

MEMORANDUM

TO: South End Landmark District Commission
FROM: Nick O'Neill, Assistant Corporation Counsel, City of Boston Law Department
Sean Chen, Assistant Corporation Counsel, City of Boston Law Department
DATE: December 12, 2019
RE: Required procedure for Certificates of Exemption in South End Landmark District

Relevant statutory provision:

- Chapter 772 of the Acts of 1975, Section 8
 - “A certificate of exemption **shall** be issued by the commission in response to every application determined, in accordance with section six, to delineate . . . (ii) any construction, reconstruction, restoration, alteration, erection, replacement or **demolition which the building commissioner shall have certified as being required to remove or rectify a condition dangerous to the public safety . . .**”
 - “Such a certificate **may** be issued by the commission in response to any application whenever, in accordance with section six, it shall be determined: (i) that the construction, reconstruction, restoration, alteration, erection, replacement or **demolition delineated in the application and appendices thereto would not materially impair the historical, social, cultural, architectural or aesthetic significance of the landmark or improvement which is the subject of the application and the landmark district** or architectural conservation district, if any, in which such landmark or improvement is located; **and** (ii) that **failure to issue such certificate would impose substantial hardship** on the applicant. The applicant shall be required to produce evidence of substantial hardship, which may include evidence that the property which is the subject of the application is not capable of earning a reasonable return. **The commission shall review such evidence and make a finding as to whether substantial hardship would result from failure to issue a certificate of exemption.** Notwithstanding any other provisions hereunder, the commission may postpone a final determination on the application for up to ninety days from the date of the hearing held pursuant to section six, during which time it shall endeavor to devise, in consultation with the applicant, a plan whereby, through such actions as are necessary or appropriate, the landmark or improvement may be preserved.”

Article 7: Actions by the Commission

Section 7.1 **CERTIFICATES OF DESIGN APPROVAL:** The commission may take any of the following actions regarding application for a Certificate of Design Approval:

- a. **Approval** -- The Commission may approve the application as submitted. This action authorizes the secretary to issue a Certificate of Design Approval.
- b. **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.
- c. **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 statute.
- d. **Denial** -- The Commission may deny the application, in which case it must set forth its reasons, and notify the applicant in writing of the reasons cited for the denial, and may include recommendations concerning the work proposed in the denied application. Without substantial changes, a denied application may not be resubmitted for two years.
- e. **Denial without Prejudice** -- The commission may deny without prejudice the application in order to request additional or alternative information, in which case it must specifically set forth the required information.

Section 7.2 **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 is valid for two years following issuance of the notice of decision.

Section 7.3 **CERTIFICATE OF EXEMPTION:** According to the enabling statute, 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. 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 which are specifically excluded from the jurisdiction of the Commission by virtue of the Standards and Criteria adopted at the time of designation.

Section 7.4 CERTIFICATE OF EXEMPTION BASED ON HARDSHIP: Section 7 of the enabling statute 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 most recent tax 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 purchases, 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:

1. Annual gross income from the property for the previous two years.
2. Itemized operating and maintenance expenses for the previous two years.
3. Cash flow, if any during the same period.

Section 7.5 APPEAL OF DECISIONS: Any person aggrieved by a decision of the commission must, in accordance with Section 9 of the enabling statute, file for appeal to the superior court for Suffolk County.

Section 7.6 APPEAL OF SATISFACTION OF CONDITIONS: If both the person designated under Section 7.1(b) to certify approval with provisos and the applicant cannot agree as to whether the conditions have been met, the applicant may appeal to the full commission by filing for an appeal with the secretary. The appeal must be filed in writing by the deadline for application for Certificates of Design Approval, and must include all necessary drawings and documents. The appeal will be heard at the first eligible regular meeting of the commission. The commission may uphold an appeal by simple majority vote.