

**Legislation Creating the Back Bay Architectural District and
Establishing the Back Bay Architectural Commission**

Acts of 1966 – Chapter 625 (As Amended)

The Back Bay Architectural District was established under the Chapter 625 of the Acts of 1966. It has subsequently been amended on four occasions: Chapter 463 of the Acts of 1974, Chapter 645 of the Acts of 1979, Chapter 624 of the Acts of 1981, and Chapter 624 of the Acts of 1982. The following incorporates those amendments.

Be it enacted, etc., as follows:

Section 1. Purposes.¹ The purposes of this act are as follows: (a) to promote the economic, cultural, educational and general welfare of the public through high standards of design throughout the Back Bay and through the preservation of the residential portion of the Back Bay area in the City of Boston; (b) to safeguard the heritage of the City of Boston by preventing the despoliation of a district in that city which reflects important elements of its cultural, social, economic and political history, (c) to stabilize and strengthen residential property values in such area; (d) to foster civic beauty and (e) to strengthen the economy of the commonwealth and the City of Boston.

Section 2. Establishment of the District.² There is hereby created in the City of Boston a district to be known as the Back Bay Architectural District, bounded and described as follows: starting at the intersection of the center line of Newbury Street and the center line of Charlesgate East, thence running northerly by the center line of Charlesgate East to the center line of Back Street; thence running easterly by the center line of Back Street to the center line of Embankment Road, thence running southerly by the center line of Embankment Road to the center line of Beacon Street; thence running easterly by the center line of Beacon Street to the center line of Arlington Street; thence running southerly by the center line of Arlington Street to the center line of Boylston Street; thence running westerly by the center line of Boylston Street to the center line of Massachusetts Avenue thence running northerly by the center line of Massachusetts Avenue to the center line of Newbury Street; thence running westerly along the center line of Newbury Street to the point of beginning.

Section 3. Definitions. As used in this act, the following words shall have the following meanings:

"Board", the Boston Redevelopment Authority or any successor to it in its capacity as the planning board of the City of Boston.

"Building Commissioner", the building commissioner of the City of Boston.

¹ Amended by Sec. 1 of Chapter 463, 1974, and then replaced in its entirety by Sec. 1 of Chapter 624, 1981.

² Replaced in its entirety by Sec. 2 of Chapter 463, 1974, and then replaced again in its entirety by Chapter 645, 1979.

"City", City of Boston.

"Commission", the commission provided for by section four.

"Exterior architectural feature", the architectural style and general arrangement of the exterior of a structure or any portion of it including but not limited to kind, color and texture of the building material, type and design of all windows, doors, lights, signs, and other fixtures, the location and adequacy of vehicular access, if any, type and design of landscaping, fences and walls, and the location and treatment of any parting space for motor vehicles.³

"Structure", a structure as defined in the Boston Building Code together with related paving, fencing or masonry or stone walls.

Section 4. Back Bay Architectural Commission. There shall be in the Environment Department⁴ a commission known as the Back Bay Architectural Commission, consisting of nine commissioners and five alternates, appointed by the mayor as follows: two commissioners and one alternate from five candidates nominated by the Neighborhood Association of the Back Bay, two commissioners and one alternate from five candidates nominated by the Back Bay Association, two commissioners and one alternate from five candidates nominated by the Boston Society of Architects, one commissioner and one alternate from three candidates nominated by the Greater Boston Real Estate Board, and two commissioners, at least one of whom shall have an interest in a retail business in the Back Bay Architectural District, and one alternate selected at large by the mayor.⁵ The terms of the commission members and alternates nominated by the Boston Society of Architects, and their successors, shall terminate in nineteen hundred and eighty, nineteen hundred and eighty-five, and every five years thereafter.⁶ As the term of any commissioner expires, his successor shall be appointed in like manner as such commissioner for a term of five years. Any vacancy in the office

³ Definition of "Exterior Architectural Feature" amended by Sec. 2 of Chapter 624, 1981.

⁴ "Boston Redevelopment Authority" replaced by "Environment Department" by Sec. 5, Chapter 624, 1982.

