

**Preservationists,
Activists,
Strip Club Owners,
and One Decrepit Old Building**

**Christina Carvey
11.026 – Downtown
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Publix Theater

Combat Zone, Boston

“I can remember going to the Publix in the late '70's, when it was in sorry disrepair, but I recall looking up at all the boxes and balconies and thinking how sad it was that such a beautiful theatre had fallen on such hard times.”¹

As the credits rolled and the lights came back up that night in 1983, the degree of disrepair became obvious.

Like the walls and ceiling, the once decorative plasterwork had been painted white; by then it was beginning to crack and fall away from the proscenium arch, the balconies and the boxes. A closer look at the plaster would reveal that it had once been painted gold and where the white paint was flecking off, specks of magenta and green peeked through revealing a hint of a greater grandeur in times past.

Indeed, when the doors to the Gaiety Theater first opened, on November 23, 1908, her patrons encountered a “splendidly decorated”² baroque style³ auditorium, richly decorated in magentas, reds and golds^{4,5}. The day before an article in the *Boston Herald* had raved, “The seats are large and comfortable, and the aisles are wide” and a sub-headline from *The Boston Sunday Globe* praised the theater as a “Model of Comfort, Complete in Stage Equipment and Accommodations of Every Kind—Well Lighted, Well Ventilated, and Up to Date in All Respects is This New Home of Vaudeville and Burlesque.”

¹ Post by BillA on 5/27/04, 1:27am, 1:27am to <http://www.cinematreasures.com/theater/6405/>

² *The Boston American*, 11/22/1908

³ The Gaiety Theater Friends (hereafter FOTG), “The Gaiety Theater: A Historic Boston Landmark,” 2003, pg 8

⁴ *The Boston Sunday Globe*, 11/23/1908

⁵ See APPENDIX A for photo.

As the last movie patrons trickled out into the Combat Zone, ready for the night's next activity, they were incognizant, or perhaps just indifferent to the fact that her last show was now behind her. When the doors to the former Gaiety (since renamed the Publix) closed that night, it marked the end of her life as a theater. Seven decades of use and minimal maintenance had rendered the once resplendent theater in a state of decrepitude. Though there were still some other tenants in the building, the auditorium was never to open again.

Over the years, she declined even more. On the exterior, the "Publix" marquee was taken down; inside the theater seats were stripped out, brass railing removed, and the plaster decorations, already showing their age, cracked and crumbled even further.

The Gaiety was dying, and no one seemed to care, but as the year 2001 was drawing to a close, that was all about to change.

The Setting

In 1986, Boston's Combat Zone wasn't generally considered prime real estate. Though the area had acquired that name during WWII⁶, in 1974 this stretch of lower Washington Street was rezoned as Boston's only adult entertainment district and the moniker became indissolubly linked to the turpitudes of the "honky-tonk" business⁷. But the speculative mind of the real estate developer thinks differently. Thus, in 1986, Kensington Investment Company seized on the opportunity to purchase 665 Washington Street – "to hold for development"⁸

One and a half decades later, Kensington was finally ready to act. On December 10th, 2001, the company filed a Project Notification Form (PNF) with the Boston

⁶ In the 1940s, enlisted-men would come to the tailor shops in the area to have their uniforms altered. (*The Washington Post*, 3/19/1995)

⁷ *The Washington Post*, 3/19/1995

⁸ Boston Landmarks Commission (BLC), "Gaiety Theater Study Report," 2003, pg 4

Redevelopment Authority (BRA)⁹ in which they proposed construction of the Residences at Kensington Place – a 28-story structure on the corner of Washington and LaGrange Streets^{10,11}. Kensington had previously put forth a similar plan in early 1995 but, due to a number of circumstances/questions concerning their potential neighbors and investors, the effort was dropped shortly thereafter¹². By the end of 2001 though, an established demand for more housing close to downtown proved that the developer’s fifteen years of speculation and patience was about to pay off, spelling the end for the Gaiety.

Significant enough

The first to voice concern over the proposed razing of the theater was The Boston Preservation Alliance (BPA). Having reviewed the Environmental Notification Form (ENF) the developer had submitted to the Massachusetts Environmental Protection Act (MEPA) Office, on December 26th, 2001 the BPA wrote to the MEPA to express why this demolition should be questioned. They noted that Clarence Blackall, “one of the foremost theater architects in the country”¹³ in his time, had designed the building. Also stating that the building’s façade, “plays an important role in the lower Washington Street streetscape” the BRA called upon the MEPA to require an Environmental Impact Report (EIR) for the project to address several issues including potential alternatives to demolition¹⁴. Though the MEPA concluded that the preparation of an EIR would not be necessary, they indicated that Kensington would be required to reach a Memorandum of Agreement (MOA) with the Massachusetts Historical Commission (MHC) to address the

⁹ The Boston Redevelopment Authority was established in 1957 and controls all of the planning and development in the City.

¹⁰ The project would include 300 residential units (10% affordable) as well as retail space along Washington Street. (Project Notification Form (PNF), 12/10/01) Because of the proposed scale of the development, it would be subject to Large Project Review by the BRA. (REF?)

¹¹ See APPENDIX B for rendering

¹² *The Boston Globe*, 1/30/1996

¹³ BLC, pg 2

¹⁴ Letter from the Boston Preservation Alliance to the BLC, 11/26/2002

loss of the Gaiety – a structure listed on the Inventory of Historic and Archaeological Assets of the Commonwealth¹⁵.

The review process for the Kensington Place project began with the Scoping Determination¹⁶. A request made during this stage for Kensington to examine and evaluate alternatives that would “eliminate, minimize, or mitigate”¹⁷ the Gaiety’s demolition, including adaptive reuse or inclusion of the theater in the development. The Developer would be required to attach studies investigating the feasibility of retaining the structure when they submitted the Draft Project Impact Report (DPIR). However, if the studies concluded that reuse was not within reason, they would not be required to act on any proposed alternatives.

Demolition Delay and the BLC

“A city without old buildings, is like a man without a memory”¹⁸”

Some have alleged that, in order to smooth the approvals process for a project, developers are quick to raze whatever may exist on their property. It is, after all, clearly easier to obtain approvals when there are fewer avenues for challenges to a proposal, and, besides, the political cost for granting approval is greatly reduced as there are few people who would take to the streets to protect the status quo when the status quo is a vacant lot. Whether or not Kensington was hoping to employ such a tactic for their project is a matter of some debate. All that can be certain is that not long after submitting their DPIR in July 2002, Kensington applied for the demolition permits needed to clear their lot.

¹⁵ Pursuant to Section 11.03(10)(b)(1) of the MEPA regulations

¹⁶ Scoping Determination is the first step in Large Project Review. Its purpose is to determine the specific impacts the developer must examine in detail in the draft Project Impact Report (DPIR), the next step in the review. The topics include transportation, environmental protection (wind and shadow, daylight, air quality, noise, groundwater, construction impacts) urban design, historic resources, infrastructure systems, and site plan (Boston Redevelopment Authority (BRA), “A Citizen’s Guide to Development Review under Article 80,” 2004, pg 6-9; Letter from Richard Mertens to the BRA (1/22/2002) to be included in comments for Scoping Determination)

¹⁷ Certificate of the Secretary of Environmental Affairs on the Environmental Notification Form for The Residences at Kensington Place, 1/25/2002

¹⁸ Miller, Nathan, “Bravo for Old Buildings!” *Readers Digest*, <http://members.aol.com/timarends/bravo.html>

In 1975, the Boston Landmarks Commission (BLC) was established as the City's historic preservation agency. The Commission consists of nine members including two architects, an architectural historian, a city planner, a landscape architect, an individual nominated by Greater Boston Real Estate Board, one nominated by the Greater Boston Chamber of Commerce and two selected “at large” by the mayor based on their demonstrated knowledge and concern for conservation; all are appointed by the mayor for a term of three years¹⁹. The BLC is charged with identifying and preserving historic properties, it functions together with local Historic District Commissions as stewards of Boston’s 7,000+ individual landmarks and additional historic buildings, places, and neighborhoods. In 1995, with the addition of Article 85 to the Boston Zoning Code, the Landmarks Commission was given the additional task of regulating the demolition of property so as to avert the destruction of properties where potential historic preservation has not yet been given proper consideration²⁰.

Because the Gaiety was included on the Inventory of Historic and Archaeological Assets of the Commonwealth²¹, it was considered to be a significant structure and thus subject to demolition delay review. After a preliminary evaluation of the case by staff at the Landmarks Commission, a demo delay hearing for the Kensington application was scheduled for the next Landmarks meeting.

September 24, 2002 – Demo Delay Hearing

The Kensington hearing was the second item on the Landmarks meeting agenda that evening. Coincidentally, it was preceded by a discussion of alternatives (rehabilitation versus demolition) for the Modern Theater, another early 20th Century theater that went on to obtain Landmark status, located a few blocks up Washington Street from the

¹⁹ Chapter 772, MGL 1975 as amended.

²⁰ Boston Zoning Code (BZC), Article 85, pg 2

²¹ PNF, Section 3.4

Gaiety. To be considered were the proposed demolition of the Gaiety Theater (659-665 Washington Street), the Glass Slipper (15-17 LaGrange Street), 1-13 La Grange/669-679 Washington Streets and 25 La Grange Street.²²

After the standard demolition delay script had been read, Ms. Ellen Lipsey, the Executive Director of the BLC, read the staff findings and comments for the case. Based on the fact that three of the structures pending demolition could be classified as “significant,” she concluded that it would be appropriate for the commission to invoke demo delay.²²

Obviously, this was not the decision the developer had been hoping for. Quickly, Matthew Kiefer, attorney for the Kensington project, countered, pointing out that, as per the BLC’s Theater District Survey of 1979, none of the buildings in question were considered significant enough to merit Landmark designation. The Gaiety had been scored as IV²³; the others had received even lower scores. If the buildings had already been determined not to be “significant” enough for landmark designation – the only cause for which the BRA could offer protection from the wrecking ball – then what could justify a delay? The floor was next open to public comment. Several Boston residents had learned of the situation facing the Gaiety and attended the hearing to advocate for demo delay. After hearing one argument in favor of delay from Boston Resident Steve Jerome, who cited the Glass Slipper as an important remnant of the once residential character of the area that was worthy of preservation, the commission voted 8-0 in favor of the demolition delay, which was thenceforth imposed for 90 days.²²

Kiefer immediately asked the commission to waive the delay given that Kensington was approximately two months away from reaching a Memorandum of Agreement (MOA)

²² Minutes, BLC meeting and public hearing, 9/24/2002

²³ This survey was “an in-depth architectural and historic survey of the theater area of the Boston Central Business District... [that made] recommendations for the National Register and Boston City Landmark designations.” It evaluated the relative significance of 20 of Boston’s theaters, which were ranked in 1981 on a I-VI scale. The Gaiety’s IV (“non-contributing”) which replaced it’s prior “recommended for future consideration as individual National Register Listing” indicated it was ineligible for designation as a Boston Landmark or individual listing on the National Register. (Staff Comments, BLC meeting and public hearing, 11/26/2002)

with the MHC that would mitigate any historical losses. As the BLC can waive demo delay if it finds that “no feasible alternatives” exist to demolition²⁴ Kiefer also noted that the existing buildings could not feasibly be reused in the Kensington project. His request was echoed by Heidi Burbidge, the project manager from the BRA, who added that there would be an opportunity for public comment before the project was finalized.²⁵

Others, including Lee Eiseman, Steve Jerome, and Frank Cullen, the director of the American Vaudeville Museum, spoke in favor of the demo delay, opining that the Gaiety Theater should be preserved and reused. Eiseman even submitted information to the commission to illustrate the historical importance of the theater. Shirley Kressel, co-founder of the adamant preservation advocacy group Alliance of Boston Neighborhoods (ABN)²⁶, stated that demo delay was the right way to proceed, given that the Kensington project was still not a certainty. The delay would be appropriate as it strove to “minimize the number and extent of building demolitions where no immediate re-use of the site is planned.”^{27,25}

Though Ralph Cole, president of Kensington Investment Company, assured Kressel and the commission that demolition would not occur until all of the project approvals and permits had been obtained, the Landmarks Commission did not waive the demo delay and the meeting was adjourned.²⁵

The Friends of the Gaiety Theater

In the weeks that followed, several members of the public who had favored the delay at the hearing joined forces. Calling themselves “The Friends of the Gaiety Theater”

²⁴ PNF, Section 1.3.5; BZC, Article 85-5.8 “Determination of No Feasible Alternative”

²⁵ Minutes, BLC meeting and public hearing, 9/24/2002

²⁶ The ABN describes themselves as a “federation of civic associations concerned with proper public process and genuine planning in Boston,” (Letter from Shirley Kressel to the BLC, 4/11/2003)

²⁷ BZC, Article 85-1 “Statement of Purpose”

(hereinafter, the FOTG), their first action was to seek landmark designation for the structure.

