

appointed by vote of a majority of the board.

"Application", application for an historic permit or certificate of nonapplicability.

"Board", the Lowell historic board.

"Certificate of nonapplicability", certificate issued by the board, or, as provided herein, the administrator, upon determination that no historic permit is required for a proposed development within the districts.

"City", the city of Lowell.

"Development", the erection, demolition, reconstruction, or alteration of any exterior architectural features of any building or structure, including, but not limited to, alteration of the site topography or general architectural arrangement of such portion of the exterior of any building or structure as is designed to be open to view from any street, canal or way open to public or private vehicular or pedestrian travel. The use or change of use of any building or structure shall not be considered "development".

"Districts", downtown district as defined herein, and, in addition, any neighborhood districts designated pursuant to this act.

"Downtown district", the Downtown Lowell Historic District established by this act or as may be amended from time to time as provided herein.

"Neighborhood district", an historic district within the city, other than the downtown district, designated by the city council of the city of Lowell.

"Historic permit", permit granted by the board, or as provided herein, the administrator, for development within the district.

"Person", natural person, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity; but excluding the city, the commonwealth, and the government of the United States, or any agencies thereof.

"Standards", historic preservation standards applicable to the downtown district and promulgated by the board as part of its regulations.

"Neighborhood standards", historic preservation standards proposed by the neighborhood committee for its neighborhood district and promulgated by the board as part of the board's regulations. Each neighborhood district shall have its own neighborhood standards.

"Neighborhood committee", subcommittee of the board having primary responsibility for review of applications for development within a neighborhood district. Each neighborhood district shall have a neighborhood committee.

"Minor development", shall be defined in the board's regulations, and shall include, but not be limited to: cleaning of a

Chap. 566. AN ACT ESTABLISHING THE DOWNTOWN LOWELL HISTORIC DISTRICT AND THE LOWELL HISTORIC BOARD.

Be it enacted, etc., as follows:

SECTION 1. This act shall be known and may be cited as the Lowell Historic District Act.

SECTION 2. As used in this act, the following terms shall have the following meanings:-

"Administrator", the administrator of the Lowell historic board,

building, repainting in original colors, repairing or replacing architectural elements according to historically compatible plans, and placement or removal of certain minor sign types.

"Major development", shall be defined in the board's regulations, and shall include, but not be limited to: alterations to exterior facades, construction of additions to existing buildings, new construction, demolition of any structures, and placement or removal of certain major sign types.

SECTION 3. The purposes of this act are:

(1) to promote the educational, cultural, economic and general welfare of the public through the preservation, protection and enhancement of the unique historic values of the city of Lowell, birthplace of the American industrial revolution;

(2) to preserve, protect and enhance the distinctive characteristics and architecture of buildings and places significant in the history of the city and of the commonwealth and the United States, ensure maintenance and improvement of the settings for such buildings and places, and encourage design compatible therewith;

(3) to ensure appropriate and coordinated development in the districts, and to prevent development which would impair or be unduly detrimental to the locally and nationally significant structures, and the general historic values, of the districts;

(4) to adopt standards which shall govern all development within the districts, as required by the legislation establishing the Lowell National Historical Park, Public Law 95-290, in order to carry out these purposes;

(5) to consolidate and expand the existing districts previously established pursuant to chapter forty of the General Laws;

(6) to expedite administrative review of development within the districts.

SECTION 4. There is hereby established the Downtown Lowell Historic District. The downtown district shall incorporate and supercede the existing City Hall Historic District and Locks and Canals Historic District, and shall initially consist of that property with buildings thereon located in said city, containing approximately four hundred acres being shown on a map on file with the city clerk's office, bounded and described as follows:

Beginning at a point of confluence of the Merrimack and Concord Rivers,

Northerly along the mid-point of the Merrimack River to the Aiken Street Bridge,

Northwesterly along said Aiken Street to a point one hundred feet north of the Northern Canal,

Northerly in a curved line 100 feet north and parallel to said

Northern Canal through property now or formerly of Notini and University of Lowell, to the mid-point of the Merrimack River,

Westerly in a curved line along the mid-point of the Merrimack River, parallel to the Northern Canal wall, to the School Street Bridge,

Northwesterly along the School Street Bridge to the opposite shore of the Merrimack River,

Westerly along the bank to the intersection of the Pawtucket Dam and the shore of the Merrimack River,