⁵ The number and method of appointment of the members of the Commission was amended by Sec. 3 of Chapter 463, 1974. To clarify the transition to the new language, Section 16 of the 1974 statute also included the following provision:

Section 16: The Commissioners to be appointed to the Back Bay Architectural Commission pursuant to section three of this act, in addition to the incumbent members under prior law, shall be appointed by the mayor of the city of Boston from two candidates nominated by the named nominating organizations in said section three, and the terms of such original appointments shall for each such commissioner be co-terminus with the term of the incumbent nominated by the same organization. Until said additional. Until the additional commissioners are appointed, the quorum requirement for action by said commission shall be three, and thereafter it shall be a majority of the commissioners.

⁶ This sentence regarding the terms of commissioners and alternates nominated by the Boston Society of Architects added by Sec. 3. Chapter 624, 1981

of a commissioner shall be filled in like manner for the unexpired term. As the term of any alternate expires, his successor shall be appointed in like manner as such alternate. Any vacancy in the office of an alternate shall be filled in like manner. Every person appointed an alternate shall be so appointed that his term will expire at the same time as the term of the incumbent commissioner appointed in the same manner as such alternate. Every commissioner and every alternate shall continue in office after the expiration of his term until his successor is duly appointed and qualified. Any commissioner or alternate may be removed by the mayor as provided in section fourteen of chapter four hundred and eight-six of the acts of nineteen hundred and nine. Whenever a commissioner is absent or unable for any cause to perform his duties, the alternate appointed in the same manner as such commissioner shall exercise the powers and perform the duties of such commissioner. Whenever both a commissioner and the alternate appointed in the same manner of such commissioner are absent or unable for any cause to perform their duties the chairman of the commission shall designate another alternate to exercise the powers and perform the duties of such commissioner; but an alternate shall not otherwise be deemed to be, or act as, a member of the commission.⁷

The commission may adopt, amend and repeal rules for the regulation of its affairs and the conduct of its business, and shall be deemed a department of the city for the purposes of section fifty-three A of chapter forty-four of the General Laws.

The commission shall annually on the first day of May, or as soon thereafter as conveniently may be, elect one of its members as chairman and another as vice chairman. The commission shall be provided with a secretary outside of its membership who shall be an employee of the Environment Department.⁸ Whenever the secretary shall not be in attendance at a meeting of the commission, the commission shall elect a secretary pro tem for such meeting. The members of the commission shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties. The records of the commission shall set forth every determination made by the commission and the vote of every member participating therein and the absence or failure to vote of every other member.⁹

Section 5. Limitation on Issuance of Building Permit. No permit shall be issued by the building commissioner for the construction of any structure in the Back Bay Architectural¹⁰ District or the reconstruction, alteration or demolition of any structure now or hereafter in said area, except in cases excluded by section nine, unless the application for such permit bears a certificate under section seven that no exterior architectural feature is involved or is accompanied by a certificate of design approval issued under section eight.

⁷ Last two sentences amended by Sec. 4, Chapter 463, 1974.

⁸ "Board" replaced by "Environment Department" by Sec. 6, Chapter 624, 1982.

⁹ Paragraph relating to the Boston Redevelopment Authority deleted by Sec. 7, Chapter 624, 1982.

¹⁰ "Residential" replaced by "Architectural" by Sec. 5 of Chapter 463, 1974.

Section 6. Limitation on Issuance of Sign Permit. No permit to erect a sign, marquee, awning, or other exterior architectural feature protruding from any structure in the Back Bay Architectural¹¹ District shall be issued by the public improvement commission of the city of Boston, or by any other agency now or hereafter authorized to issue such permits, unless the application for such permit shall be accompanied by a certificate of design approval issued under section eight.

Section 7. Certificate of Nonapplicability of Statute. Except in cases excluded by section nine, every person about to apply to the building commissioner for a permit to construct any structure in the Back Bay Architectural¹² District or to reconstruct, alter or demolish any structure now or hereafter in said area shall deposit with the secretary of the commission his application for such permit together with such plans, specifications and other material as the commission may from time to time prescribe. Within eight days thereafter, Saturdays, Sundays and legal holidays excluded, the commission or such member or employee as the commission may from time to time designate so to do shall consider such application, plans, specifications and other material and determine whether any exterior architectural feature is involved. If it is so determined that no exterior architectural feature is involved, the secretary of the commission shall endorse on the application forthwith a certificate of such determination and return the application, plans, specifications and other material to the applicant.