Twelve registered Boston voters (ten are required) signed a petition seeking to designate both the exterior and the interior of the theater and submitted it to the BLC²⁸. The petition included the following reasons for recommendation:

“Designed by Clarence H. Blackall, perhaps the most experienced and leading theater architect of his time, the Gaiety Theater is his last remaining heretofore unprotected theater and a cornerstone in the architectural and historical patrimony of the city and the nation. ...[it] was constructed to the latest fireproofing and structural standards of its day.... Like the Colonial and Metropolitan Theaters, Blackall designed the façade of the Gaiety as an office building which, in its massing and scale, relates harmoniously to the surrounding cityscape.... As a major surviving theater of the famed Boston Rialto, famous actors and actresses have played the Gaiety, including Sammy Davis, Jr., whose career was launched here. ”^{29,30}

The petition was received on November 12th, 2002 and the preliminary landmark hearing set for two weeks later.³¹

A little over a week after submitting the petition, Jack Little, Stephen Jerome and Lee Eiseman (respectively the President, Vice President and Clerk of the FOTG) attended

²⁸ The Commission is responsible for determining which “place[s], structure[s], building[s], fixture[s], object[s] or landscape or topographic feature[s]” receive landmark designation. Landmarks have “in whole or part... historical, social, cultural, architectural or aesthetic significance to the city and the commonwealth, the New England region or the nation.” (MGL, Chapter 772, Section 2, definition of “landmark”) Only properties meeting at least one of the following criteria may be considered for designation: a) inclusion on the National Register of Historic Places; b) prominent identification with an important aspect of the economic, social and political history of the city, the commonwealth, and the region; c) significant association with the lives of outstanding historic personages; d) representative of elements of architectural design embodying distinctive characteristics of a type inherently valuable for study of a period, style or method of construction or development, or a notable work of an architect, landscape architect, designer, or builder. (BLC, pg 37)

²⁹ Landmarks Petition Form for the former Gaiety Theater, submitted 11/12/2002

³⁰ The claim that Sammy Davis, Jr. performed at the Gaiety was based on interviews performed by the FOTG; it was never substantiated. (FOTG, pg 15)

³¹ The regulations of the BLC (section 2.2, pg 4, as amended) require that hearing be held within 30 days of the filing of the petition.

BSA Historic Resources Committee's (HRC) monthly meeting in order to gain support from this group. In particular, they wanted to present evidence to illustrate why the Gaiety's level IV ranking was lower than it should be³².

Noting that Boston had lost many historic theaters over the past two decades, Jack Little stressed the importance of not losing another one to the wrecking ball. He also described the "unusual sense of spaciousness combined with intimacy" that Blackall professedly achieved at the Gaiety, as not only a unique architectural characteristic/achievement, but also one that, he believed, lent the theater well suited to reuse. Lee Eiseman added his concern that the proposed development would also require the demolition of a townhouse dating from the 1830s.

Two HRC members, Jackie McBride (also a member of the ABN) and Michael De Lacey, added their support for preservation, respectively chastising the loss of theaters in the Midtown Cultural District (MCD)³³ and suggesting that, if restored, the Gaiety would help maintain a connection between theaters on lower Washington Street and those on Tremont Street. However as an entity, the HRC did not adopt a position of support.

Issues of Acoustics

At the demo delay hearing, Ralph Cole had granted a request by Lee Eiseman for a visit inside the Gaiety³⁴. In early November 2002, Eiseman, several FOTG and Dr. David Griesinger, a psychoacoustical consultant enlisted by the FOTG, were allowed on a brief site visit to the theater³⁵.

³² Meeting notes, BSA HRC meeting, Nov 2002

³³ Adopted in 1989, one of the goals of the Midtown Cultural District Plan is "to revitalize Midtown as the region's center for performing and visual arts by rehabilitating historic theaters and creating new cultural facilities for the city's nonprofit arts community" (BZC, Article 38-1) [See APPENDIX C for complete Article 38-1; See APPENDIX D for a map of the MCD

³⁴ Minutes, BLC meeting and public hearing, 9/24/2002

³⁵ FOTG, pg 24

After the visit, Griesinger raved about the quality of the theater's acoustics,

“The designers took measures to reduce the reverberation time to the point where speech would be easily understood. Along the sidewalls above the first balcony are panels that are [were] filled with horsehair padding. With such an acoustic treatment in place, The Gaiety would have an excellent compromise between acoustics for speech and acoustics for music.”³⁶

Such a compromise would have been especially useful for burlesque performances as these shows included unaccompanied speech, solo and choral singing, and orchestral music that could sometimes be rather raucous³⁷.

After careful analysis of the test recording samples he had collected during the site visit, Griesinger concluded that the acoustics in the Gaiety Theater were among the best in Boston³⁸.

Proponents of preserving the Gaiety have alleged that Blackall collaborated with Wallace Sabine in the design of the Gaiety. As Sabine is often considered the “father of modern acoustical engineering,”³⁹ such association with a significant person might bolster support for the landmark petition. Sabine is known to have used similar panels⁴⁰ and, by 1911, Blackall was working with Sabine in the design and construction of his theaters; but there are no records or hard evidence to indicate that the two men collaborated on the Gaiety. Furthermore, Blackall's writings from 1908 indicate that, at that time, he believed experience to be far more valuable than scientific theory in acoustical design. Even Griesinger could conclude only that the panels were strong evidence that Sabine had worked on the theater at some time⁴¹. Historian Dr. Emily Thompson reached a

³⁶ <http://www.gaietyboston.com/acoustics1.html>, 5/11/2005

³⁷ FOTG, pg 20

³⁸ FOTG, pg 19

³⁹ BLC, pg 31

⁴⁰ FOTG, pg 64

⁴¹ FOTG, pg 25

similar conclusion that would tend to suggest only a post-construction collaboration at best:

“It is certainly possible, and even likely, that Blackall enlisted Sabine to ‘correct’ the acoustics of The Gaiety.... Sabine professed disdain elsewhere for using felt in a building under construction, so the presence of a felt-like substance in The Gaiety suggests he was brought in too late to be able to contribute to a more architecturally-integrated solution.”⁴²

Others have argued against any relationship with Sabine suggesting instead that the padding was installed decades later, in the 1930s or 1940s, when the theater was remodeled and equipped to show films. This judgment is based on the observation that the “decorative overlay” on the panels matches that of the projection booth added during the remodel.⁴³ No formal analysis of the fabric was ever undertaken.⁴⁴

A Bit more History

Theaters had been offering various forms of entertainment in Boston since the 1790s. Given Boston’s Puritanical roots, it is perhaps not surprising that at least one of the early theaters, the Boston Museum, housed “a gallery of curiosities” including displays from local museums, wax tableaux and taxidermied animals in addition to the “lecture hall” where theatrical performances were given⁴⁵.

But by the turn of the 20th century, driven in part by immigration, urbanization and increases in prosperity and leisure time, virtually all types of entertainment were flourishing in the city. In this “heyday of the theater,” a person could have his choice of

⁴² FOTG, pg 20

⁴³ BLC, pg 32

⁴⁴ FOTG, pg 74

⁴⁵ <http://www.bostonathenaeum.org/bostontheaterhistoriesa.html>, 5/11/2005

“plays, vaudeville, burlesque, comic performance, novelties, melodrama, travelogues, Turkish dancers [or] ‘follies of the day’” at one of Boston’s 20 theaters⁴⁶.

The Gaiety Theater was designed and built for the performance of burlesque – a low-cost form of, usually racy, live entertainment enjoyed predominantly by the working class⁴⁷. These shows invariably included performances by comedians, variety acts and short sketches; there was also the requisite “chorus line of girls in tights, led by female stars known as soubrettes.” Shows traveled from city to city on one of two circuits – the Empire Circuit, centered in the Midwest and also known as the Western Wheel, and the Columbia Circuit (Eastern Wheel)⁴⁸.

“Each [circuit] established ties with theaters in major cities. Each had its own producers and its own personality. The Empire Circuit tested the limits of civic tolerance with its “hot” shows emphasizing the displayed female body and blue humor. Columbia’s first president, Samuel A. Scribner, encouraged “refined” revues and musical comedies acceptable to women and middle-class men. Boston’s Gaiety Theater was part of the Eastern/Columbia Wheel.”⁴⁹

For sixteen years, shows from the Columbia circuit played at the Gaiety Theater. Many of these shows “received lavish praise... practically [achieving] the eminence of musical comedy”⁵⁰; many were done by once well-known producers, and starred vaudevillians and burlesquers who, though mostly unknown in the 21st century, were very popular in their day and genre⁵¹. However, no shows actually originated at the Gaiety, and as such it has been argued that the theater did not contribute notably to the development of this particular form of entertainment⁵².

⁴⁶ BLC, pg 18

⁴⁷ FOTG, pg 28; BLC, pg 17

⁴⁸ Bordman, Gerald, *The Concise Oxford Companion to American Theatre*, pg 72

⁴⁹ BLC, pg 19

⁵⁰ BLC, pg 22

⁵¹ Zeidman, Irving, *The American Burlesque Show*, pg 99-103; Corio, Ann, *This Was Burlesque*, pg 111

⁵² BLC, pg 42

Different opinions

In advance of the preliminary landmark hearing, the BLC was flooded with letters regarding the upcoming decision.

Frank Cullen sent a three page essay entitled “Boston: Birthplace of American Vaudeville – The People’s Art Form” in which he praised several of the theater’s noteworthy architectural features and extolled its role as the common man’s entertainment in the early 1900s⁵³. Boston City Councilors John Tobin and Michael Ross wrote in support of the petition, as did the Pro Arte Chambers Orchestra and many other concerned citizens.

Not everyone had such fond sentiments for the preservation of an old theater. The Boston Preservation Alliance, one of the first groups to have questioned the proposed demolition, wrote to the BLC to emphasize that their concerns had always been more about the scale of the proposed project and less about the loss of that particular historic structure. The Alliance also remarked that, having thoroughly reviewed materials from the petitioners, they did not believe there was enough new evidence to support the undertaking of a study report⁵⁴.

Henry Moss, co-chair of the HRC, had visited the theater on November 25th and based on his visit concluded that it would be “pointless” to upgrade the theater’s rating to III because too much of the theater’s original integrity had been lost to warrant nomination as a Boston Landmark. He granted that, though the building appeared structurally sound, most of the interior would require a complete reconstruction to recreate the original appearance. Finally, Moss expressed his belief that saving and reusing the building as a theater would not be economically feasible⁵⁵.

⁵³ Cullen, Frank, “Boston: Birthplace of American Vaudeville - The People's Art Form,” 11/26/2002

⁵⁴ Letter from the Boston Preservation Alliance to the BLC, 11/26/2002

⁵⁵ Meeting notes, BSA HRC meeting, Oct 2002; Letter from Henry Moss (BSA) to the BLC, 11/26/2002

Landmarks Commissioner Thomas Green, who had also visited the structure, shared his belief that, though the petition was interesting, based on what he had seen on the tour, the building did not warrant landmark status. Green also noted: “The huge balconies and relative small orchestra would make a ‘reuse’ unlikely....”⁵⁶

Staff comments

In advance of the preliminary hearing, “staff comments” were prepared by Ellen Lipsey that noted many points for the Commissioners to keep in mind when making their evaluation of this petition. She remarked that the comments were lengthier than usual given the “passion” of the petitioners, the impending threat of demolition, the fact that the development process for the property had already begun and, notably, the fact that the Boston’s preservation community did not agree on significance of the Gaiety Theater⁵⁷.