Southwesterly across the Merrimack River crossing Pawtucket Street along the western border of Francis Gate Park to a point on Shaffer Street approximately 238 feet north of the intersection of Shaffer Street and Broadway (the boundary here does not include any portion of said Shaffer Street or Broadway),

Northerly approximately 160 feet along the boundary of a parcel now or formerly of the Lowell Housing Authority,

Westerly approximately 20 feet along the boundary of said parcel,

Northerly approximately 80 feet along the boundary of said parcel,

Easterly on a crooked line by land now or formerly of Trustees of Lowell Fruit Company approximately 260 feet,

Northerly by land now or formerly of said Trustees approximately 80 feet,

Westerly crossing Broadway to a point 200 feet west of Pawtucket Canal,

Proceeding on a curved line 200 feet parallel to the Pawtucket Canal to the mid-point of Pevey Street, and continuing along said mid-point of Pevey Street to the School Street Bridge over Pawtucket Canal,

Westerly along School Street to Payne Street, Southerly along Payne Street, crossing Saunders Street, then

Continuing Southerly on seven lines along the property line of land now or formerly of the city of Lowell currently used as a playground to property now or formerly owned by the Lowell Boys Club Association, then

Westerly along the boundary of said Lowell Boys Club Association to the mid-point of Middlesex Street,

Southerly on Middlesex Street to the intersection with Boston & Maine Railroad tracks, then

Southwesterly along said tracks to Hale Street, then Southeasterly to Thorndike Street,

Northeasterly on Thorndike Street to Middlesex Street at the Lord overpass, then

Southerly along a line to Eliot Street which line would appear as an extended version of Spring Street, a public way not currently in use,

Westerly along Eliot Street across Appleton Street to and including the Appleton Street row houses,

Southerly along said row houses to a parking lot,

Southwesterly along land now or formerly of Lowell Housing Authority, to Gorham Street,

Westerly along Gorham Street to Charles Street, Southerly on two lines along Charles Street to the mid-point of the Concord River,

Easterly along said mid-point of the Concord River to the point of beginning.

Excepting therefrom a parcel of land with buildings thereon located within the above-described parcel, bounded and described as follows:

Beginning at a northeasterly point twenty feet west of the Western Canal and 200 feet south of the Northern Canal,

Northerly on a curved line 200 feet south and parallel to said Northern Canal across Moody Street,

Northeasterly along Moody Street to the University Avenue Bridge (Pawtucket Street),

Westerly on a curved line 100 feet southeast and parallel to said Northern Canal, recrossing Pawtucket Street,

Easterly along a curved line 100 feet east and parallel to the Pawtucket Canal to Madonna Circle, then following the rail spur, crossing Broadway, and continuing along the rails now or formerly of the Boston and Maine Railroad, crossing School Street, to Western Avenue,

Southeasterly along Dutton Avenue to Dutton Street,

Southerly along Dutton Street to the common boundary of two lots now or formerly owned by Edward A. Souza (3,679 square feet) and Frank G. W. McKittrick,

Easterly along said boundary line to Suffolk Street,

Southeasterly on a curved line along Suffolk Street to Cross Street,

Northerly along Cross Street to Adams Street,

Easterly along Adams Street to St. Patrick's parking lot (St. Patrick's Church building being included in the Downtown District),

Southerly along the property line between said church and said parking lot to Suffolk Street,

Southeasterly along Suffolk Street to Market Street,

Easterly crossing Market Street 20 feet west and parallel to the Western Canal to the point of beginning.

Unless otherwise specifically noted, lines along streets shall be to the mid-point of said streets.

The city council of the city of Lowell on its own motion, the board, or any group of ten residents or property owners in the city may propose to said city council changes in the boundaries

of the downtown district. Said city council, by a two-thirds vote, and after notice and hearing provided by said city council in the same manner as in section eleven, may make such changes as they deem appropriate in the boundaries of the downtown district.

SECTION 5. There is hereby established within the government of the city of Lowell the Lowell historic board, consisting of nine members who shall be appointed within sixty days after the effective date of this act as follows:-

(a) five members to be appointed by the city manager of the city of Lowell and confirmed by the city council of said city, including one attorney from two nominated by the Lowell Bar Association, one representative from two nominated by the Lowell Historical Society, one member of the planning board of said city, one person having an interest in real property within the downtown district who has been selected from two persons nominated by the Lowell chamber of commerce in consultation with the Downtown Business Association and who is a member of both the Lowell chamber of commerce and the Downtown Business Association, one architect from two nominated by the local chapter of the American Institute of Architects; provided, however, that in the event any of the nominations made pursuant to this subsection are unacceptable to said city manager, he may request the submission of up to two substitute nominees from the designated nominating body;

(b) the director of the city division of planning and development;

(c) one member to be appointed by the chairman of the Lowell historic preservation commission;

(d) one member to be appointed by the superintendent of the Lowell National Historical Park; and

(e) one member to be appointed by the commissioner of environmental management of the executive office of environmental affairs, or any successor agency.

