or commentary on information previously provided may be submitted to the Commission at its offices for a period up to and including three working days excluding Saturday, Sunday & Holidays. Under a special circumstances the Chairperson may extend the time for filing of written statements for a period of up to 15 working days. Written statements so submitted will be part of the record for the public hearing and available for public inspection.

- 3.7 Exhibits: Exhibits shall be marked for identification and shall be offered in an orderly fashion. They shall be made available for examination by any and all parties in interest. Leave to file post-hearing exhibits such as photographs and maps may be sought at the hearing, or thereafter in writing, which may be granted by the Chairperson.
- 3.8 Standards of Evidence: Hearings shall be conducted in such a manner as will result in an equitable determination of the issues as promptly as circumstances permit. The Commission shall make determinations as to the relevance and materiality of evidence. The Commission may require a preliminary statement of the nature of the evidence proposed to be elicited from any witness.
- 3.9 Qualification of Witnesses: The Commission shall be the sole judge of the qualifications of an individual seeking to offer expert testimony or professional opinion.
- 3.10 Cross Examination: Cross examination of witnesses is a privilege extended by the Commission to certain qualified, designated individuals in the interest of eliciting material testimony on matters before the Commission. Such privilege may be withdrawn if the cross examination does not serve this purpose or is inconsistent with an orderly, expeditious, equitable hearing.
- 3.11 Availability of Records of the Proceedings: Copies of records of the proceedings, including transcripts, minutes, written statements, exhibits and evidence, shall be made available to the public and all parties at interest at the offices of the Commission. At the discretion of the Commission, wider distribution of copies of such records may be made in like manner as hereinbefore provided in Article 2.4
- 3.12 Prerogatives of the Presiding Officer: The Presiding Officer shall enforce the Regulations of the Commission and may institute such other procedures or take such additional steps as he or she deems necessary to assure an orderly, equitable and expeditious hearing of the matters under discussion.

ARTICLE 4: PROCEDURES FOR CARRHING OUT THE REGULATORY FUNCTIONS OF THE COMMISSION

4.1 Application for Certificates from the Commission

Any person seeking a Certificate of Design Approval or Certificate of Exemption for proposed changes to a property designated by the Boston Landmarks Commission, shall file an application with the Commission.

Such application will be filed at the offices of the Commission with the Secretary to the Commission. Property owners (or their authorized agents) must sign each application, and applications from a condominium building must have a signature representing an endorsement from the trustees (or managing board).

The applicant shall use an application form provided by the Commission for the purpose. The application generally requires the following information:

1. The property name (if any) and address.
2. The name and address of the owner.
3. The name and address of the applicant, if other than the owner.
4. A written description of all proposed physical changes and the reasons for making the changes.
5. The names and addresses of professional advisors and contractors
8. Photos of building.

The Commission may also require such descriptive material as is necessary to evaluate the proposed changes. Such requirements will be specified in the appropriate application form and instructions adopted by the Commission and may include the following:

1. photographs showing existing conditions and surroundings
2. site plan, if relevant
3. elevation drawings
4. specifications
5. material and color samples, if relevant.

4.1 Applications

For a minor project, simple sketches or annotated photographs may be sufficient. For a major project, elevation drawings and additional materials may be required. The staff to the Commission may refuse to accept a petition if sufficient descriptive material has not been provided.

4.2 Processing of the Application

Within eight days (excluding Saturdays, Sundays, and legal holidays) after an application has been filed, the Secretary to the Commission or designee shall decide whether the application shall be acted on as an application for a Certificate of Design Approval or Certificate of Exemption.

4.3 Administrative Review

Administrative review of applications may occur at staff level under the following conditions:

1. Certificates of Exemption involving routine maintenance and repair (or in-kind replacement of existing architectural or site details);
2. The applications involve minor modifications or changes which are deemed easily reversible to include: interior and exterior signs; paint colors; roofing surfaces; storm windows; security window grilles; intercom/buzzer/security devices; replacement wood-constructed windows and doors; repointing; cleaning; restoring minor masonry elements; downspout, gutter, flashing systems; pavers; lighting fixtures; awnings and canopies. In cases where the propriety of staff-level review is in question, the executive director shall determine whether the staff or the Design Review Committee shall act on the application.
3. The Commission shall authorize staff members to review these applications, and two or more staff members shall participate at each review. No formal public notice shall be required for administrative review.
4. Staff determinations shall be based upon interpretations of the general standards and criteria and of the specific standards and criteria which accompany a landmark designation.

The staff shall issue a written notice of decision for each review and include information to the applicant on appealing a decision to the Design Review Committee (See below). A report on administrative reviews shall be routinely distributed to the full Commission, and all correspondence shall be maintained in the regulatory files of the Commission.

