



BOSTON CITY COUNCIL

Committee on Government Operations
Lydia Edwards, Chair

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REPORT OF COMMITTEE CHAIR

November 17, 2021

Dear Councilors:

Docket #0296, petition for a special law re: An Act Relative to the Boston Landmarks Commission, was sponsored by Councilor Kenzie Bok and Councilor Liz Breadon and referred to the Committee on February 3, 2021. The Committee held a hearing on February 8, 2021 where public comment was taken and working sessions on February 18, 2021 and September 8, 2021.

Summary of Legislation:

Docket #0296 will amend Section 2 of Chapter 772 of the Acts of 1975, as most recently amended by Section 11 of Chapter 373 of the Acts of 2018 by changing the definition of the term “Landmark”. The change will allow for local resources that have historical significance in the community to be designated as landmarks.

Information Gathered at the Hearing:

At the hearing, the Committee discussed the current process for landmarking, the importance of local involvement, as well as the relationship between historic preservation and development. The Committee discussed that resources with significance to the City’s neighborhoods should be able to be designated as landmarks. The Committee recognized that having landmarks with local significance will provide equity and will allow the City of Boston to preserve its local history. The Committee heard testimony from Carl Spector, Environment Commissioner; Rosanne Foley, Executive Director of the Landmarks Commission; and Lynn Smiledge, Chair of Landmarks Commission.

Information Gathered at the February 18th Working Session:

The following individuals participated in the working session: Rosanne Foley, Executive Director of the Landmarks Commission; Lynn Smiledge, Chair of Landmarks Commission; Greg Galer, Executive Director of the Boston Preservation Alliance; Paul Steinke, Executive Director of the Preservation Alliance of Greater Philadelphia; Greg Vasil, Chief Executive Officer, Greater Boston Real Estate Board (“GBREB”); and, Adam Hundley, Esq. Councilor Bok provided opening remarks supporting the docket and stating that local landmarking may have been the original intent of the enabling legislation. Councilor Bok stated that requiring state or national significance in addition to local significance is contrary to what other cities do across the country. Councilor Bok stated that this legislation is important to all of the City’s communities and will open up the landmark process to resources of local significance. The

Committee discussed the current process and the impact of the legislation on projects that have already received approvals and permits.

Mr. Vasil and Mr. Hundley offered comments supporting the spirit of the legislation but cautioned that the language may have unintended consequences. Mr. Vasil and Mr. Hundley suggested that transition language be included in order to protect projects that have received permits. Mr. Hundley explained that transition language provides fairness, consistency, and predictability for projects in the pipeline. Mr. Hundley offered the following language and the Committee discussed its merits: “Section 2. Notwithstanding any other law, rule, regulation, or provision to the contrary, these sections shall apply to the Boston Landmarks Commission only. **However, Section 1 shall not apply to any property which, prior to the effective date of this Act, was the subject of action by the Landmarks Commission on a landmarking petition or under Article 85 of the Boston Zoning Code relating to demolition delay. Further, no action of the Landmarks Commission under Section 1 shall be inconsistent with or invalidate any actions taken prior to the effective date of this Act by the Zoning Board of Appeal, Boston Redevelopment Authority, or Inspectional Services Department of the City of Boston.**” The Committee discussed what the standards should be for projects to receive the benefit of transition language.

Information Gathered at the September 8th Working Session

The Committee discussed the purpose of the docket and reviewed the issues raised at the hearing and previous working session. Councilor Bok provided an update on developments since the last working session explaining that the City Council supported significant increases in the Boston Landmarks Commission budget. The increase in funding will be used for staff raises, additional staff and dedicated funds to review the study report backlog.

The Committee discussed concerns raised by property owners with Boston’s interest in protecting its history with sites that have local significance. The real estate community raised concern about providing predictability for property owners with sites currently under development. The Committee discussed that the remaining issue with the legislation is its applicability and whether some categories of sites should be exempted from this change. The real estate community offered reasons for properties to be exempted as follows: an attempt to landmark them under the current statute has previously failed and development approvals have already been granted. Preservation advocates oppose these broad exemptions so that no neighborhood should be penalized for attempting to landmark a site under the old standard and that approvals are often held for many years without action.

Councilor Bok proposed compromise language as follows:

The change would take effect on the next July 1st following passage; this will allow for advance notice for all property owners and will enable appropriate staffing/funding increases for the Landmarks Commission in the relevant fiscal year.

All properties with current approved unexpired building permits (from ISD) or current approved unexpired variances (from ZBA) at the effective date (July 1) would be exempted from consideration under the new standard, so long as these approvals remain unexpired. Note: building permits expire after 6 months if work is not started, variances after two years, but mechanisms exist for extending either for active projects.

Projects with a Planned Development Area zoning overlay district approved by the BPDA Board and Zoning Commission by the effective date (July 1) would be exempted from consideration under the new standard for two years, after which point they would remain exempt for any portion of the site with an approved building permit that remains unexpired.

Summary of Amendments:

Based upon the information gathered at the hearing and the working session regarding the impact of the change on ongoing projects, the docket is amended by adding language concerning previously approved permits or variances. In Section 2 language is added that would exempt property where building permits approved by the City or zoning variances granted by the Zoning Board of Appeal are in effect and unexpired. This would apply to designation of landmarks based solely on significance to Boston. Language is also added relating to properties with a Planned Development Area zoning overlay district. Any property designated as a Planned Development Area zoning overlay district approved by the Boston Zoning Commission by the effective date of this Act would not be subject to the new landmark designation standard under Section 1 of the Act until two years after the effective date of the Act. Further, any portion of the property within an approved Planned Development Area zoning overlay district where a building permit was previously approved during the two years following the effective date of this Act shall remain subject to the previous landmark designation language and shall not be subject to the new standard under Section 1 of this Act as long as such building permit remains in effect and unexpired.

Section 2 is amended as follows: “Notwithstanding any other law, rule, regulation, or provision to the contrary, these sections shall apply to the Boston Landmarks Commission only. However, the substitution of language enacted by Section 1 to allow for the designation of a Landmark based on significance solely to the City of Boston shall not apply to any property where, upon the effective date of this Act, building permits approved by the City of Boston or zoning variances granted by the Boston Zoning Board of Appeals are in effect and unexpired, for so long as said building permits or zoning variances remain in effect and unexpired. Furthermore, in the case of any property with a Planned Development Area zoning overlay district approved by the Boston Zoning Commission by the effective date of this Act, the substitution of language enacted by Section 1 shall not apply until two years after the effective date of this Act, and thereafter shall continue not to apply to any portion of the property within a Planned Development Area where a building permit has been approved by the City of Boston during the two years following the effective date of this Act, for so long as said building permit remains in effect and unexpired.”

Section 3 is amended by changing the effective date to the next July 1st following passage of the Act. Under the initially filed version, the Act would have gone into effect upon passage.

Rationale and Recommended Action:

Passage of this home rule petition will allow historic resources that have local significance to be eligible for landmark designation. Allowing local resources to proceed through the landmarking process will provide equity and community involvement. The amended language protects projects that have proceeded through or continuing through the permitting process. The

amended language will balance the City's important goal of preserving its local history with the desire that it provide predictable expectations to local property owners;

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0296, petition for a special law re: An Act Relative to the Boston Landmarks Commission,

submits a report recommending that this docket **ought to pass in an amended draft.**

For the Chair:

A handwritten signature in cursive script that reads "Lydia Edwards". The signature is written in black ink on a light-colored background.

Lydia Edwards, Chair
Committee on Government Operations