Upon dissolution of the Lowell historic preservation commission, the member to be appointed by said commission shall be appointed by said city manager to represent historic preservation interests. Appointees to the board shall become official members of the board upon their acceptance of office, and shall each be sworn into office by the city clerk of said city within thirty days of their appointment. The board shall hold its first meeting within ten days of being sworn into membership, and shall at that meeting elect from its members, by a vote of five members, a chairman and vice-chairman. Election for chairman and vice-chairman shall be held every year thereafter.

Board members shall be appointed for two-year terms; except

that for initial appointments, the attorney chosen to represent the Lowell Bar Association, the representative chosen to represent the Lowell Historical Society, the member appointed by the chairman of the Lowell historic preservation commission, the member appointed by the superintendent of the Lowell National Historical Park, and the member of the planning board of said city, shall all serve for three-year terms. Vacancies shall be filled in the same manner as original appointment within sixty days after creation of the vacancy. Any board member who fails to attend three consecutive regular or special meetings of the board without good cause approved by the chairman of the board, shall be subject to dismissal by a vote of five members of the board. The chairman shall give written notice to such board member at least ten days prior to the meeting at which said vote is to be taken, and said board shall meet, upon the board member's request, within said ten day period, to consider any relevant information justifying such failure to attend.

Members of the board are hereby deemed special municipal employees for purposes of chapter two hundred and sixty-eight A of the General Laws. All staff members or other employees of the board shall be city employees. Members of the board, staff members, and other employees of the board shall not be subject to the provisions of chapter thirty-one of the General Laws. The historical commission of the city of Lowell established pursuant to chapter forty C of the General Laws is hereby abolished, effective on the date of the first meeting of the board.

SECTION 6. Within ninety days of its first meeting, the board shall appoint by a vote of five members of the board an administrator, who shall serve for such term as the board may determine and shall assist the board in carrying out its powers and duties pursuant to this act. The administrator shall have such duties and responsibilities as the board may provide in its rules and regulations. At minimum, the administrator shall perform a preliminary review of all applications for historic permits and certificates of nonapplicability, shall award historic permits for minor development, and shall ensure to the best of his abilities compliance with this act.

SECTION 7. The board shall have all powers and duties reasonably necessary to carry out the purposes of this act, including, but not limited to the following:-

(1) To promulgate, amend, and enforce the standards, which shall apply to all development, by any person, within the downtown district; and to promulgate and enforce the neighborhood standards and any interim standards. The board may amend such standards as may be necessary, which amendment shall be

in the same manner as original adoption. The board shall provide in its regulations for modification of the otherwise applicable standards or neighborhood standards in certain hardship cases.

(2) To promulgate and enforce any other rules and regulations to carry out the purposes of this act.

(3) To grant, grant with conditions, or deny historic permits or certificates of nonapplicability for development within the districts. Conditions to the grant of an historic permit may include, without limitation, imposition of perpetual historic preservation restrictions or easements.

(4) To determine an amount reasonable for application fees and to collect such fees, to accept gifts, appropriations and grants, and to disburse all such monies in order to further the purposes of this act.

(5) To propose to the city council of the city of Lowell changes in the boundaries of the districts and to propose new neighborhood districts.

(6) To sue or be sued.

(7) To publish in cooperation with other interested agencies, guides, maps and other materials to document and highlight the historic resources of said city and to explain the standards and procedures for development within the districts.

(8) To acquire, accept, and maintain real property or interests in real property for historic preservation purposes. The board shall have no power of eminent domain.

(9) To accept, purchase, or require, as a condition to the grant of an historic permit, historic preservation restrictions or easements.

(10) To establish an historic markers program.

(11) To conduct studies of the historic and archaeological assets of said city.

(12) To conduct training sessions for the board on technical subjects related to their duties as board members.

(13) To serve in an advisory capacity to the city manager of said city, planning board of said city, director of the city division of planning and development, Massachusetts historical commission, and other public agencies, in matters pertaining to or affecting any historic structures, sites, areas or assets of archaeological interest in said city.