The comments included pertinent findings from the Boston Theater District Survey and the subsequent ranking system. Lipsey stressed that, based on the Gaiety’s score, it was not qualified to be a landmark. She added that the BLC had previously had the opportunity to update this rating in 1989, with the creation of the Midtown Cultural District Plan, but that the Gaiety’s score of was upheld during this review (as were all other 1981 ratings).⁵⁷

The outcomes of petitions for other Blackall theaters was given for reference; in the case of the Wang, the Wilbur and the Modern, interior, interior/exterior and exterior landmark designations were assigned respectively. However when the Gary and the Exeter Theaters had been considered, the Commissioners determined that though each was worthy of preservation, neither met “the stringent standards for potential designation,” and the petitions were denied.⁵⁷

⁵⁶ Letter from Thomas Green to the BLC, 11/25/2002

⁵⁷ Staff Comments, BLC meeting and public hearing, 11/26/2002

Lipsey reminded the Commissioners that Landmark designation is the “highest honor and form of protection that can be afforded,” and that it must be reserved only for properties deemed to be architecturally or historically significant not only to Boston but also to the state, to New England or to the Nation. Her final remarks included the following:

“[The] Staff finds the architectural and historical evidence presented to date does not justify further consideration of the Gaiety Theater for Landmark designation. In the history of the Commission, no petitions have been accepted for buildings rated IV or lower. This determination is not an endorsement for the demolition of the Gaiety Theater. **The Commission does not support the loss of any historic building, [but] at the same time that it affirms that not all buildings qualify for designation as Boston Landmarks....**”⁵⁸ (emphasis added)

As the overall tone of the “staff comments” suggested the coming denial of the petition, the outlook did not seem good for the Gaiety Theater. Nevertheless, an invitation was extended for the submission of new information that might improve the theater’s perceived significance relative to Landmark Criteria.”⁵⁸

November 26th, 2002. Preliminary Hearing, Petition 207.02 – petition to designate the Gaiety Theater as a Boston Landmark.

“The purpose of the preliminary hearing is to present to the Commission why a property or properties should be considered for designation....”⁵⁹

The purpose of the hearing was for the Commission to consider arguments for and against the petition to designate the interior and/or the exterior of the Gaiety; following the testimony, the commissioners would vote to determine whether or not the case would be accepted for further study.⁶⁰

⁵⁸ Staff Comments, BLC meeting and public hearing, 11/26/2002

⁵⁹ Regulations of the BLC, as amended

⁶⁰ Minutes, BLC meeting and public hearing, 11/26/2002

The four FOTG officers presented the first arguments for designation that evening. They began by reiterating the reasons for designation cited on the petition and then presented short histories of the Gaiety and of the theater in Boston. Eiseman then read statements from letters and articles that favored the proposed designation; Frank Cullen and Bob Kostarian attended the hearing to personally express their support⁶¹.

Kiefer offered a rebuttal citing the same reasons that had been included in the staff comments prepared for the hearing. As he had at the demo delay hearing, he noted that the building would be difficult to reuse; he additionally noted that the significant features had been altered or removed⁶¹.

When the petition's proponents again took the floor, Richard Candee, head of Boston University's preservation program, urged the Commissioners to upgrade the Gaiety's rating after Michael DeLacey (from the HRC) had noted that there was precedent for doing so. Shirley Kressel argued that there was "ample time" to consider the petition, that it would not interfere with the proposed development given that final approval of the project was still a ways off⁶¹.

Arguments against the designation followed from Susan Hartnett of the BRA and Esther Kaplan of the Office of Cultural Affairs. Both women's opposition was based on the claim that there was no need for a theater of the Gaiety's size; the women may have been concerned that, given the amount of money a restoration would cost, Kensington would appeal a landmarks designation and ultimately win at a significant cost to the city in time and money spent in defense of the designation.⁶² Albert Rex from the BPA noted that he opposed designation but supported retention of the theater until the Kensington project had the green light⁶¹.

⁶¹ Minutes, BLC meeting and public hearing, 11/26/2002

⁶² The Landmarks enabling legislation states "Any person aggrieved by a designation of the commission ... may... appeal the designation or determination to the superior court for Suffolk County. Upon every such appeal, the court shall hear all pertinent evidence and, on the basis thereof, ... **if it finds the decision of the commission ... to damage the owner of the property unreasonably in comparison to the benefit conferred on the public, shall annul the designation... in whole or in part....**" (emphasis added) (MGL Chapter 772, Section 9. Appeals)

Following the testimony, Ellen Lipsey clarified the theater rating system and read the staff comments and conclusion that “in the matter of long-term public interest, the commission should reject the petition.” But she added that if the theater’s rating were upgraded, it could be reconsidered⁶³.

Despite Lipsey’s suggestion, and the “vocal urging of City of Boston employees that designation was inappropriate and a study uncalled for,”⁶⁴ the Commission voted 5 to 3 in favor of the petition that evening and added the Gaiety Theater to the list of properties requiring the preparation of a study report^{63, 65}.

It is probably safe to say that the outcome of the hearing was a surprise to the petition’s opponents. The BSA Historic Resources Committee later had this to say about the commission’s decision:

“The vote was unusual in that it ran counter to the recommendations of BLC staff and the Boston Preservation Alliance, not to mention the **BSA** and **SAH**. Stay tuned...”⁶⁶
(emphasis added)

In actuality, the recommendation from the SAH (Society of Architectural Historians) had not been received by the BLC in time to serve as testimony for the hearing on November

⁶³ Minutes, BLC meeting and public hearing, 11/26/2002

⁶⁴ Raffi R. Berberian letter to the BLC dated 4/7/2003

⁶⁵ Prior to a designation hearing the Landmarks Act mandates that “an investigation and report on the historical and architectural significance of the structures, sites or objects to be designated shall be made.” Furthermore, the report shall attempt to provide an indication of the economic status of the property under consideration, and shall recommend the boundaries of any proposed landmark. “All recommendations shall be made 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....” (MGL, Chapter 772, Section 4, “Designations by Commission”)

⁶⁶ Meeting notes, BSA HRC meeting, Nov 2002

26th.⁶⁷ The Society’s representative, David Fixler had eloquently offered the following comments for the BLC’s review:

“The situation in which the Gaiety Theater finds itself is unfortunate, if not tragic... it is clear that at one time the Gaiety... was a very nice theater, of which little more than a hulk remains today....

“Within the shell of the theater, the basic space and a smattering of the plaster ornament... is intact. It is however in terrible shape and could conceivably cost \$20-25 million to put into proper usable condition. Little if any of the remaining ornament could be salvaged and restored, **and the entire project would essentially become a reconstruction...**” (emphasis added)

He continued:

“Then the philosophical question arises – what are we preserving.... any ‘restoration’ of the Gaiety would in fact be a reconstruction, there is almost nothing that speaks to the integrity of the original beyond the concrete shell and a battered brick façade, and it is hard to make the case that this is a building of such great architectural or cultural value that it merits these exceptional measures. As preservationists, we should understand that the sentiment and nostalgia that are driving the petitioners can be powerful tools to facilitate saving anything. However, we must also be pragmatists, and recognize that to be effective, preservation must move beyond nostalgia to analysis and judgment based on (to the greatest degree possible) objective criteria.”⁶⁸

While one cannot say whether or not it would have affected the BLC’s decision to go ahead with the study report, it certainly would have served as another significant argument against such a step.

⁶⁷ Though the recommendation was written 11/26/2002, it was apparently not received at the BLC until December 10th. One can only speculate as to whether this was intentional on the part of an author who perhaps did not wish his, largely subjective recommendation, to influence the Commissioners’ decision.

⁶⁸ Letter from David Fixler (SAH) to the BLC, 11/26/2002

FOTG – 1: Opponents – 0

Not everyone was pleased with the Commission’s decision. Douglass Shand-Tucci, a historian of American art and architecture, wrote to the Landmarks Commission to express his amazement that anyone would attempt to “save” the theater. After reminding the BLC that he had “pioneered the study of these theaters” for articles he wrote in the late 1970s, he declared, “... the Gaiety has very, very little [value]. It is not either architecturally or historically worth preservation... I write to declare my strong opposition to this ill-advised effort to keep the Gaiety.”⁶⁹

For the theater’s advocates, the vote was a major victory. The demo delay, set to expire on December 9th, 2002, had effectively been postponed for several months while the BLC staff put together a study report. This new delay would allow the preservationists more time to strengthen their case and to gain additional support for their cause.

FOTG growth and other support

In the months that followed their formation, the Friends of the Gaiety grew into a motley organization consisting of “committed volunteer architectural historians, architects, developers and devotees of Boston’s cultural patrimony.”⁷⁰ They also enjoyed support from some members of the local acoustical community for the purportedly superb acoustics in the Gaiety and potential association with Wallace Sabine⁷¹.

Many Gaiety Friends were members of Boston’s performing arts community who felt that that Boston’s need for performing space far exceeded the available supply, consequently they embraced the prospect of preserving the theater for use as another concert hall. In January 2003, Leo Beranek, an acoustician and Sabine-biographer, wrote

⁶⁹ Letter from Douglass Shand-Tucci to the BLC, 11/28/2002

⁷⁰ <http://www.gaietyboston.com/donation.html>, 5/10/2005

⁷¹ Meeting Notice, Greater Boston Chapter – Acoustical Society of America meeting, 3/18/2003

to Mayor Menino to urge preservation of the Gaiety, calling it a theater “that is just right for the performance of music.”

“Boston has a vital need, a hall for musical performances that has a seating capacity of 1500 or so. We are proud of our Boston Symphony Hall that seats 2600 and of Jordan Hall that seats about 1000. Both halls are booked to capacity and one is large for many users and the other is too small. The worst part of the story is that there are only a few dates during each concert season that are available in either outside of its own uses. A number of us have been worried about how to meet this need and all suggestions to date have been for halls that would seat only 500 or so. For organizations such as Handel and Haydn, and those that produce small operas, chamber music, small/medium orchestra and choral performances, there is no place to go. We vitally need another venue.”⁷²

Beranek also urged the Mayor to assist “some coalition of local musical organizations and others” with finding the money to renovate the theater. Whether or not he was referring to the Gaiety Friends at that point is unclear. They were aiming to raise enough money from private sources to purchase, restore and endow the theater such that they could run it as a non-profit operation⁷³. Perhaps the Friends recognized that even if the Gaiety were landmarked, such an action would only require the developer to *preserve* the theater; it could in no way require Kensington to make the space available to the small-budget community arts groups, musical organization and performance companies who supported the preservation effort.

Of course, those against designation claimed that just the opposite was true regarding the need for performance space of this size. At the petition hearing, Esther Kaplan of the Office of Cultural Affairs had noted that, though there was excess demand for both small and large theaters (200-800 and 3000+ seats, respectively), theaters the size of the former Gaiety (~1500 after renovation) did not meet those needs and were not in demand themselves⁷⁴.

⁷² Letter from Leo Beranek to Mayor Menino, 1/28/2003

⁷³ <http://www.gaietyboston.com/tenreasons.html>, 5/10/2005

⁷⁴ Minutes, BLC meeting and public hearing, 11/26/2002

Chinatown for preservation

In general the more people who back your cause, the better – especially if those individuals are likely bloc voters and/or carry some degree of political clout. So in February 2003, Friends of the Gaiety clerk Steve Jerome wrote an article for the *Sampan*⁷⁵ in an effort to get Chinatown on board with saving the Gaiety.

The article was bluntly titled “Gaiety Friends Need Chinatown,” and in it, Jerome appealed to the residents of Chinatown to join in the Friends’ campaign to preserve the theater.

He reminded *Sampan* readers of “a call” in the MCDP for the creation of cultural spaces for the city’s nonprofit arts community and stated that it had explicitly recommended the conversion of the Gaiety and Pilgrim Theaters into such spaces.

Though the Pilgrim has since been demolished, Jerome asserted that the Gaiety remained the “ideal candidate for a long overdue cultural and performing arts facility for Chinatown.”⁷⁶ He added that it was imperative for the theater to receive landmark designation, to ensure its continued existence and, he hoped, eventual restoration.