All interested parties aggrieved by a staff determination may request a second review of an application before the Design Review Committee provided written notice to that effect is presented to the Commission within 30 days following the date on which the Notice of Decision is mailed or a new application if filed within 30 days following the date on which the Notice of Decision is mailed. No fee shall be charged for a reconsidered application.

4.4 Public Hearing on Application

The Commission shall hold a public hearing on every application determined in accordance with the enabling statute to require a Certificate of Design Approval or Certificate of Exemption for cases of economic hardship except for these cases delegated to administrative review at a staff level. (See 4.3)

In cases where applications are filed from architectural conservation districts (for landmark districts) prior to the appointment of a district Commission, the Commission shall determine whether review of the applications shall occur by the full Commission, by the Design Review Committee, by an interim sub-Commission, or by staff. Full review shall transfer to the district Commission once appointments have been approved by the City Council.

4.4.1 Notice

The Commission shall give ten days notice of such hearings to:

1. Members and Alternates of the Commission
2. The City Clerk (to be posted in the office thereof)

3. Applicants
4. Owners of abutting properties as listed in the most recent tax list
5. The Mayor
6. The Boston Redevelopment Authority
7. The Inspectional Services Department
8. Any person (or organization) requesting notice of such hearing such request (to be made or renewed annually in December.)

The notice of the hearing will contain the following information:

1. Date, time and place of the hearing
2. List of applications to be heard, including address of applicant and a precis of proposed work
3. Notice that applications are available for review at the offices of the Commission.

4.4.2

Conduct of the Hearing

The hearing may be conducted by the chairman, by any other member of the Design Review Committee, or by Commission staff; this individual shall be considered to be the Presiding Officer.

Hearings will normally be held in City Hall or, if appropriate and desirable, in the vicinity of the district (or landmark). The Presiding Officer shall open each hearing by reading a statement which identifies the purpose of the review and establishes an appropriate forum for proceedings by a public body.

Applications will be heard in the order given in the agenda; except that the Presiding Officer may change the order to prevent delays, such as if an applicant is not present and applicants listed later in the agenda are present. The Presiding Officer will ask the applicant to describe the application, and then will ask for staff comments on conformance with the standards and criteria and a recommendation for action. Any member of the public, in order of recognition by the Presiding Officer, may then speak on

the application. The Presiding Officer may, at his or her discretion, change any procedure for conduct of hearings, provided that all persons affected by the application have a fair opportunity to be heard. The chairman may also impose a time limit on testimony.

4.5 Consideration by the Commission

Following the public hearing, the Presiding Officer will file a written report with recommendations for action by the Commission. A summary oral report may also be made to the Commission at the time of consideration. Unless any member of the Commission so requests, a full review of each application shall not take place a second time before the Commission.

As soon as may be convenient following the public hearing, but no later than the thirtieth day following the filing of the application, unless applicant in writing shall allow additional time, the Commission shall act on the application.

4.6 Certificate of Design Approval

The Commission may take the following actions regarding an application for a Certificate of Design Approval:

4.6.1 Approval

The Commission may approve the application as submitted; this action authorizes the Secretary to issue a Certificate of Design Approval.

4.6.2 Approval with Provisos

The Commission may approve the application subject to certain provisos generally pertaining to changes in the proposed work or subsequent design review of elements of the proposed work by either Commission or staff.

4.6.3 Approval with Conditions to be Covenants

Subject to the provisions of Section 6 of Chapter 772, the Commission may approve an application, incorporating into the Certificate of Design Approval conditions to be covenants running with the land, found to achieve the purposes of the enabling act.

4.6.4 Disapproval

The Commission may decide not to issue a Certificate of Design Approval, in which case it shall state in writing its reasons for its decision. If, when considering the application, the Commission finds there is insufficient information to evaluate the proposed changes, it may disapprove the application "without prejudice" for reasons of insufficient information. In this case, the application must be resubmitted for consideration and treated as if it were a new application, unless the applicant agrees to a waiver of the 30-day time limit, and the application is tabled until the next hearing.

4.7 Notice of Decision

Notices of determinations by the Commission shall be sent by certified mail to applicants and by regular mail to those who have at the public hearing requested such notice. A Certificate of Design Approval shall be considered valid for two years following issuance of the notice of decision.

4.8 Certificate of Exemption

According to of the Enabling Act, there are conditions under which the Commission shall issue a Certificate of Exemption. These pertain to applications delineating work which is "ordinary maintenance and repair", or which is required to remove or rectify a condition dangerous to the public safety. A Certificate of Exemption shall also be issued for work authorized under a permit dated prior to the effective date of the Act.