(14) To hire such technical staff or consultants as may be required to carry out its responsibilities. Such technical and consulting services may include, but are not limited to, experts in the fields of architecture, planning, law, and historical or archaeological research. Administrative, clerical, and other necessary support staff may also be hired by the board. The director of the city division of planning and development shall, whenever possible, provide assistance to the board.

(15) To delegate authority to the administrator as it deems necessary to carry out the purposes of this act.

SECTION 8. Standards applicable to development within the downtown district shall be adopted by the board, after notice and public hearing as provided in section six, within one hundred and twenty days after holding its first meeting. Interim standards may be adopted by the board, after notice and hearing as provided in section eleven, except that no notice is required to abutters, for use until the final standards are adopted. The standards shall be consistent with those approved by the Secretary of the Interior on January nineteenth, nineteen hundred and eighty-one which are contained in "Details of the Preservation Plan", published by the Lowell historic preservation commission. Specific standards may be adopted to apply only to certain portions of the downtown district, such as commercial streets, entry routes to the city of Lowell, and buffer zones to historic buildings. The standards shall set forth, at minimum: acceptable materials, techniques, height, massing, setback, and architectural detailing for the exteriors of structures; standards for signage, landscaping and design of open spaces and parking areas. The board may amend the standards as it deems necessary. Any such amendments shall be made in the same manner as original adoption of the standards.

SECTION 9. Upon its own motion, or upon nomination in writing by the board or any group of ten residents or property owners within the city of Lowell, the city council of said city may designate by a three-fourths vote of its members a neighborhood district. Upon the designation of a neighborhood district, the board shall appoint five of its members as a neighborhood committee, which shall advise the board in carrying out the purposes of this act with regard to the neighborhood district. The neighborhood committee shall consist of at least one member of the board who is a resident of the neighborhood district, and one member who is a property owner, within said neighborhood district. If the board has no such members, the city manager of said city shall appoint, with assistance from the board, residents and property owners of the neighborhood district to serve as members of the neighborhood committee. Members of a neighborhood committee shall have such powers and duties as shall be delegated by the board in its regulations.

As soon as practicable after designation of a neighborhood district, the neighborhood committee shall propose, and the board shall adopt, with any additions or amendments as the board shall see fit, neighborhood standards which shall be applicable to such neighborhood district. Neighborhood districts

shall not be subject to the downtown district standards except as any or all of those standards are specifically incorporated into the neighborhood standards; provided, however, that all development within a neighborhood district shall require an historic permit or certificate of nonapplicability. The board, or, where appropriate, the administrator, shall grant, grant with conditions or deny historic permits or certificates of nonapplicability for development within the neighborhood district upon recommendation by the neighborhood committee. Procedures applicable to the neighborhood committee shall be provided for by the board in its regulations.

SECTION 10. No person shall perform any development within any districts without having filed an application with the administrator and having received from the board or, where applicable, the administrator, an historic permit or certificate of nonapplicability; nor shall any building or other city permit be issued to such person until an historic permit or certificate of nonapplicability has been so received. Within seven days after receipt of an application, the administrator shall render a determination, based upon the standards, or where applicable, neighborhood standards, whether the development proposed by the application is a major development or minor development. If the administrator determines that a proposed development is a minor development, he shall in writing grant, grant with conditions, or deny an historic permit within seven days after receipt of the application and shall without delay send a copy of such decision to the board. If the administrator determines that a proposed development is a major development, or is not subject to the standards or neighborhood standards, he shall refer the application for such development to the board for consideration for an historic permit or a certificate of nonapplicability. The administrator shall prepare written comments and send them to the board on any application within ten days after receipt thereof.

All applications for development which the administrator has referred to the board shall be placed on the agenda and discussed at a meeting of the board. Historic permits or certificates of nonapplicability shall be issued by the board by a vote of five of its members. An applicant may request in the application a preliminary review by the administrator, but any guidance offered shall not constitute nor guarantee the granting of an historic permit or certificate of nonapplicability.

Within twenty-one days after receipt by the administrator of an application for a major development, the board shall conduct a public hearing on the application after providing notice pursuant to section eleven. A written decision on the application, granting, granting with conditions, or denying an historic permit or

certificate of nonapplicability and setting forth the reasons for the board's decision, shall be rendered by the board and filed with the city clerk of said city within sixty days after such hearing. Failure by the board to file its decision with said city clerk within sixty days after the hearing on the application shall be deemed to be approval of the application. A copy of the decision shall also be mailed to the applicant by certified mail within sixty days after such hearing. Historic permits for major development shall be recorded by the applicant in the registry of deeds within ten days after the expiration of the period of appeal provided in section twelve.