Some community advocates, such as Sherry Hao from the Campaign to Protect Chinatown, agreed with Jerome and joined the battle to Save the Gaiety⁷⁷. Others however, hungry for the additional units of affordable housing the Kensington development would bring, felt that the ultimate benefits of project would outweigh any historical loss⁷⁸. But despite the different opinions, Chinatown residents and

⁷⁵ “New England’s Only Chinese-English newspaper” (self-titled)

⁷⁶ *Sampan*, 2/21/2003

⁷⁷ Letter from the Campaign to Protect Chinatown to the BLC, 4/8/2003

⁷⁸ *The Boston Globe*, 8/29/2004; Letter from Richard Chin (Wang YMCA of Chinatown and the Chinatown Neighborhood Council) to the BRA, 1/18/2002

organizations in favor of preservation were far more vocal than those that were opposed and helped to bolster the case for the Gaiety.

African American support

In the 1920s, the Jazz Age was sweeping the nation. Burlesque producers picked up on this new style and before long, shows with all black or integrated “casts” were being put together⁷⁹. These shows usually originated in Harlem and toured “an informal circuit” of theaters in Philadelphia, Boston, Baltimore, Washington and occasionally Chicago and Pittsburgh⁸⁰. Though many of Boston’s theaters hosted such productions at one time or another, The Gaiety and the Casino were the only two to “regularly [present] African-American performers.”⁸¹

Some have cautioned that these integrated productions should not be interpreted as “enlightened race relations,”⁸² but rather just one of a number of attempts by the Columbia Circuit to stave off its impending decline:

“Cartoon comedies, melodrama, clean burlesque, dirty burlesque, Negro aggregations, mixed black and white troupes, vaudeville--Columbia tried them all in the last dying years. To no avail.”⁸³

But regardless of the reasons for their presentation, these shows afforded many talented black performers an opportunity to perform in an era where Jim Crow laws often prevented them from doing so⁸⁴.

⁷⁹ BLC, pg 23

⁸⁰ Gaiety Theater Friends - newsletter No. 3, Spring 2003

⁸¹ FOTG, pg 14; BLC, pg 23

⁸² BLC, pg 23

⁸³ Zeidman, pg 96

⁸⁴ FOTG, pg 10

In February 2003, the FOTG had seized upon this to lobby for support from the black community. They co-sponsored an event with Harvard University's W.E.B. DuBois Institute for Afro-American Research which presented a retrospective of the theater's history and "a recreation – through the use of old recordings and video clips – of the excitement that African-American performers generated from The Gaiety's stage."⁸⁵ The Friends also began referring to the theater as an African-American historic site, perhaps hoping to pressure the Mayor's office into rethinking its stance against the proposed designation.

The BLC Study Report – accepted March 14, 2003

Pam Fox, an architectural historian, had been selected to compose the BLC Study Report for the Gaiety based on her involvement with the preparation of the Boston Theater District Survey as well as the Study Reports for several other Boston theaters.

The information presented in the report came from BLC records, books on theater history, playbills, newspaper clippings, engineering reports and interviews with historians. The report described the location, historical use and current condition of the structure. It also depicted the theater's significance with regard to architectural achievement, association with historic persona, and the histories of theater in Boston as well as of vaudeville and burlesque. The theater's relationship to the criteria for landmark designation was outlined and a description of how both the theater and the proposed development fit into the underlying Plans and Zoning was given. After a presentation of the options available to the BLC (including Landmark Designation, National Register Listing, and a Memorandum of Agreement) and the foreseen impacts of those alternatives, the report recommended how to proceed with this landmarks case.⁸⁶

As the report had concluded that the Gaiety Theater did not meet any one of the four criteria for landmark status, it recommended against designating the Gaiety. Instead, it

⁸⁵ Gaiety Theater Friends - newsletter No. 3, Spring 2003

⁸⁶ BLC "Gaiety Theater Study Report," 2003

suggested the “execution of a Memorandum of Agreement between the developer and the Massachusetts Historical Commission, with the Boston Landmarks Commission as a concurring party....”⁸⁷ Of course, a MOA was already in the works between Kensington and the MHC.

The FOTG counter report

As the BLC Study Report and its recommendations did not bode well for the Gaiety, the FOTG were not about to let it be the final word governing the theater’s fate. They immediately took action by composing their own report, “The Gaiety Theatre: A Historic Boston Landmark” to provide, in their words, “a more balanced view without regard to political or commercial pressures.”⁸⁸ Their study presented additional information regarding the significance of the structure; it also included a case for how the Gaiety actually did meet three of the four criteria for landmark status, a point-by-point rebuttal of what they considered to be “the most egregious errors of the [BLC] Study Report”⁸⁹, and an attack on the Kensington project.

The report included the results from the acoustical studies conducted by Griesinger and, again, stressed the likelihood of Sabine’s involvement with the theater. There was a lengthy section discussing the Gaiety’s social significance and a description of the architectural significance with regard to fireproofing and building technology.

⁸⁷ BLC, pg 42

⁸⁸ FOTG, pg 3

⁸⁹ FOTG, pg 5

Architectural Significance

In 1885, it became mandatory for theaters in Boston to be constructed of fireproof materials and to have proper routes of egress⁹⁰. As such, the BLC Study Report dismissed claims that the Gaiety's fireproofing was architecturally innovative by stating that fireproof construction was not novel. Though this is true, the counter report stressed that the Gaiety was the "first playhouse to be completed and operated under the rigid [newly revised] building laws of 1907."⁹¹ When the theater opened, newspapers advertisements noted that the concrete floors and roof deck were reinforced to prevent against collapse, that structural steel clad in masonry, and wood was used sparingly – only for the stage floor and for limited trim elements⁹². Blackall had been the primary author of the fire-prevention and safety portions of the new building codes and is said to have designed the Gaiety to demonstrate the application of these new codes⁹³.

When it opened, the theater had also received praise for the site lines – each seat had an unobstructed view to the stage thanks to the use of massive I-beams that allowed the balconies to be cantilevered into the auditorium foregoing the need for columnar support⁹⁴. And while Boston's Jordan Hall (1903) has been cited as an earlier example of such a structural accomplishment, the FOTG stated that the technologies were, in fact different. As reported by structural engineer John Coote,

“The balcony at Jordan Hall [22-foot, seven-row deep] is an unremarkable and modest design, consisting of cantilevered steel reuses supported on a row of columns situated at the rear of the Auditorium.... The Blackall design for The Gaiety was much more structurally daring. The conventional columns were replaced by long span steel girders which spanned the whole width of the Auditorium. This allowed for very much deeper

⁹⁰ BLC, pg 29

⁹¹ Advertisement for the Gaiety Theatre included with the Landmarks Petition

⁹² FOTG, pg 29

⁹³ FOTG, pg 31

⁹⁴ BLC, pg 21

balconies to be constructed [49-foot, 17-row deep] while maintaining seating areas which are column-free.”⁹⁵

At the time of construction, the beams, which measured 54” x 12” in section and spanned the 57’ width of the theater, were the largest in the city⁹⁶.

“To express my support ...”

In the days leading up to and immediately following the designation hearing the BLC received many letters regarding the (now very controversial) case of the Gaiety’s fate. Letters were also sent to the Boston’s Mayor Menino given that, even if the Commissioners voted for designation, he would still have to sign off on it in order for it to be conferred.

Writing in favor of preservation were those who felt the theater should be saved for its feats of structural engineering or the role it played in Boston’s evolving fire codes⁹⁷. Others thought that its acoustics, described as “ideal for listening to unamplified sound”⁹⁸ and/or its purported relationship with Sabine warranted its preservation⁹⁹. There were those who wanted to see the “important cultural resource within the Midtown Cultural District”¹⁰⁰ restored and used as a cultural space¹⁰¹ or as a performance venue for both the local community¹⁰² and for performance groups⁹⁸. Carl Zellner, a founding member of the Landmarks Commission in 1975, had read the FOTG report and believed that the Gaiety deserved to “be restored to its original glory.” Stating that the theater had important historical significance as a “people’s house” -- a theater for the working class --

⁹⁵ FOTG, pg 30

⁹⁶ FOTG, pg 29-30

⁹⁷ Letter from John Anderson to the BLC, 4/11/2003; Letter from Boston City Councilors John M. Tobin, Jr. and Michael P. Ross to the BLC, 4/8/2003

⁹⁸ Letter from John W. Felton to the BLC, 4/8/2003

⁹⁹ 94, Letter from John Anderson to the BLC, 4/11/2003

¹⁰⁰ Letter from Jacquelin S. McBride to the BLC, 4/8/2003

¹⁰¹ Letter from the Campaign to Protect Chinatown to the BLC, 4/8/2003

¹⁰² Letter from John Anderson to the BLC, 4/11/2003, Letter from Jacquelin McBride to the BLC, 4/8/2003; Fax from Mary Fuller to the BLC, 4/10/2003

he wrote in support of landmark designation¹⁰³. Boston City Councilors John Tobin and Michael Ross noted the theater's "significant contributions to twentieth century jazz and vaudeville acts in Boston, particularly with its integrated casts."¹⁰⁴

Michael DeLacey, a member of the BPA who had urged the Alliance to support the FOTG's "grassroots movement,"¹⁰⁵ stated that the evidence supporting preservation had already been laid out in the BLC's own Study report, which he described as "rather compelling **in favor of** designation."¹⁰⁶ (emphasis added)

Gaiety Friend Raffi Berberian wrote to elucidate the position from which the FOTG counter report had been written:

"The Friends of the Gaiety Theater is not an assembly of fanatical anti-development historic preservationists. The Friends' immediate objective is to help save The Gaiety by making known to the Landmarks Commissioners the crucial criteria that make preservation of this property imperative. Although some members are amateurs in the field, they are demonstrating admirable competence in enlisting the judgments of professionals, undertaking historical research, publicizing the story of The Gaiety, and preparing reports and rebuttals to present to the Commission the compelling case for designation. I believe the caliber of their campaign before the Boston Landmarks Commission is unprecedented. As The Friends' submissions will demonstrate, the architectural and historical significance of The Gaiety demands this level of attention."¹⁰⁷

Some individuals simply opined that over the years, there had already been enough "destruction of the cultural heritage in America"¹⁰⁸, that enough theaters had already been torn down to make way for "shopping mall parking lots, office complexes, and luxury

¹⁰³ Fax from Carl Zellner to the BLC, 4/11/2003

¹⁰⁴ Letter from Boston City Councilors John M. Tobin, Jr. and Michael P. Ross to the BLC, 4/8/2003

¹⁰⁵ Meeting notes, BSA HRC meeting, Dec 2002

¹⁰⁶ Letter from Michael J. DeLacey to the BLC, 4/9/2003

¹⁰⁷ Letter from Raffi Berberian to the BLC, 4/7/2003

¹⁰⁸ Fax from Natalia Pavlova to the BLC, 4/10/2003

condominiums.”¹⁰⁹ The value of landmarking the Gaiety, they believed, would be realized for generations to come¹¹⁰.

“To express my opposition...” -- The other side of the coin...

At the other end of the spectrum were the voices opposed to landmark designation; and unfortunately for the Gaiety, some of those voices were rather noteworthy.

PreservatiON Mass (a statewide preservation organization) after reviewing the Study Report prepared by the BLC, wrote, “Regretfully, after a great deal of consideration, we feel that the Gaiety Theater does not meet criteria for Boston Landmark designation.”¹¹¹ The BPA, whose members had read the BLC report as well as information provided by the FOTG, reached the same decision – “regretfully” and “after much discussion,” the building did not meet the criteria¹¹². Both the BPA and PreservatiON Mass noted the prestige of Boston Landmark designation and stated that it applies only to buildings that rise **above local significance**. Both groups avowed (with virtually identical language) that their decisions were neither to be “construed as a condemnation of the theater for not having sufficient (architectural or) historic qualifications,” nor interpreted as an “endorsement of the Kensington Place project.”^{111,112}

Cara Metz, on behalf of the MHC, acknowledged the popular arguments in favor of preservation but countered with the following:

“As such, the theater is an interesting, but not outstanding, example of a purpose-built burlesque theater constructed to the requirements of stricter building codes of the era and its comparatively minimal decorative interior is reflective of the financial realities of theater operators in much of the entertainment business of the day....