The Commission staff shall review each application to see if any of these conditions apply. Upon determining that any such conditions do apply, a Certificate of Exemption shall immediately be issued.

For purposes of administering the process expeditiously, "ordinary maintenance and repair" will be interpreted to include changes to designated properties which are specifically excluded from the jurisdiction of the Commission by virtue of the design guidelines adopted at the time of designation.

4.9

Certificate of Exemption Based on Hardship

Section 7 of Chapter 772 establishes certain conditions under which the Commission may issue a Certificate of Exemption based on economic hardship to the applicant. No administrative review may occur on an application for a Certificate of Exemption based on Hardship.

An applicant seeking a Certificate of Exemption based on financial hardship shall be required to produce evidence of substantial financial hardship.

At the time of filing for a Certificate of Exemption based on hardship, the applicant shall supply the Commission with the following information:

1. The amount paid for the property, the date of purchase and the party from whom purchased (including a description of the relationship, if any, between the owner and the person from whom the property was purchased).
2. The assessed value of the land and improvements thereon according to the two most recent assessments.
3. Real estate taxes for the previous two years.
4. Annual debt service, if any, for the previous two years.
5. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.
6. Any listing of the property for sale or rent, price asked and offers received, if any.
7. Any consideration by the owner as to profitable adaptive uses for the property.

If the property is income-producing, an owner must also provide: annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and cash flow, if any, during the same period.

4.10

Violations

Commission staff shall notify owners of record or sites where the changes are being made without Commission approval that they are in violation of the enabling act and that they are required to report directly to the Commission about the violation. The staff shall issue notices of violation to the owners of record, describing the violation and the steps needed to rectify it, in response to complaints filed by any of the following:

1. any Commissioner or alternate;
2. the executive director or any member of the staff;
3. the City of Boston Inspectional Services Department; or
4. any person, if the violation is certified by a person listed above.

Commission staff shall send notices of violation by first class mail upon receipt of the complaint, subject to certification. The staff shall simultaneously file a complaint with the Inspectional Services Department. If the owner or record does not respond within ten days of the violation notice, the secretary shall send a second notice expressing the intent of the Commission to present the case to Corporation Counsel if no response is received.

If no response is forthcoming, the secretary shall be required (with the consent of the executive director or the chair of the Commission) to present the violation to the Corporation Counsel for appropriate action to require conformance with the enabling act.

A cease and desist order shall be issued where work deemed hazardous to the preservation of the landmark (e.g., sandblasting, removal of significant artifact, demolition) is underway and immediate notification is required to suspend such activity. Such orders shall be delivered in person to the site.

4.11 Records

All records of the regulatory function of the Commission shall be on file in the Environment Department and available for public inspection.

4.11.1 Minutes

Minutes, taken by Commission staff, shall include: a summary of discussion of each application presented at the public hearing; a record of any motions, including the name of the member making the motion, and a listing of all yea and nay votes cast. No minutes need be taken for administrative reviews (See Section 4.4). The minutes shall be available to all members and to the public.

ARTICLE 5: Amendments

- 5.1 Form: Amendments to these Regulations shall be proposed in writing and shall be made available to the public and the members of the Commission at such time as notice is given for the public hearing at which they are to be considered.
- 5.2 Approval: Amendments to these Regulations may be considered at any regular, special or annual meeting of the Commission subsequent to a public hearing on the proposed amendments. Approval shall be consistent with the following provisions by the By-laws: Article 4.2.b shall be used to determine the quorum required and Article 4.3 shall be used to determine the votes required for approval.

ARTICLE 6: Se verability

- 6.1 Se verability: The provisions of these Regulations are severable; if any such provision or provisions shall be held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provisions of the Regulations.

EXHIBIT 4



August 26, 2009

Mark Donahue
Mission Associates, LLC
c/o Weston Associates
170 Newbury Street
Boston, MA 02116

CERTIFICATE OF DESIGN APPROVAL WITH PROVISOS

Re: Application #05.675 (200.05.01) Continuing Review of Renewal and Revisions
Basilica Court Project, 90 Smith St, Mission Hill, Mission Church Complex

Dear Mr. Donohue:

**Boston
Landmarks
Commission**

City of Boston
The Environment
Department

Boston City Hall/Room 805
Boston, Massachusetts 02201
617/635-3850

Susan D. Pranger, Chair
Cyrus Field, Vice-Chair
John Amodeo
David Berarducci
Dana Brown
David Colton
John Freeman
Susan Gogonian
Thomas Herman
Kirsten Hoffman
Adam Hundley
Diana Parcon
Jeffrey Pond
Yanni Tsipis
Charles Vasiliades
Richard Yeager
Ellen J. Lipsey, Exec. Director