All time requirements contained within this section, except the requirements of section eleven referred to herein; may be modified by written agreement of the board and an applicant for an historic permit or certificate of nonapplicability.

SECTION 11. All hearings required by this act, except as provided in section four, shall be held by the board only after notice of the time, place and sufficient identification of the subject matter of such hearing shall have been given by the board by advertisement in a newspaper of general circulation in the city of Lowell not less than seven days before the day of such hearing, and by posting such notice in a conspicuous place in the office of the city clerk of said city and the office of the director of the city division of planning and development for a period of not less than seven days before the day of such hearing. Notice for a hearing on an application shall be given at the expense of the applicant and shall also require mailing a copy of such notice to the applicant and to all owners of land abutting the land included in the application as appear on the most recent city tax list.

SECTION 12. No claim of invalidity of the standards, neighborhood standards, boundaries of the districts or any amendment thereto, designation of a neighborhood district, or the board's regulations or any amendment thereto, shall be made in any legal proceeding, unless commenced within thirty days after the adoption thereof and unless notice specifying the court, parties, invalidity claimed and date of filing is filed together with a copy of the complaint with the city clerk of said city within seven days after the commencement of the action.

Within seven days after the issuance of any written decision by the administrator, any person aggrieved may file an appeal to the board.

Within twenty days after the filing by the board of a decision on an application with said city clerk, any party aggrieved may file an appeal to the trial court department of the superior

court. Notice of the action with a copy of the complaint shall be given to the city clerk so as to be received within such twenty days. The complaint shall allege that the decision exceeds the authority of the board, and any factors pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by said city clerk.

If the complaint is filed by someone other than the original applicant, such original applicant, and all members of the board, shall be named as parties defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within fourteen days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board and shall within twenty-one days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer shall be required, but an answer may be filed and notice of such filing with a copy of the answer and an affidavit of such notice given to all parties as provided above within seven days after the filing of the answer. Other persons may be permitted to intervene upon motion. The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties whether or not they have appeared. The court shall hear all evidence pertinent to the authority of the board and, upon the facts as so determined, annul such decision if found to exceed the authority of the board or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this act.

Costs shall not be allowed against the board unless it shall appear to the court that the board in making the decision appealed from acted with gross negligence, in bad faith or with malice. Costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said appellant or appellee acted in bad faith or with malice in making the appeal to the court. All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

SECTION 13. The administrator shall issue a certificate of compliance in recordable form upon determination by the board that the development has been completed in accordance with the historic permit.

SECTION 14. Upon determination by the board that any person is in violation of this act or regulations promulgated hereunder, the board shall issue an order requiring that such violation be corrected and that any development in violation of this act cease and desist. The superior court department of the trial court shall have jurisdiction to enforce the provisions of this act and any regulations promulgated hereunder, and may restrain by injunction violations hereof.

Any person found by the board to be in violation of this act or regulations promulgated by the board hereunder shall be assessed a maximum penalty of one hundred dollars per day for each day of such violation.

SECTION 15. All books, papers, records, documents, equipment, lands, interest in land, buildings, facilities, and other property, both personal and real, which, immediately prior to the effective date of this act, are in the custody of the historical commission of the city of Lowell established pursuant to chapter forty C of the General Laws, and which relate to or are maintained for the purpose of the exercise of powers or as a performance of duties under said chapter forty C or this act shall be transferred by said commission to the board.

All orders, actions, guidelines, rules and regulations, procedures, by-laws, ordinances, licenses, permits, authorities, permissions, certificates, approvals, and endorsements duly granted by the city of Lowell, any agency of said city, or the historical commission of the city of Lowell and which are in effect immediately prior to the effective date of this act, shall continue in full force and effect and the provisions thereof shall thereafter be enforced, until superseded, revised, rescinded or cancelled in accordance with this act or any other applicable law. All applications for development within any districts which are pending before the historical commission of the city of Lowell for which no final decision has been rendered by that commission must be resubmitted as an application pursuant to this act.

SECTION 16. Effective upon the date of the first meeting of the board: Chapter Two, Article XIV of the Code of the city of Lowell is hereby repealed.

SECTION 17. This act shall take effect upon its passage.

Approved December 13, 1983.

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