¹⁰⁹ Fax from Michael O’Connell to the BLC, 4/11/2003

¹¹⁰ Letter from Jerome Rosenfeld to the BLC, 4/11/2003

¹¹¹ Letter from PreservatiON Mass to the BLC, 4/8/2003

¹¹² Letter from Boston Preservation Alliance to the BLC, 4/8/2003

“When evaluating historic properties, however, both historic association and architecture must be considered. While the historic associations of the Gaiety Theater are indeed important, the building itself has lost most of its architectural significance....

“In consideration of the information contained in the Landmark Study Report, the MHC concurs with the [BLC] staff recommendation that the Gaiety Theater is not an outstanding work of Boston architect Clarence H. Blackall, and does not appear to meet the criteria for Boston Landmark designation.”¹¹³

It was noted by Boston resident and former BLC Chairman Alan Schwartz that “Unlike previously designated theaters and other sites... the Gaiety has unfortunately lost most of its architectural integrity” who concurred with the Study Report’s conclusion that the Gaiety Theater “[Did] not meet the high standards for Landmark designation as found in Chapter 772.”¹¹⁴

Citizen W. Kevin Fitzgerald, a self-described “firm believer in the Midtown Cultural District,” shared his belief that the Gaiety was one of many theaters in the district that had become antiquated and unsuited for reuse due to health and safety concerns. Fitzgerald avowed that if reuse were a possibility, it would have already happened, but recognized that the opposing side might think otherwise, saying “Somehow, we Bostonians have a more difficult time in recognizing that buildings cannot be reused.” After noting his experience with the restoration and renovation of several structures in Boston, Fitzgerald concluded, “My sensitivity is acute, my interest sincere and my pragmatism very real and I hope that you will reject the petition.”¹¹⁵

¹¹³ Letter from Massachusetts Historical Commission to the BLC, 4/8/2003

¹¹⁴ Letter from Alan G. Schwartz to the BLC, 4/8/2003

¹¹⁵ Letter from W. Kevin Fitzgerald to the BLC, 3/31/2003

April 8, 2003 – Gaiety Theater Designation Hearing

An unusually large crowd was gathered in Room 900 in Boston's City Hall when the meeting was called to order that evening¹¹⁶. In addition to the BLC commissioners and staff, the room was filled with individuals (and their supporters) who would be testifying for or against designation.

Following a summary presentation of the Study Report's findings and recommendations, the testimony began. The Commissioners first heard statements from elected officials and their representatives. Next came statements from the Massachusetts Historical Commission and the Boston Redevelopment Authority, two agencies with review authority under the BLC enabling legislation (the Landmark's Act). Those in favor of designation then took the floor, presenting statements and evidence; those opposed followed suit¹¹⁷.

That evening, Stuart Rosenberg, a representative for Boston City Counselors Ross and Tobin, representatives of Chinatown advocacy groups, representatives from cultural and performing groups, representatives of the Friends of the Gaiety Theater, including Jack Little and Shirley Kressel, Steve Landrigan, Michael DeLacey and several other Boston residents and activists repeated their arguments in support of designation. At the hearing, the Friends of the Gaiety officially submitted their counter study report as testimony¹¹⁷.

Those testifying in opposition were representatives from the Massachusetts Historical Commission, the Boston Preservation Alliance, Historic Boston Inc., the Boston Society of Architects, Ralph Cole from Kensington Investment Company, representatives of Chinatown advocacy groups, Susan Hartnett from the BRA, Lance Olsen, the manager of the Emerson Majestic Theater and Ester Kaplan, Office of Cultural Affairs¹¹⁷.

¹¹⁶ Letter from Lee Eiseman to the BLC, 4/10/2003

¹¹⁷ Minutes, BLC meeting and public hearing, 4/8/2003

After acknowledged the letters to the BLC regarding this matter both sides had a chance to rebut. A deadline for the submission of additional written testimony was given as April 11th, and the vote for designation was scheduled for the later that month¹¹⁸.

April 22, 2003 - The vote

“Tonight you must consider designation apart from everything but the Commission's enabling legislation, its regulations and by-laws – apart from... the proposed Kensington project..., apart from the compelling pleas that this building should be preserved and reused as a theater for live entertainment. Your main action tonight is to vote whether or not the Gaiety Theater should be designated as a Boston Landmark.”¹¹⁹

When the discussion and vote on whether to designate the Gaiety Theater as a Boston Landmark came about that evening, the commissioners had had two weeks to consider the evidence presented at the public hearing, five weeks to consider the BLC Study Report, and five months to consider the petition. As the discussion began, the prepared staff comments were read, perhaps foreshadowing the theater's fate:

"The criteria for designation have remained high. To date the commission has designated 79 individual Landmarks including portions of 17 interiors.... All but one interior designated, had more intact building fabric, furnishings and/or finishes at the time of designation than the Gaiety has now."

“Along with the interiors of the Wilbur, Wang, Keith Memorial, Paramount, and Emerson Majestic the designation of a sixth theater interior, the Colonial is pending. The Wilbur, Wang, and Colonial are Blackall designs and are cited as among Blackall's greatest accomplishments.... The BLC's survey listed the Gaiety as a candid for preservation and reuse, but not designation.”

¹¹⁸ Minutes, BLC meeting and public hearing, 4/8/2003

¹¹⁹ Staff comments, BLC meeting – Gaiety Theater discussion and vote, 4/22/2003

“The issue of what’s left to preserve, in terms of significant building fabric, is ultimately at the heart of the Gaiety Landmark designation issue. The tool of Landmarking for protection is inextricably tied to preserving existing physical fabric regardless of whether the building is significant historically or architecturally, or both.

*“To sum up, the question before you tonight is **not** whether the Gaiety deserves to be preserved or reused as a theater. It is whether the Gaiety Theater as it stands today, has enough historical and/or architectural significance combined with enough remaining physical fabric at this time (related to significance), to meet the rigorous standards for Landmark designation....”¹²⁰*

The ensuing discussion addressed the relationship of the Gaiety to the criteria for landmark designation.

- a) It was noted that the Gaiety was not presently listed on the National Register
- b) With regard to the social, political, economic or cultural history of the city, the commonwealth, the New England region, or the nation, the Gaiety was not found to meet the level of significance required for designation.
- c) With regard the proposal that the structure should be landmarked for epitomizing simplistic, practical design, it was determined that in the case of the Gaiety, there was not enough original material intact to be grounds for landmark designation.

As this third point was further discussed, the Commissioners stressed that landmarking the theater interior would require its replication and reconstruction rather than its restoration¹²⁰.

Following their discussion, the BLC made a motion to recommend a MOA very similar to the one suggested in their study report, but with the notable additional stipulation that Kensington should provide a written confirmation that the Gaiety would remain standing until “all permits required for construction have been issued.” This motion was passed with a vote of 9-0. The landmark petition itself was never brought to a vote¹²¹.

¹²⁰ Staff comments, BLC meeting – Gaiety Theater discussion and vote, 4/22/2003

¹²¹ Minutes, BLC meeting – Gaiety Theater discussion and vote, 4/22/2003

One week later, the Commission sent out a formal memo to “Petitioners and other interested parties” describing their decision not to vote. The petitioners were thanked for their efforts and for their contributions to the “BLC’s high standard of review....” The BLC acknowledged that the theater was worthy of preservation, but not landmark status. And like the MHC and BPA before them, they avowed that their decision not to designate should not be construed as an endorsement of the Kensington project¹²². But as the BLC is part of the BRA and the BRA was very supportive of this development, it is likely that very few supporters of the Gaiety Theater believed them....

“All major approvals...”

In advance of the designation decision, activist Shirley Kressel had written to the BLC to request that if designation was assigned the Commission would urge Kensington to sign a “legally enforceable commitment” giving assurance that they would not demolish the theater until all construction permits for their project had been issued¹²³. Kensington had made a verbal promise at least once before, but as the demo delay had expired four months prior, Kressel presumably worried that the pending landmark case was the only thing standing between the Gaiety and the wrecking ball. As Kensington's development goals are counter to the development goals she and her organization have for Boston, she clearly wanted to prevent Kensington from turning the location into an empty lot where, even were the pending proposal ultimately overturned, there would be less leverage with which to negotiate for concessions to local citizen concerns on an alternative proposal.

¹²² Memo “Re: Petition #207.02, Gaiety Theater, 659-665 Washington Street, Boston” from the BLC to interested parties, 4/29/2003

¹²³ Email from Shirley Kressel to Ellen Lipsey (BLC), 4/9/2003

Save the Gaiety, Stop development!

With the BLC's decision, the path of saving the theater via landmark designation was abruptly cut off. But the fight to prevent Kensington from tearing down the Gaiety to make way for their development was far from over. On the contrary, this battle would rage on for two more years.

Concerns had been raised about the Kensington project from the moment it was first proposed; many revolved around the fate of the Gaiety Theater. But at the same time, other questions were raised, especially the way in which the development would relate to the Midtown Cultural District Plan and the ramifications the development was likely to have on Chinatown.

Height fright

Three days after filing the Project Notification Form (PNF) with the BRA, representatives of Kensington Investment Company met with the Park Plaza Civic Advisory Committee to review the proposal.¹²⁴

The primary concern that evolved from that meeting was with regard to how well the project would relate to the area's existing architecture; in particular (as is often the case with proposed development in Boston¹²⁵), the committee expressed concern over the planned height. Noting that both the Midtown Cultural District Plan and the Chinatown Master Plan recommend for development in scale with the existing urban fabric of the

¹²⁴ All proposals for development in Boston must undergo review by the BRA; larger projects additionally require review by city-appointed Civic Advisory Committees (CACs) which are "obligated to perform a major advisory role in all stages of the planning, renewal and redevelopment of the [committee specific] Urban Renewal Area and to communicate regularly with the BRA on matters of community concern relating to it." In the Park Plaza Urban Renewal Area, the future site of the Kensington Place project, this review is provided by the Park Plaza CAC. (BZC, Article 80; *The Boston Herald*, 11/30/2001; Letter from the Park Plaza Civic Advisory Committee to the BRA, 12/27/2001)

¹²⁵ *The Boston Herald*, 11/30/2001

neighborhoods (primarily 10 stories or less), the Park Plaza CAC expressed their belief that this guideline “should be respected and followed.”¹²⁶

Other committees and individuals shared their opinion. Among the remarks submitted by Boston’s Environmental Department for the project’s Scoping Determination was a note that the Landmarks staff had found “the height of the proposed buildings and massing along Washington Street out of scale and character for the area.” They suggested that shifting the massing of the tower along LaGrange Street and including a height setback along Washington Street would help to resolve the issue.¹²⁷

PDA problems

As the Park Plaza CAC had pointed out, the underlying zoning in the Midtown Cultural District (MCD) is for low-rise structures. Fortunately for Kensington, their project site was located within Planned Development Area IV (PDA-IV) of the MCD¹²⁸. As such, Kensington could seek a PDA Overlay District designation, which would raise the height limit to 275 feet for construction that is part of a PDA Development Plan; arguments against the legality of the proposed height would therefore be dismissed.

¹²⁶ Letter from the Park Plaza Civic Advisory Committee to the BRA, 12/27/2001

¹²⁷ In January 2002, other letters for the Scoping Determination expressing similar concerns over the scale of the Kensington Place project were received from representatives of the Asian Community Development Corporation, the Bay Village Neighborhood Association, the Campaign to Protect Chinatown, the Chinese Progressive Association and Boston resident Douglas Fiebelkorn.

¹²⁸ The MCD established four such areas. “The purposes for establishment of the areas within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the Midtown Cultural District while insuring quality design by providing planning and design controls; to protect and rehabilitate Boston's historic entertainment center as its cultural district, and to achieve the plan for the area as a vibrant regional arts district; to preserve and create the facilities necessary to house and showcase the resident artists and non-profit arts groups; to create new day care facilities; to protect and provide for expansion of housing and community facilities for the Chinatown community; to create public gathering places that will enliven and complement the historic buildings and streets which the Hinge Block comprises; and to preserve and protect the historic resources of Midtown.” (BZC, Section 38-10)

The concern many people raised with regard to the Kensington's PDA was the way in which the developer had drawn the boundaries. Since their project site alone was not large enough to meet the one-acre minimum requirement¹²⁹, it was proposed that a portion of the adjacent China Trade Center be included in the development area. The complication with that was that the owner of the China Trade Center was the BRA. For one thing, it did not seem right that a public organization should be assisting a private business with a controversial project. Many opponents of the BRA had, for years considered them to be in cahoots with developers, often at the expense of the "little guy," and this was only reinforcing that belief¹³⁰. Indeed, even the PNF listed as a projected public benefits: "Furthering the BRA's planning objectives to redevelop lower Washington Street..."¹³¹ There was also the worry that if this sort of dealing was allowed to occur, it would set a precedent for other developers to attempt the same thing, and ultimately the zoning code would be rendered meaningless¹³².