At its hearing held in Boston City Hall on August 25, 2009, the Boston Landmarks Commission reviewed your application for a renewal of the Certificate of Design Approval for application #05.675 (200.05.01) which was originally issued on June 06, 2005 and expired on June 06, 2007. The Commission reviewed the request for a renewal with the understanding that the project proposal remains the same, with relatively minor revisions to the first phase of the project. The proposed project consists of the following work for the Basilica Court project: The project consists of approximately 229 units of rental housing located at 80-100 Smith Street and 100 St. Alphonsus Street. The project includes adaptive reuse of the Mission School; demolition of the Power Station, St. Alphonsus Hall and the Convent; and construction of two new residential buildings, an eight-story building on the approximate footprint of St. Alphonsus Hall and a 14-story building on the approximate footprint of the Convent. The project also includes below- and on-grade parking, rehabilitation of perimeter walls and fences and rehabilitation of the retaining wall separating the upper and lower portions of the Mission Church complex. The proposed first phase of the project will be to demolish the Power Station and its smokestack, rehabilitate the Mission Grammar School for office use and make some site improvements; the demolition of the Convent and St. Alphonsus Hall and subsequent new construction of the residential buildings and below-grade parking will be in a future construction phase, the date of which is undetermined. The Commission based its review on the plans and specifications submitted with the original application dated February 8, 2005, the submittal dated May 10, 2005 and the Smith Street, St. Alphonsus Street and ball field elevations for Scheme A dated May 24, 2005 and the site plans dated May 23, 2005. The Commission also reviewed a submittal dated August 11, 2009, consisting of site plan, architectural plans, elevations and section drawings describing proposed revisions required to accommodate mechanical equipment within the roof of the school building and to relocate a mechanical unit on the site.

The Commission agreed to grant a renewal (valid for two years from date of issue) of the original Certificate of Design Approval with Provisos as follows:

1. All of the final designs, details, colors, and materials shall be submitted to the BLC – the Design Review Committee and full commission – for final review and approval before the work commences. This includes the plans for new construction, rehabilitation and repairs to the building envelope of the Mission School (according to the Standards and Criteria for secondary buildings), site/landscaping work, salvaged items, lighting and signage.
2. For salvaged materials, the applicant shall submit to the BLC for review and approval an inventory documenting all materials to be salvaged along with salvage techniques, storage provisions and reuse plans. Stone from St. Alphonsus Hall shall be used for the first floor courses of the building replacing the hall, details to be reviewed and approved by the BLC. Reuse of terra cotta panels, cast iron elements, and stained glass from the Convent shall also be reviewed and approved by the BLC.
3. The BLC notes in particular Section 9.6 of the Standards and Criteria addressing Demolition. Demolition shall only be considered for the purpose of new construction. Demolition shall only be allowed once a financial commitment to the project, or a demonstrated financial capacity, has been presented to the satisfaction of the City of Boston, and once major permits, including a building or foundation permit, have been secured. The owners of record shall be responsible for securing all of the buildings of Mission Church Complex. If the owners fail to secure the buildings, the further deterioration or loss of the buildings due to water damage, vandalism, fire, or other causes shall be considered demolition by neglect.

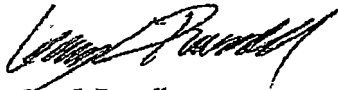
The Commission at the August 26, 2009 hearing approved the presented revisions to the application with the following provisos:

4. The renewal of the Certificate of Design Approval with Provisos is valid until August 26, 2011, with all original provisos listed above to be followed, as well as additional provisos listed below.
5. The new location for the transformer is approved, provided there is additional screening of the equipment, as designed by the landscape architect and reviewed by BLC staff.
6. The changes to the school roof to accommodate the rooftop mechanical equipment is approved provided the location near the ridge line and detailing be designed to minimize the appearance of the HVAC equipment. Clearance is to be confirmed by the equipment manufacturer and the final location and details to be reviewed by BLC staff.
7. The landscape plan shall be revised to include site improvements that incorporate salvaged material from the demolition of the power plant and smokestack, to the extent possible. The revised landscape and materials salvage plan shall be reviewed by the BLC Design Review Committee at a future hearing.
8. The final details and specifications of new doors and railings are to be submitted to BLC staff for review and approval.