Section 8. Certificate of Appropriateness.¹³ No person shall construct any exterior architectural feature in the Back Bay Architectural District, or reconstruct, alter, change, except as hereafter provided, the exterior color of, or demolish, any such feature now or hereafter in said area, until such person shall have filed in duplicate with the secretary of the commission an application for a certificate of appropriateness in such form and with such plans, specifications and other material as the commission may from time to time prescribe and a certificate of appropriateness shall have been issued as hereafter provided in this section. The commission shall retain one copy of the application and transmit the other to the board.

Within eight days after the filing of an application for a certificate of design approval, Saturdays, Sundays and legal holidays excluded, the commission or such member or employee as the commission may from time to time designate so to do shall determine the properties deemed by it to be materially affected by such application and, unless a public hearing on such application is waived in writing by all persons entitled to notice thereof, shall forthwith cause its secretary to give by mail, postage prepaid, to the applicant, to the owners of all such estates as they appear on the then most recent real estate tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, reasonable notice of a public hearing on

¹¹ "Residential" replaced by "Architectural" by Sec. 6 of Chapter 463, 1974.

¹² "Residential" replaced by "Architectural" by Sec. 7 of Chapter 463, 1974.

¹³ Section 8 was amended by Secs. 8-11 of Chapter 483, 1974, and then replaced in its entirety by Sec. 4 of Chapter 624, 1981.

such application to be held not sooner than twenty¹⁴ days after the date on which the copy of the application was transmitted to the board. The public hearing may be conducted by the commission itself or by such member or members or employee or employees as the board may from time to time designate; provided, however, that if such public hearing is not conducted by the commission itself, the person or persons so conducting it shall transmit a written report and recommendation thereon forthwith to the commission. There shall be available at such public hearing a report and recommendation from the commission,¹⁵ together with material, plans or drawings to aid the commission in reaching its decision.

Prior to the public hearing, the commission shall transmit a copy of the report to the board for its consideration and recommendations.¹⁶

The commission shall not render any decision until such report and the recommendation of the Environment Department and the Board have been received and considered, provided that if no such report and recommendations have been received by the time of the public hearing, the commission may render its decision without such report and recommendations.¹⁷

As soon as conveniently may be after such public hearing or the waiver thereof, but in all events within fifty calendar days after the filing of the application for the certificate of appropriateness or within such further time as the applicant may in writing allow, the commission shall determine whether the proposed construction, reconstruction, alteration, change in exterior color or demolition of the exterior architectural feature involved will be appropriate to the preservation of the Back Bay Architectural District for the purposes of this act, and whether, notwithstanding that it may be inappropriate, owing to conditions especially affecting the structure involved, but not affecting the Back Bay Architectural District generally, failure to issue a certificate of appropriateness will involve a substantial hardship to the applicant and such a certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this act. In passing upon appropriateness, the commission shall consider, (a) the historical and architectural value and significance of the structure and its relationship to the surrounding area; (b) the relationship of the exterior architectural features of such structure to the rest of the structure and to the surrounding area and to exterior architectural features of other structures in the neighborhood; (c) architectural style, general design, compatibility with neighboring structures, arrangements, texture, materials and colors of the original structure and of the proposed change or addition; (d) any landscaping features proposed by the applicant; and (e) any aesthetic or other factor which it deems to be pertinent.

¹⁴ This time period was reduced from twenty to fourteen days by Sec. 4 of Chapter 624, 1981, but was increased back to twenty days by Sec. 8 of Chapter 624, 1982.

¹⁵ "Board" replaced by "Commission" by Sec. 8 of Chapter 624, 1982.

¹⁶ Added by Sec. 8 of Chapter 624, 1982.

¹⁷ Amended by Sec. 8 of Chapter 624, 1982.

The commission shall pass only on the exterior architectural features of a structure and shall not consider interior arrangements nor the use to be made of the structure. It is the intent of this act that the commission be strict in its judgment of plans involving substantial new construction or for structures deemed to be valuable according to studies performed on behalf of the city, the board or the commission for said area to determine which structures are of architectural value. It is also the intent of this act that the commission shall be lenient in its judgment of plans for structures of little architectural value, except where such plans would seriously impair the architectural value of surrounding structures or the surrounding area. It is also the intent of this act that the commission construe more liberally proposals respecting structures within those sections of the Back Bay Architectural District which may be zoned for local or general business uses than with those proposals within those sections of the district which may be zoned for residential uses, to the end that conversions of structures to business uses will not be unreasonably prevented.