Parcel D and the Glass Slipper

Following their initial review, the Park Plaza CAC had also questioned whether or not the entire project site was actually located within the Park Plaza Urban Renewal Area (PPURP). In particular, they questioned the status of Parcels D and E. The PPURP states, in part "Unless the Authority shall have selected a developer for Parcels D and E within three years from the date of approval of this plan [1971], Parcels D and E shall no longer be considered part of the Park Plaza Project Area,"¹³³ and though an amendment to the PPURP that the BRA passed in 1981 deleted the three year expiration date for the two parcels, the statutory timeframe had elapsed leaving the validity of the action in

¹²⁹ BZC, Section 3-1A. Special Purpose Overlay Districts

¹³⁰ *The Boston Globe*, 8/9/2001; 6/30/2003; 1/5/2005

¹³¹ PNF, 12/10/2001

¹³² Letter from Bay Village Neighborhood Association to the BRA, 1/22/2002; Letter from the Neighborhood Association of Back Bay to the BRA, 1/25/2002; Letter from Jacquelin McBride to the BRA, 1/25/2002; Letter from Campaign to Protect Chinatown to the BLC, 4/9/2003

¹³³ Letter from the Park Plaza Civic Advisory Committee to the BRA, 12/27/2001

doubt¹³⁴. This was a problem because, as Kensington reported in their PNF, “assistance from the BRA pursuant to its Park Plaza Plan eminent domain authority may be required to assemble all of the parcels that will ultimately comprise the site.” Though Parcel D was part of the proposal, Kensington did not own it; if not included in the urban renewal area, the BRA would not have the jurisdiction to take this land via eminent domain¹³⁵.

Parcel D and the remainder of the Kensington Place project site is within the only area zoned for adult entertainment uses in Boston. In the late 1970s, the adult entertainment industry was thriving; there were scores of sex-related businesses in the “Zone” including strip clubs, peep shows, adult bookstores, sex shops and porn movie houses¹³⁶. But by the mid 1980s, pressures from City Hall, the adjacent community of Chinatown, and even the rise of home video, had resulted in a sharp decline in the market for such entertainment¹³⁷. New development just outside the Zone hurt the adult businesses even more as it resulted in increased property values and, consequently, higher rents¹³⁸.

Nevertheless, still concerned that market forces alone would fail to price out the adult entertainment providers, then-Mayor Flynn took over, enlisting the help of the property owners and having the city buy up property to prevent new adult businesses from opening¹³⁹. The Boston Licensing Board did its part by making it more and more difficult for the not-so-respectable businesses to keep their liquor licenses¹⁴⁰.

The Glass Slipper had weathered it all. Though the demise of the club had seemed certain in 1989 when the Boston Licensing Board revoked the club’s liquor license, upon appeal to the state’s Alcoholic Beverages Control Commission, the revocation was

¹³⁴ *Sampan*, 12/20/2002

¹³⁵ Letter from the Park Plaza Civic Advisory Committee to the BRA, 12/27/2001

¹³⁶ *The Boston Globe*, 12/23/1987; 7/5/2003

¹³⁷ *The Boston Globe*, 3/18/1988; 9/4/1987; 12/23/1987

¹³⁸ *The Boston Globe*, 9/4/1987

¹³⁹ *The Boston Globe*, 12/17/1995

¹⁴⁰ *The Boston Globe*, 7/3/1987

converted to a 10-day suspension, granting the Slipper a reprieve.¹⁴¹ And much to the annoyance of the City and the residents of Chinatown, the Slipper's business continued to boom¹⁴². The market for adult entertainment would not go away; in fact, it was strong enough so that when a second strip club, Centerfolds, opened across the street from the Glass Slipper in late 2001, both clubs easily stayed in business¹⁴³.

As 2001 drew to a close, the Glass Slipper was comfortably situated right where it always had been, at 15 LaGrange Street. But the club was about to encounter a problem – 15 LaGrange was in Parcel D.

One can imagine that the club's owners Nicholas Romano and William Bennett were not too pleased with the prospect of having their property seized via eminent domain. Legally, the BRA would be required to pay for the club's moving expenses and to help the club relocate to a new venue, but there were limited relocation alternatives within Boston's existing adult entertainment district. Granted, if no space could be found in the former Zone, the Glass Slipper's owners could sue to open elsewhere in the City, and it is presumed that they would win, as case law affirms the city is legally required to provide areas for adult entertainment. Nevertheless, Romano and Bennett liked their location and did not want to be forced to move¹⁴⁴. Furthermore, the City would not be required to indefinitely subsidize any reduction in business at a new location, and it wasn't entirely certain that the BRA could legally seize their property. The Glass Slipper was not about to go without a fight.

¹⁴¹ Somewhat interestingly, in its decision to overturn the BLB's action, the ABCC wrote that the "transparent purpose" of the revocation had been to clear the adult entertainment district for redevelopment. (*The Boston Globe*, 9/1/1989)

¹⁴² *The Boston Globe*, 12/4/1998

¹⁴³ *Boston's Weekly Dig*, 12/18/2002

¹⁴⁴ *The Boston Globe*, 7/5/2003; Letter from Shirley Kressel to the BLC, 4/11/2003

Chinatown

“Boston’s Chinatown was established between 1869 and 1870 when the completion of the Transcontinental Railroad brought Chinese railroad workers to manufacturing jobs in Boston and other parts of the Northeast.... Chinatown grew slowly over a hundred and thirty years... to a 46-acre neighborhood that is one of the last ethnic communities in the city of Boston.”¹⁴⁵

Despite substantial and continuing growth in population and pressures for further expansion, Chinatown began to shrink in the late 1950’s when the borders were constricted and 200-300 families were displaced by the construction of the Southeast Expressway/Central Artery and the Mass Turnpike. Over the years, from its mid-50’s peak, Chinatown lost one third of its housing and fifty percent of its land area to urban renewal projects. Nevertheless the community’s population continued to grow¹⁴⁴; in the 1980s, as the Combat Zone began its decline, businesses that serve the neighborhood began to spill into the former Zone¹⁴⁶. But by the late 80s, developments within and near the Zone were beginning to put upward pressures on the cost of living within Chinatown itself¹⁴⁷. As such, residents have become increasingly interested in having their voices heard when it comes to development in the Zone¹⁴⁸.

Many residents of Chinatown had spoken out against the demolition of the Gaiety Theater as they had hoped it could instead be reused as performance venue for their community¹⁴⁹. More than a decade after the MCDP had called for cultural space, this goal was still unfulfilled.

However, of even greater worry to Chinatown’s activists and residents was what Kensington was proposing to put in the Gaiety’s place. Members of the PPCAC and several Chinatown advocacy groups expressed grave concern over the impacts that yet

¹⁴⁵ Chinatown Masterplan (CM) 2000, pg 6

¹⁴⁶ *The Boston Globe*, 7/11/1987; 8/2/1987

¹⁴⁷ *The Boston Globe*, 6/13/1987; 9/4/1987; 3/18/1988

¹⁴⁸ *The Boston Globe*, 9/12/2003; 10/27/2002; 2/16/2002

¹⁴⁹ *Sampan*, 2/21/2003; 1/7/2005; Letter from the Campaign to Protect Chinatown to the BLC, 4/8/2003

another upscale development would have on the current local population – particularly with regard to the projected increase in the cost of housing as gentrification spreads closer to and even into Chinatown¹⁵⁰.

Project approvals

The DPIR for the Kensington project¹⁵¹, incorporated several concessions aimed at addressing some of the noted concerns. The new proposal included the height setbacks recommended by the BLC and Dean Johnson, a consultant to the Park Plaza Civic Advisory Committee (PPCAC)¹⁵² to help it better relate to the surrounding structures when viewed from the street. The four-level, above ground parking garage, had been moved below ground. Additionally, to mediate the worry that the project would ultimately price out the local residents, the number of affordable units was increased to 15%¹⁵³; this number would later be increased once again to a remarkable 17%¹⁵⁴.

The feasibility studies requested by the PPCAC and the BLC had been done. Perhaps not surprisingly, Kensington’s consultants determined that reuse of the historic structures on the site was not a realistically feasible. For the DPIR, the consultants noted that, although it would *technically* be possible to incorporate the theater and office building into new development, the amount of work necessary to bring the old structure up to modern day seismic and fire building codes would make the cost prohibitive (it would need to be entirely gutted and reduced to its shell in order for it to be properly reinforced). The option of performing a “façadectomy” – in which only the Washington Street face of the structure would be preserved – was ruled out as it was not a “generally accepted treatment of historic properties.”¹⁵³

¹⁵⁰ Letter from the Park Plaza Civic Advisory Committee to the BRA, 12/27/2001; Letter from the Campaign to Protect Chinatown to the BRA, 1/25/2002

¹⁵¹ DPIR submitted to the BRA on 7/10/2002

¹⁵² Letter from Dean Johnson (consultant to Park Plaza CAC) to the BRA, 1/25/2002

¹⁵³ DPIR, submitted 7/10/2002

¹⁵⁴ The Boston Globe, 12/22/2004

It is perhaps interesting to note that this section of the DPIR also includes a statement that, early in the approvals process, Kensington, members of the BLC staff, and representatives of the MHC conceded that retention of the Gaiety Theater would preclude the proposed development. Whether this knowledge was later reflected in the tone of the Gaiety's Study Report or in the subsequent landmark hearing is unknown. Certainly, it has been suggested^{155,156} that, as the BLC is not independent of the BRA¹⁵⁷, the Landmarks Commission tries not to hinder projects that have the BRA's support.

Shirley Kressel declared in a letter to the BLC after the landmarks hearing, "It is no secret that the BRA works on behalf of developers; indeed this is the core founding mission of redevelopment authorities.... The simple fact is that the BLC is under pressures by a Mayor with a long-standing publicly known commitment to the Kensington project."¹⁵⁵

Undoubtedly, for those who speculated that the BLC succumbed to pressure from the mayor and the BRA, and consequently to the whims of the developers who contributed to the mayor's campaigns¹⁵⁸, the failure to bring the Gaiety's case to a vote at the landmark hearing only worsened their suspicions¹⁵⁶.

The MOA

The BLC could not require that Kensington include in its MOA a promise to obtain all permits for its development before demolishing the Gaiety¹⁵⁹. Nevertheless, three days after the landmarks hearing, Kiefer wrote to the BLC confirming that Kensington would not demolish until it obtained "all major discretionary approvals necessary for the

¹⁵⁵ Letter from Shirley Kressel to the BLC, 4/11/2003

¹⁵⁶ *The Boston Herald*, 4/21/2003

¹⁵⁷ "There shall be in the Boston Redevelopment Authority a Boston Landmarks Commission...." MGL Chapter 772, Section 3

¹⁵⁸ *The Boston Globe*, 9/9/2001

¹⁵⁹ Letter from the MHC to the BLC, 7/16/2003

Residences at Kensington Place project to proceed.” He also added that the developer planned to include a similar proviso in its agreement with the MHC¹⁶⁰.

Sure enough, five months later the promise was legally made official as a part of the MOA between Kensington and the MHC. The agreement also stipulated that in order to mitigate the loss of the historic structure, Kensington was required to properly document the theater before demolition, to incorporate into their development a public exhibit that highlighted the historical importance of the Gaiety, and to salvage important artifacts from the theater for use in that exhibit. Additionally, it stated that the project would be subject to periodic design review by the MHC and the BLC, though this was more of a formality, given that neither organization would object to the project provided that no alternations were made to the plans that had been proposed in the Final Project Impact Report (FPIR)^{161,162}.