This determination is based solely upon the information submitted to the Commission with the application. If statutory reviews by other authorities conflict with this decision, those actions may affect the status of the certificate. This certificate is valid for two years from the date of issue. The applicant is required to notify the Commission of any changes to this proposal, and failure to do so may affect the status of this certificate. The Commission reserves the right to require remedial action to bring work into compliance with Commission standards if any work occurring without a Certificate of Design Approval results in significant change in the appearance of the building. The Commission may also require remediation if work does not meet the noted specifications of a Certificate of Design Approval or which is not in compliance with Boston Landmarks Commission standards and criteria for this property or with Commission policy. Photographs of the completed project should be submitted to the Commission office to confirm compliance with the terms of the certificate.

Please bring a copy of this certificate with you when filing for permits from the Inspectional Services Department at 1010 Massachusetts Avenue, Boston. Feel free to contact the Commission staff at (617) 635-3850 if you have any questions regarding this decision. Thank you for your cooperation with the Commission.

Sincerely,



Gary L. Russell
Staff Architect

Record of Commission Vote: Application #05.675 (200.05.01) Continuing Review: 90 Smith St, Mission Hill, Mission Church Complex 08-25-09

Motion: Field, Second: Pranger

In favor: Pranger, Tsipis, Hoffman, Hundley, Field, Goganian, Amadeo Opposed: None.

cc: Randi Lathrop, BRA
Erico Lopez, BRA
David Carlson, BCDC
Brona Simon, MHC

EXHIBIT 5



Michelle Wu
Mayor

Boston Inspectional Services Department

Building and Structures Division

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

VIOLATION NOTICE

Marc A. Joseph
Inspector of Buildings

MARK J DONAHUE, MISSION ASSOC. LLC & WESTON ASSOC. INC.
170 NEWBURY ST
BOSTON, MA 02116

DATE FILED: 02/17/2011

INSPECTOR: William Solberg

VIOLATION NUMBER: **V91802**

Owner or in control of property located in the City of Boston at:

100 SMITH ST Mission Hill/, MA 02120

WARD: 10

The Commissioner of the City of Boston Inspectional Services Department and the Inspector of Buildings of the City of Boston have adjudged certain property owned or controlled by you to be in violation of the Massachusetts State Building Code, pursuant to M.G.L. c. 143 s. 1 et seq., and 780 CMR 114.0 et seq. (9th Ed.), as amended. Notice of said violation and order to abate same through the remedy and within the time prescribed below is hereby provided pursuant to 780 CMR 114.2.

780 CMR:	Description	Violation Remedy
Chapter 103.1	Unsafe Maintenance.	Secure a permit to repair or replace
	Left side of brick first floor is showing some major cracks and balconies are also deteriorating.	Submit to this Department, forthwith, a Mass. State Registered structural engineer's report on condition of balconies and the cracks in the exterior bricks. The report also needs to give specific recommendation in a plan to repair on an immediate schedule.

Failure to correct this Violation within **24 Hours** of service of this Notice will result in criminal prosecution and/or civil penalties and fines.

Inspector

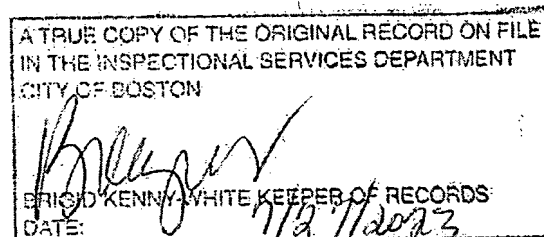
For the Commissioner

William Solberg

Phone: (617)961-3372

Email: william.solberg@boston.gov

Date Issued





Michelle Wu
Mayor

Boston Inspectional Services Department Building and Structures Division

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

Marc A. Joseph
Inspector of Buildings

PERMIT

For minor alteration, repair, replacement, renovation & demolition, not to include structural work, egress, or change of occupancy.

Primary Contact: **JOHN MORIARTY**

Issue Date: **03/01/2011**

Name of Owner:

Fees: **\$30.00**

Address: **100 SMITH ST
Mission Hill, MA 02120**

Declared Value: **\$1,000.00**

Neighborhood: **Mission Hill/**

Ward: **10**

Legal Occupancy: **n/r long form
to come**

Application/Permit No: **SF65947**

Work Description: **MAKE BUILDING SAFE PRIOR TO DEMOLITION HEARING WITH BOSTON LANDMARKS COMMISSION AND TO CLEAR ISD VIOLATIONS #V91802**

Requirements:

1. Before any construction commences, this permit must be posted at the front of the street address, affixed to a window and open to public inspection until the completion of work.
2. Rough inspections are required for: excavation before concrete is poured; before foundation work is covered; when rough wiring or plumbing is completed; prior to insulating or closing of walls.
3. Final inspections for mechanical and/or electrical shall be done prior to obtaining the final approval by the Building Inspector.
4. The holder must call the District Inspector to arrange for all inspections: 617 635-5300.