If the commission determines that the proposed construction, reconstruction, alteration, change in exterior architectural feature involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to issue a certificate of appropriateness will involve substantial hardship to the applicant and issuance thereof may be made without substantial detriment or derogation as aforesaid, or if the commission fails to make a determination within the time hereinbefore prescribed, the secretary of the commission shall forthwith issue to the applicant a certificate of appropriateness. In approving an application the commission may impose conditions which, if the certificate of appropriateness or the permit for demolition or removal is acted upon, shall be binding upon the applicant, the owner of the property and his successors in title. Any such condition may subsequently be modified or removed by the commission. Prior to approving an application subject to condition, the commission may notify the applicant of its proposed action and permit the applicant to express his opinion thereon. If the commission determines that a certificate of appropriateness should not issue, the commission shall forthwith spread upon its records the reasons for such determination and may include recommendations respecting the proposed construction, reconstruction, alteration, change in exterior color or demolition. Upon the making of any such determination the secretary of the commission shall forthwith by mail, postage prepaid, give notice of such determination to the applicant and to every person filing written request for such notice, transmitting therewith an attested copy of the reasons and recommendations, if any, spread upon the records of the commission.

The exterior color of any building or structure or portions thereof within the Back Bay Architectural District may, without the filing of an application for, or the issuance of, a certificate of appropriateness, be changed to any color or combination of colors which the commission, in accordance with written guidelines published from time to time, determines may be so used without substantial derogation from the intent and purposes of this act.

The installation of storm windows in any location and the paving of areas visible only from the public alleys within the Back Bay Architectural District may, without the filing of

an application for, or the issuance of. a certificate of appropriateness, be carried out in any manner which the commission shall determine in accordance with written guidelines published from time to time.

Section 9. Exclusions. Nothing in this act shall be construed to prevent any ordinary maintenance or repair of an exterior architectural feature now or hereafter in the Back Bay Architectural¹⁸ District which involves no change in design, material, color or outward appearance thereof; nor shall anything in this act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature which the building commissioner shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature under a permit issued by the building commissioner prior to the effective date of this act.

Section 10. Appeals. Any person aggrieved by a determination of the commission may, within thirty days after the making of such determination, appeal to the superior court sitting in equity for the county of Suffolk; provided that within eight days, exclusive of Saturdays, Sundays and legal holidays, after the secretary of the commission mails the notices provided for by the fifth paragraph of section eight, such person files with such secretary written notice of his intention to appeal. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the reasons given by the board to be unwarranted by the evidence or to be insufficient in law to warrant the determination of the commission or make such other decree as justice and equity may require. The remedies provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination or approval of the commission unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

Section 11. Enforcement. Whoever constructs, reconstructs, alters, changes the exterior color of or demolishes any exterior architectural feature now or hereafter in the Back Bay Architectural¹⁹ District in violation of this act shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars. In addition, whoever, after notice from the secretary of the commission, maintains any exterior architectural feature now or hereafter in the Back Bay Architectural²⁰ District in violation of this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and each day during any portion of which such violation is allowed to continue shall constitute a separate offense.

¹⁸ "Residential" replaced by "Architectural" by Sec. 12 of Chapter 463, 1974.

¹⁹ "Residential" replaced by "Architectural" by Sec. 13 of Chapter 463, 1974.

²⁰ "Residential" replaced by "Architectural" by Sec. 14 of Chapter 463, 1974.

The superior court sitting as aforesaid may, upon application of the commission, restrain the construction, reconstruction, alteration, change in exterior color of or demolition of any exterior architectural feature now or hereafter in the Back Bay Architectural²¹ District in violation of this act and order the removal of any such exterior architectural feature constructed or reconstructed in violation thereof and the substantial restoration of any such exterior architectural feature altered or demolished in violation thereof or the exterior color of which is changed in violation thereof.

Section 12. Severability of Provisions. The provisions of this act shall be deemed to be severable; and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 13. Effective Date. This act shall take effect on December first, nineteen hundred and sixty-six.

²¹ "Residential" replaced by "Architectural" by Sec. 15 of Chapter 463, 1974.