Of course, by this time, Kensington was already well on its way to getting all of the said “major discretionary approvals” necessary for its project. On the same day as the MOA was made official, a public hearing was held to consider the proposals for the PDA Overlay District and the Development Plan for said PDA that were required for the project to proceed. Despite statements from members of the Park Plaza CAC, from Chinatown advocates, from FOTG member Steve Jerome and from City Councilor Maura Hennigan against the development, the BRA voted in Kensington’s favor on every issue.¹⁶³

¹⁶⁰ Letter from Matthew J. Kiefer to the BLC, 4/25/2003

¹⁶¹ Memorandum of Agreement between and among the MHC, The Kensington Investment Company, Inc., and the MDEP regarding The Residences at Kensington Place, Boston, MA, signed on 9/11/2003

¹⁶² FPIR submitted on 3/10/2003

¹⁶³ At the hearing, the BRA voted to authorize its Director to issue any and all agreements and documents appropriate and necessary for the project (including a Final Adequacy Determination, a Certification of Compliance, a Certificate of Consistency and a Cooperation Agreement). The Authority also voted to approve the proposed Development Plan finding, in part, that it was allowable by and complied with any provisions of the underlying zoning regulations, and that, once the area had been zoned as a PDA overlay district, the plan would meet the standards required for approval as per the Boston Zoning Code. Finally, the director was authorized to petition the Boston Zoning Commission to incorporate the proposed PDA into the Midtown Cultural District zoning map and to approve the Development Plan for said PDA. (BRA certificate of vote, 9/11/2003)

That same evening, the BRA approved a modification to the Park Plaza Urban Renewal Area, “with respect to Parcel D.” The passage of this modification put an end to any debate regarding whether or not Parcel D was in the urban renewal area; but more importantly, it adjusted the description of properties that the BRA could seize. The BRA could now fulfill its half of the Cooperation Agreement it had been negotiating with Kensington since 2001 – it could seize the Glass Slipper for the Kensington project if its owners refused to sell¹⁶⁴.

The approvals may have been facilitated by the fact that, since the submission of the DPIR, the developer had better addressed the issue of the area they would seek to have designated as a PDA. As more than one eyebrow had been raised regarding the proposed inclusion of land owned by the BRA, Kensington instead entered into an agreement with the Boston Young Men’s Christian Union according to which the BYMCU would allow a portion of its site to be incorporated into the proposed PDA overlay district¹⁶⁵. Still shy of the one-acre requirement, the developer proposed to include portions of the adjacent public streets and sidewalks to bring the area up to the minimum. Project opponents “cried foul”¹⁶⁶, and argued that the developer had been coached by the BRA into using this trick; others flat out questioned its legality¹⁶⁷. Though BRA spokeswoman Susan Elsbree claimed there was precedent for “counting streets” toward the one-acre requirement, when questioned by a columnist, she could not provide any examples¹⁶⁸. Regardless, the inclusion was not successfully challenged.

¹⁶⁴ BRA certificate of vote, 9/11/2003; Sampan, 9/23/2003

¹⁶⁵ Letter from the BYMCU to the BRA, 6/13/2003

¹⁶⁶ *The Boston Globe*, 12/22/2004; *The Boston Phoenix*, October 15 - 21, 2004

¹⁶⁷ *Sampan*, 12/17/2004

¹⁶⁸ *The Boston Phoenix*, December 24-30, 2004

Sprinkler problem

Though Kensington had promised to wait for certain approvals before demolishing the building, preservationists and activists were worried that the developer would bring about demolition simply by neglecting the property to the extent it would be forced to proceed for safety reasons. Indeed, Kensington had not put much, if any, money towards improvements since purchasing the building in 1986, and a lack of maintenance had resulted in widespread water damage inside the theater. Their goal *may* have been to facilitate redevelopment by turning their property into a blight (as some critics accused¹⁶⁹; but, having purchased the property “to hold for development,”¹⁷⁰ it simply may have been that Kensington did not want to spend any money on a structure they had always planned to demolish.

The Boston Fire Department was not happy with the fact that this lack of upkeep included a failure to ever install an automatic sprinkler system in the building. Though the theater was the epitome of fireproof technology in 1908, nearly a century later, it was far from up to code; should the structure catch fire, the fire department was concerned for its own safety. As such, in October 2003, the Boston Fire Department issued an Abatement Order mandating the installation of an automatic sprinkler system. But the order included a caveat – the sprinklers would not be necessary if demolition occurred in a timely manner. Kensington quickly reached an agreement with BFD to demolish the structure as soon as all approvals had been granted, setting a tentative deadline of March 31, 2004¹⁷¹. Though the agreement allowed, penalty-free, for the creation of a new deadline should the original not be met, it established a legal reason why the Gaiety should be demolished sooner rather than later.

March 31st came and went, and the Gaiety was still standing; but Kensington was very close to obtaining all of the major discretionary approvals necessary for its project to

¹⁶⁹ Letter from Jeremy Liu to the BRA, 1/25/2002

¹⁷⁰ BLC, pg 4

¹⁷¹ Letter from Matthew J. Kiefer to the Boston Fire Department, 5/11/2004

proceed. When the Massachusetts Department of Housing and Community Development (MDHCD) signed off on the Park Plaza Urban Renewal Plan Modification a month later, the approvals required by the MOA were complete.¹⁷² Theoretically, demolition of the Gaiety could now begin.

Has demo begun?

Perhaps in anticipation of the MDHCD's approval, in early April 2004, Kensington hired contractors to drain the water from the basement and to begin removing certain interior materials from the building. Immediately, opponents of the Gaiety's demise raised the alarm¹⁷³.

FOTG president John Little, members of the Boston City Council, and Shirley Kressel wrote to the MHC, the BRA and the BLC to call attention to the fact that that Kensington, without all of the approvals, might be in violation of the MOA¹⁷⁴.

Kressel was also concerned with the manner in which Matthew Kiefer, Kensington's lawyer, was seeking to define what approvals the MOA required. Kiefer considered "major discretionary approvals" to be those which involved a complete review of the project, including considerable public participation, and for which the issuing authorities had "wide latitude... in deciding whether to approve the application."¹⁷⁵ As per this definition, lack of a building permit would not prevent demolition. Hoping to address this issue, Kressel asked for both the BLC and the MHC to require Kensington to confirm in writing, "that no further steps toward demolition [would] be taken until a full and final building permit is issued for the project."¹⁷⁶

¹⁷² See APPENDIX F for a list of Kensington's Major Discretionary Approvals

¹⁷³ *The Boston Globe*, 9/2/2004

¹⁷⁴ Letter from John Little (FOTG) to the MHC, 4/25/2004; Letter from Boston City Councilors John M. Tobin, Jr. and Michael P. Ross to the BRA, 4/28/2004

¹⁷⁵ Letter from Kensington to the MHC, 12/13/2004

¹⁷⁶ Email from Shirley Kressel to Ellen Lipsey (BLC), 4/28/2004

The Park Plaza CAC made a similar request in a letter to the MHC. After noting their concern that “demolition of a historic asset be prevented until after it is certain that redevelopment of the site is feasible – both legally and economically,” they detailed the approvals necessary for the issuance of demo permit as per their understanding of the MOA. “Building Permit” preceded “Demolition permit’ on their list¹⁷⁷.

But these requests would not be granted; on the last day of April, the MHC received a letter from Kiefer to document that all of major discretionary approvals had been received and the requirement was complete¹⁷⁸.

Article 38

Kensington had not been in violation of the MOA when it began dewatering the basement and removing the asbestos. These steps were part of required pre-demolition work that must be done before the City of Boston’s Inspectional Services Department (ISD) will issue a permit for demolition. The pre-demo work for the Gaiety theater was a bit complicated as, in addition to the usual cutting and capping of utilities, it involved the abatement of hazardous materials (asbestos) and the careful removal of the artifacts Kensington’s consultants had selected to include in the public interpretive exhibit. While the pre-demo work progressed, project opponents kept watch. They also took up the legal argument as to why the Gaiety could not be demolished¹⁷⁹.

Article 38 of the Boston Zoning Code was created to establish the zoning regulations associated with the Midtown Cultural District Plan. Gaiety supporters seized upon section 38-21.2 of the Code, stating that it prohibits demolition of a theater; they argued that as the Gaiety was a theater, issuing a demo permit for the structure would violate the

¹⁷⁷ Letter from Park Plaza Civic Advisory Committee to the MHC, 5/21/2004

¹⁷⁸ Letter from Matthew J. Kiefer to MHC and the BLC, 4/30/2004

¹⁷⁹ Letter from Kensington to the MHC and the BLC, 9/3/2004

Code¹⁸⁰. Kressel added that Article 38 gave special protection to theaters – rendering them subject to neither the BLC’s “jurisdiction nor expertise” – in other words, even though the BLC had not assigned landmark designation to the Gaiety, that did not equate to permission to raze the structure.

But as Kensington’s lawyer was quick to point out, the building had not been zoned for use as a theater at the time the MCD Plan was adopted. In 1988, the legal occupancy of had been temporarily changed to: food storage, stores, offices, restaurant, bookstore¹⁸¹. The MCD Plan took effect the following year. Furthermore, Kiefer argued, the Gaiety did not meet the definition of “theater” as explained in Article 38: “Theater” means a facility equipped for the production and presentation of performing and visual arts events.”¹⁸² In 2003, an architectural firm had determined that the Gaiety, in its current state, was not suitable for such use; and to be rendered suitable would require the building’s footprint to be expanded. As such, Kiefer averred that the former Gaiety was not subject to Section 38-21.2¹⁸³. But project opponents fought on.

As the Article 38 arguments and letters continued, so too did the pre-demo work on the Gaiety. Project opponents succeeded in interrupting the work once in September 2004, when, in response to a concern raised regarding the removal of windows and roofing material from the building, the ISD issued a temporary Stop Work Order to investigate why this had occurred. Kressel had argued that such work was outside the parameters of the pre-demo asbestos removal permit as it rendered the building susceptible to the elements. If rain were to cause significant deterioration of the Gaiety’s interior, the developer could later use the argument that the structure was unsafe, facilitating demolition¹⁸⁴.

¹⁸⁰ Letter from Shirley Kressel to the ISD, 6/4/2004

¹⁸¹ Letter from Matthew Kiefer to the ISD, 4/30/2004

¹⁸² BZC, Article 38, Appendix E

¹⁸³ Letter from Matthew Kiefer to Boston the ISD, 4/30/2004; BZC, Article 38.21 [see APPENDIX C]

¹⁸⁴ *The Boston Globe*, 9/2/2004

Upon Ralph Cole's reassurance that the windows had been removed only temporarily as part of the required hazardous materials abatement, the ISD allowed the pre-demolition activities to be completed¹⁸⁵.

The Holy Grail -- a demo permit

Two months later, the pre-demolition work had been completed and Kensington was ready to proceed with their project¹⁸⁶. On November 24th, they applied for a demo permit for the Gaiety.

Shirley Kressel immediately wrote to Gary Moccia, Assistant Commissioner at the ISD. Citing the well used Article 38-21.2 as well as problems with the assignment of the PDA zoning, Kressel asserted that the ISD was obligated, as Boston's zoning enforcement agency to deny the permit for the Gaiety¹⁸⁷. But her comments fell on deaf ears. The fact that a Certificate of Consistency from the BRA accompanied the permit application was apparently considered sufficient proof of legality. Thus, on December 10th, Kensington got its demo permits. Demolition was permitted to commence as early as seven days later¹⁸⁸.

Take 'em to court

The morning the permits were issued, attorney Ken Tatarian delivered a motion to Land Court seeking to stay the effectiveness of any demo permits already granted; a hearing on

¹⁸⁵ Letter from Kensington to the MHC and the BLC, 9/3/2004

¹⁸⁶ Demo permit for 659-665 Washington Street, Boston, issued 12/10/2004

¹⁸⁷ Letter from Shirley Kressel to the ISD, 11/30/2004

¹⁸⁸ *The Boston Globe*, 12/10/2004

the motion was also requested. The hearing was granted, and on December 17th, Land Court Judge Keith Long heard testimony for and against such an action¹⁸⁹.