Date	Building Inspector	Insp Type	Date	Building Inspector	Insp Type
Date	Electrical Inspector	Insp Type	Date	Electrical Inspector	Insp Type
Date	Mech Inspector	Insp Type	Date	Mech Inspector	Insp Type

A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON

Construction work is permitted from Mon - Fri, 7am to 6pm, CBC Ord. 16-26A

BRIGID KENNY-WHITE, KEEPER OF RECORDS

POST THIS PERMIT IN VIEW OF THE PUBLIC WAY OR STREET

7/27/2023

**Choo
& Company, Inc.**

Architecture and Engineering

May 13, 2011

Bill Solberg
Boston Inspectional Services Department
1010 Massachusetts Avenue
Boston MA 02118

wd 10

Re: 100 Smith Street Boston MA
Project #11038

Dear Mr. Solberg,

In reference to the property at 100 Smith Street in Boston, Massachusetts, I have visited the site and observed that the emergency repairs to the balcony in the bay window are adequate. I believe that the temporary fence can be removed.

Please contact me if you have any questions.

Very truly yours,
Choo & Company, Inc.



Arthur Choo Jr., A.I.A.



A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON
[Signature]
BRIGID KENNY-WHITE, KEEPER OF RECORDS
DATE: 7/27/2011

Choo & Company, Inc.

Architecture, Construction Management & Testing

February 24th, 2011

Mr. Mark Donahue
Weston Associates, Inc.
170 Newbury Street
Boston, MA

RE: 100 Smith Street, Boston MA
Project No. 11038

Dear Mr. Donahue,

On Friday February 18th 2011 I visited the Mission Church complex on Smith Street in Boston MA.

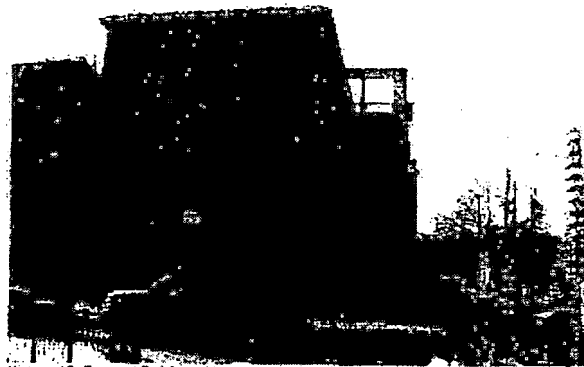
I was asked to assess the structural integrity of the former convent building at 100 Smith Street (built 1898).

1. BUILDING DESCRIPTION – EVALUATION

The Convent Building is a brick building that stretches along St. Alphonsus Road and has its entrance along Smith Street.



Picture 9. Convent Building along St. Alphonsus Street



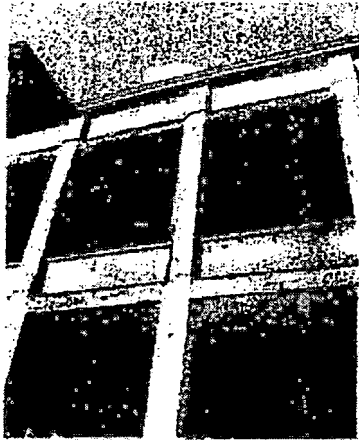
Picture 10. Convent Building main entrance – Smith Street

The investigation was started by a thorough walk around the building. The exterior walls appeared to be in good condition, no major cracks could be seen and no loose material was detected. The only areas at the exterior that will need some attention are the balconies and a one story bay window at the courtyard. It should also be noted that the roof drainage needs improvement. The current drainage is not sufficient to prevent water damage to the building. Rain and melting water should be properly collected and drained away from the building.

One Billings Road, Quincy, MA 02171 phone: 617-786-7727

Facsimile: 617-786-7715

RECORD ON FILE
THE OFFICE OF THE CLERK OF THE SUPERIOR COURT
DEPARTMENT OF REVENUE
FRIGID KENNY-WHITE
CLERK OF RECORDS
1/27/2023



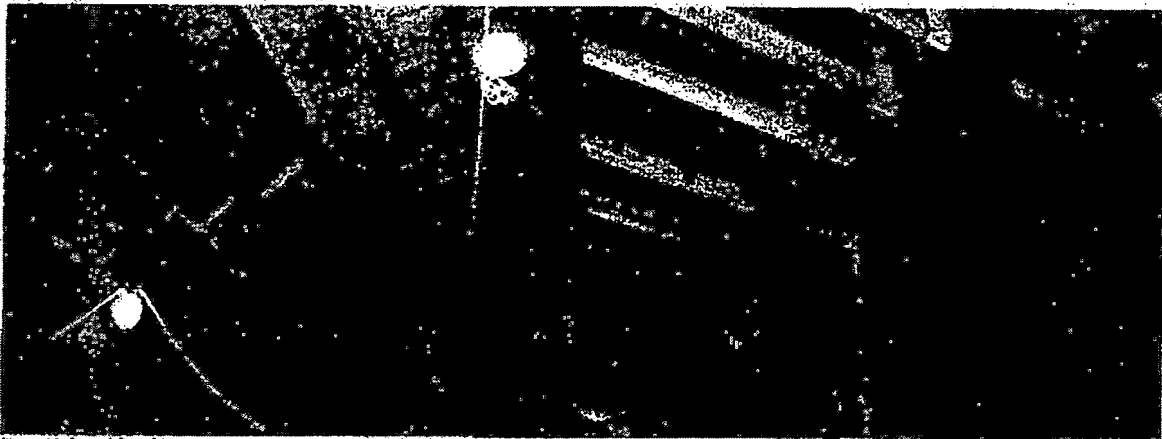
Picture 11: balconies in the courtyard



Picture 12: cracks in brick wall at bay window - cracks are due to a construction accident

All loose materials at the balconies should be removed and all cracks in the concrete should be patched. The balconies should then be properly shored up to prevent any damage by falling parts. The area at the bay window that was damaged during a construction accident (picture 12) should also be patched and shored up to prevent further cracking of the walls.

The first two floors of the Convent Building consist of wood decking on wood joists/beams. The roof framing is wood joists on steel beams.



Picture 13: Second floor framing

Picture 14: Roof framing

2. CONCLUSIONS

It is my professional opinion that the Convent Building is not in danger of collapse and does not pose a risk to public safety at this time. The structural elements appear to be in reasonable condition, although some joists and beams show signs of water damage and will need to be replaced in the future. Some additional building upgrades will need to be done in order to make it comply with the current building code. It is also advised that the roof should be investigated after the snow is melted, and any holes in the roof be patched to prevent water from entering and deteriorating the structure.

Please contact me if you have any questions.

Very truly yours,

Choo & Company Inc.
Arthur Choo Jr., A.I.A.

REGISTERED ARCHITECT
ARTHUR K.F. CHOO
No. 6319
BOSTON
MA

THIS IS A TRUE COPY OF THE ORIGINAL RECORD ON FILE
INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON

ARGID KENNY-WHITE KEEPER OF RECORDS
DATE: 7/27/2023

EXHIBIT 6



7/26/2023 16:16

INFORMATION - APPLICATION# BOA1501970

Application Type BOA
Application Type Description Board of Appeals
Primary Applicant Ryan
Primary Applicant Last Name Gazda
Address 80 to 100 Smith ST 10 Mission Hill MA 02120
Location
 Application is Open.
 Current milestone is Fees.
 Current unpaid amount of \$150.00.

Job Description

Status Dates

Processed 7/24/2023 09:26
by Isabel DaRosa
Issued
by
Final
by
Temp COO
by
COO
by
Expires

Job Description

Work Type
Work Type Description
Occupancy Type Comm
Occupancy Type Description Commercial
Priority
Priority Description
A/P Name
Square Footage 0.00
of Plans 0
of Pages 0
Declared Valuation 438000.00
Calculated Valuation 0.00
Actual Valuation 0.00
Comments
 At 80 Smith Street, to correct "unsafe and dangerous" violation V637004, raze the entire building/structure. The building at 100 Smith Street is being razed under building permit SF1411719. The occupied building at 90 Smith Street is remaining intact. **Dig Safe # 20231201777**

Application Details

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Reviews

(Tab Not Loaded)

Inspections

(Tab Not Loaded)

Conditions

(Tab Not Loaded)

Required Licenses

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Fees

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Bonds

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Valuations

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Applicants

(Tab Not Loaded)

Sites

(Tab Not Loaded)

Model Homes

(Tab Not Loaded)

Employees

(Tab Not Loaded)

Related Records

(Tab Not Loaded)

Logs

(Tab Not Loaded)

Attachments

(Tab Not Loaded)



7/26/2023 16:16

INFORMATION - APPLICATION# BOA1501970

Application Type BOA
Application Type Description Board of Appeals
Primary Applicant Ryan
Primary Applicant Last Name Gazda
Address Location 80 to 100 Smith ST 10 Mission Hill MA 02120
 Application is Open.
 Current milestone is Fees.
 Current unpaid amount of \$150.00.

Job Description

Status Dates

Processed 7/24/2023 09:26
by Isabel DaRosa
Issued
by
Final
by
Temp COO
by
COO
by
Expires

Job Description

Work Type
Work Type Description
Occupancy Type Comm
Occupancy Type Description Commercial
Priority
Priority Description
A/P Name
Square Footage 0.00
of Plans 0
of Pages 0
Declared Valuation 438000.00
Calculated Valuation 0.00
Actual Valuation 0.00
Comments
 At 80 Smith Street, to correct "unsafe and dangerous" violation V637004, raze the entire building/structure. The building at 100 Smith Street is being razed under building permit SF1411719. The occupied building at 90 Smith Street is remaining intact. **Dig Safe # 20231201777**

Application Details

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Valuations

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Applicants

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Sites

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Model Homes

(Tab Not Loaded)

Employees

(Tab Not Loaded)

Related Records

(Tab Not Loaded)

Logs

Event Log

Log Type	Description	Started	Started By	Stopped By	Total Time	Stopped	Review #	Inspection #	Comments
EMAIL	Emailed message	7/24/2023 09:26	077534		0	1	1		2315823

Status Log

Changed On Milestone Application Status Changed By System Generated Comments

7/24/2023 09:29	Fees	Open	077534	true
7/24/2023 09:26	Intake	Open	077534	true

Attachments

(Tab Not Loaded)



7/26/2023 16:17

INFORMATION - APPLICATION# BOA1501979

Application Type BOA
Application Type Description Board of Appeals
Primary Applicant Ryan
Primary Applicant Last Name Gazda
Address Location 94 Saint Alphonsus ST 10 Mission Hill MA 02120
 Application is Open.
 Current milestone is Fees.
 Current unpaid amount of \$150.00.

Job Description

Status Dates

Processed 7/24/2023 09:34
by Isabel DaRosa
Issued
by
Final
by
Temp COO
by
COO
by
Expires

Job Description

Work Type
Work Type Description
Occupancy Type Comm
Occupancy Type Description Commercial
Priority
Priority Description
A/P Name
Square Footage 0.00
of Plans 0
of Pages 0
Declared Valuation 420000.00
Calculated Valuation 0.00
Actual Valuation 0.00
Comments
 At 100 Smith Street, to correct "unsafe and dangerous" violation V639670, raze the entire building/structure. The building at 80 Smith is being razed under building permit SF1411715. The occupied building at 90 Smith Street is remaining intact. **Dig Safe # 2023120777**

Application Details

(Tab Not Loaded)

Reviews

(Tab Not Loaded)

Inspections

(Tab Not Loaded)

Conditions

(Tab Not Loaded)

Required Licenses

(Tab Not Loaded)
Fees (Tab Not Loaded)
Bonds (Tab Not Loaded)
Valuations (Tab Not Loaded)
Applicants (Tab Not Loaded)
Sites (Tab Not Loaded)
Model Homes (Tab Not Loaded)
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Related Records (Tab Not Loaded)
Logs (Tab Not Loaded)
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Logs Event Log <table border="1"> <thead> <tr> <th>Log Type</th> <th>Description</th> <th>Started</th> <th>Started By</th> <th>Stopped By</th> <th>Total Time</th> <th>Stopped</th> <th>Review #</th> <th>Inspection #</th> <th>Comments</th> </tr> </thead> <tbody> <tr> <td>EMAIL</td> <td>Emailed message</td> <td>7/24/2023 09:34</td> <td>077534</td> <td></td> <td>0</td> <td></td> <td>1</td> <td>1</td> <td>2315823</td> </tr> </tbody> </table> Status Log <table border="1"> <thead> <tr> <th>Changed On</th> <th>Milestone</th> <th>Application Status</th> <th>Changed By</th> <th>System Generated</th> <th>Comments</th> </tr> </thead> <tbody> <tr> <td>7/24/2023 09:37</td> <td>Fees</td> <td>Open</td> <td>077534</td> <td>true</td> <td></td> </tr> <tr> <td>7/24/2023 09:34</td> <td>intake</td> <td>Open</td> <td>077534</td> <td>true</td> <td></td> </tr> </tbody> </table>	Log Type	Description	Started	Started By	Stopped By	Total Time	Stopped	Review #	Inspection #	Comments	EMAIL	Emailed message	7/24/2023 09:34	077534		0		1	1	2315823	Changed On	Milestone	Application Status	Changed By	System Generated	Comments	7/24/2023 09:37	Fees	Open	077534	true		7/24/2023 09:34	intake	Open	077534	true	
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