Tatarian argued that, as an abutter to Kensington's properties, the Glass Slipper would be harmed by the demolition because the new development did not conform to the underlying zoning of the district. Furthermore, if demolition were allowed, his client would be unable to advertise that it was located "next to the historic Gaiety Theater."¹⁹⁰

If this argument seems like a stretch, it perhaps makes more sense to consider that the driving force behind this lawsuit may have been an attempt to prevent, or at least delay the demolition for another reason.¹⁹¹ About one year prior, three lawsuits had been filed in Land Court against the Boston Zoning Commission claiming that the PDA designation for the Kensington project had been granted inappropriately. One case had been brought by a small coalition including three Boston City Councilors, several neighborhood activists (including Kressel) and the Oni Collaborative – a group leasing space across the street from the project site¹⁹². Nicholas Romano, co-owner of the Glass Slipper, had filed the other two. In November 2004, Judge Long had ruled that the activists and city councilors did not have standing¹⁹³. One week later the Oni Collective dropped the case entirely¹⁹⁴. Additionally, Romano's two cases were consolidated into one. But at the time the demo permit was issued, Long had still not ruled on the legality of the PDA zoning for Kensington's site – a decision was not expected until that coming March¹⁹⁰. Romano presumably calculated that the odds of a ruling against the PDA designation would be far more likely if they were not fighting against development of an empty lot. Such a ruling would save the Gaiety; but it would also prevent Kensington's project from

¹⁸⁹ Email from Kenneth H. Tatarian to Susan Rice (ISD), 12/10/2004; *The Boston Globe*, 12/17/2004; *Sampan*, 12/17/2004

¹⁹⁰ *The Boston Globe*, 12/22/2004

¹⁹¹ Even Judge Long would later write, "It is unclear how being next to 'the historic Gaiety Theatre' will affect the number or demographics of the Glass Slipper's customers." (*The Boston Globe*, 12/22/2004)

¹⁹² *Sampan*, 5/6/2004; *The Boston Globe*, 9/2/2004

¹⁹³ *The Boston Globe*, 11/18/2004

¹⁹⁴ *The Boston Phoenix*, December 17 - 23, 2004

proceeding as planned and would therefore halt the eminent domain seizure of the Glass Slipper.

Regardless of the reason for the Slipper's suit against the issuance of a permit, Kensington agreed it would take no action until after Judge Long had issued this decision, which came on December 21st¹⁹⁵. Writing that Tatarian had failed to demonstrate how razing the theater would bring irreparable harm to the Glass Slipper, Judge Long rejected the Slipper's request for a preliminary injunction against the demo. Long noted that though his "sympathies lie with the preservationists... the facts and the law do not."¹⁹⁶ The Glass Slipper appealed its case to the Massachusetts Appeals Court the following day; but within 24 hours, the Appeals Court had upheld the Land Court's decision¹⁹⁷.

It seemed like the Gaiety was on her last legs. Then, on the last day of the year, she was granted "another reprieve," much to the relief of the preservationists¹⁹⁸. On behalf of his client, Ken Tatarian had submitted a brief to Judge Francis Spina of the Massachusetts Supreme Court and once again, Kensington agreed to wait for the decision before taking any action.

The case was heard on January 11, 2005. This time, Tatarian included the point that the demolition of the Gaiety would deprive his client of "several substantial arguments" in their legal case regarding the PDA designation. But it was still to no avail. In addition to concluding that lack of an injunction would not result in irreparable harm, Judge Spina disagreed with the assertion that demolition of the theater would undermine their legal challenge to validity of the PDA overlay district. He wrote, "Their suit in the Land Court does not depend on whether the 'Gaiety Theatre' building remains standing, but on

¹⁹⁵ *The Boston Globe*, 12/17/2004

¹⁹⁶ *The Boston Globe*, 12/22/2004

¹⁹⁷ *The Boston Globe*, 12/23/2004

¹⁹⁸ Post by Ron Newman on 1/1/05, 4:40pm, to <http://www.cinematreasures.com/theater/6405/>

whether the District Plan was properly amended.”¹⁹⁹ With the injunction denied, the Glass Slipper’s efforts to save the Gaiety came to an end²⁰⁰.

The last few months

Despite countless strikes against their cause, Gaiety supporters had not given up. In early January 2005, they organized a small rally in front of the former theater with the hope of calling the media’s attention to their cause. Though 40 people showed up, some carrying signs decrying the “Bad Redevelopment Authority,”²⁰¹ the event failed to attract any substantial press coverage²⁰². Afterwards, one loyal supporter suggested that some “dedicated folks [should go to] the site in shifts and physically prevent demolition,” adding, “Dramatic confrontations like that get big news coverage,”²⁰³ but nothing ever came of the suggestion.

In February, as interior demolition of the Gaiety got underway, Kressel, tried another approach. She asked Julie Crockford, an employee at the Museum of Afro American History, to call for Mayor Menino’s help in saving the theater as “an active, vibrant, operating element of the Black Heritage Trail, rather than a picture in a history book....” She also brazenly suggested that Crockford should indicate that doing so would “save him from making a shameful mistake and insulting the black community.” Obliging, Crockford forwarded Kressel’s email to the BLC along with a request for the mayor to help save “THE vaudeville theater where black actors worked.”²⁰⁴ Frank Cullen from the American Vaudeville Museum was more critical of the mayor, “That the elected and appointed officials of the City of Boston encouraged and permitted the demolition of Boston’s most important theater for African American performing artists, the Gaiety

¹⁹⁹ Memorandum and Judgment, *Romano v. Marr*, 1/11/2005

²⁰⁰ *The Boston Globe*, 1/12/2005

²⁰¹ *The Boston Phoenix*, January 14-20, 2005

²⁰² Post by Ron Newman on 1/10/05, 8:39am, to <http://cinematreasures.org/theater/6405/>

²⁰³ Post by BillA on 1/11/05, 7:20pm, to <http://cinematreasures.org/theater/6405/>

²⁰⁴ Email from Shirley Kressel to Julie Crockford, 2/2/2005; Email from Marie Turley (Boston City Hall) to Ellen Lipsey (BLC), 2/4/2005

Theatre, and did so during Black History month 2005 is an indication of racial, cultural and artistic insensitivity and a collective tin ear....”²⁰⁵

As the interior demolition continued, the Gaiety supporters had one small fight left. In January, City Councilors Turner and Arroyo had secured an appeal with the Boston Zoning Board of Appeals (ZBA). Like the Glass Slipper before them, they claimed that the issuance of a demo permit for the Gaiety had violated Article 38-21 and they sought reversal of its issuance. On March 29th, a crowd of over 40 activists, preservationists and community members descended on City Hall for the hearing, ready to plead their case. But before anyone got to speak, ZBA chair Robert Shortsleeve dismissed the case, as per the instruction of the City’s corporation counsel, Merita Hopkins; as this issue had previously gone before the courts, the board members were to follow the precedent set by that decision and stated that the activists had no legal standing^{206, 207}.

The supporters would not take “no” for an answer; as described by Councilor James Kelly (a supporter of the Kensington Project):

“There were several members of the antidevelopment group that were shouting, and security had been called... They came close to making an arrest. They were being unruly, shouting, and being disruptive.”²⁰⁷

When the shouting got them nowhere, Councilors Maura Hennigan, Turner and Arroyo, determined to speak to the Counsel, led “a parade of citizens”²⁰⁶ to Hopkins’s office, ready for a sit-in if necessary.

Though a decision on the hearing was not given that afternoon, the board did eventually agree to hear the testimony, allowing the four city councilors, Lee Eiseman and Ching-In

²⁰⁵ Email from Frank Cullen to the MHC, the BLC, Mayor Menino, et al., 2/11/2005

²⁰⁶ *The Boston Phoenix*, Issue Date: April 1 - 7, 2005

²⁰⁷ *The Boston Globe*, 3/30/2005

Chen, of the Asian American Resource Workshop, to plead for the Gaiety one last time²⁰⁸.

The end

“Tho [sic] I’ve never been in the Gaiety, I feel like I’ve lost an old friend...”²⁰⁹

At the hearing, Councilor Hennigan had asked for a stay on demolition until the board’s decision, but it was not granted²¹⁰. Though the Glass Slipper’s case challenging the PDA zoning was still pending, no court order or injunction had been issued to invalidate any of the Kensington project’s “major discretionary approvals”; leaving Kensington “free to exercise rights under them.”²¹¹

The Gaiety lasted for three more weeks; but by April 20th, her time had finally come – demolition was underway.

The wrecking ball methodically punched away the old building’s walls, gradually exposing the once-grand theater to the outside world. Three weeks later, all that remained was a pile of rubble²¹². The Gaiety was no more.²¹³

²⁰⁸ *The Boston Phoenix*, Issue Date: April 1 - 7, 2005; *The Boston Globe*, 3/30/2005; *Sampan*, 4/4/2005

²⁰⁹ Post by Mike Brown on 4/25/2005, 1:38am to <http://cinematreasures.org/theater/6405/>

²¹⁰ *Sampan*, 4/4/2005

²¹¹ Letter from Kensington to the MHC, 12/13/2004

²¹² *The Boston Phoenix*, Issue Date: May 6 - 12, 2005; <http://cinematreasures.org/theater/6405/>

²¹³ See APPENDIX G for demolition photo

Epilogue

Over the next few weeks and months, the remnants of the Gaiety will be loaded into trucks and hauled away along with the pieces of what used to be the Club New Orleans (25 LaGrange Street). The Glass Slipper (15-17 LaGrange Street), has yet to be seized, and the neighboring property at 1-13 La Grange Street, is still standing, but all indications suggest that both will share the Gaiety's fate. The latter is already owned by one of Kensington's principals²¹⁴ and the BRA issued a "notice of intent" for the strip club in late January²¹⁵. Many have rationalized the Gaiety's demolition by noting the merits of the planned development – the 61 units of affordable housing, the additional property tax revenue for Boston's coffers and the removal of a vestigial Combat Zone establishment – unfortunately, none of these benefits are guaranteed.

It is almost certain that the Glass Slipper would be forced out of its current location – despite its legal challenge to the PDA, the club is unlikely to win as Boston's "virtually bulletproof" PDAs have always held up in court²¹⁶. However, in mid-April, with eager assistance from the BRA (which is, of course, legally required to help the business relocate) the club's owners entered into negotiations for an alternate location – a four story building almost directly across the street from where the Slipper currently sits²¹⁷. A combination of zoning restrictions, eminent domain regulations and First Amendment rights may keep the strip club in the neighborhood after all.

The 17% affordable housing that the project will provide, when only 10% is legally required, seems rather admirable, while the taxes such a structure would generate are substantial. Yet a recent article in *The Boston Herald* questioned the developer's ability to follow through on the project – obviously, a project that goes uncompleted generates no affordable housing, and taxes on an empty lot just don't compare. Noting the development team's complete lack of experience with projects of this scale – a high-rise

²¹⁴ *The Boston Herald*, 12/3/2004

²¹⁵ *The Boston Herald*, 1/21/2005

²¹⁶ Comment made by Kressel's in *The Boston Globe*, 8/7/2004

²¹⁷ *The Boston Globe*, 4/15/2005

tower likely to cost well over \$100 million – the author predicts, “a dim future: Another rubble-strewn site that sits on the market for years, its would-be developers waiting for a big payday.”²¹⁸

Is Kensington considering a property flip? The possibility can't be denied. When the developers first submitted their PNF in late 2001, it was projected that the job would be completed in July 2004; but as of mid-May of 2005 demolition is still underway. Market conditions change and by the time Kensington can officially break ground it may feel that building luxury condominiums on the site no longer projects to a worthwhile return on investment. If so, the Gaiety may have been lost to a parking lot.

In the end, the benefits of the Kensington project - housing, taxes, revitalization of a downtrodden neighborhood - may come to pass. On the other hand, the preservationists may be proven right - Boston will come to regret the loss of yet another historical theater. Only time will tell.

²¹⁸ *The Boston Herald*, 5/6/2005

APPENDIX A – Gaiety Theater, 1908²¹⁹



“Stage and Boxes of the Gaiety Theater,” on opening night

²¹⁹ *The Boston Globe*, 11/23/1908

APPENDIX B – Rendering of Proposed Development

Image removed for copyright purposes.

APPENDIX C – Boston Zoning Code excerpts

ARTICLE 38 – MIDTOWN CULTURAL DISTRICT

SECTION 38-1. Statement of Purpose, Goals, and Objectives. The goals and objectives of this article and the Midtown Cultural District Plan are to direct downtown development in a way that promotes balanced growth for Boston; to prevent overdevelopment of the Financial District and the Back Bay by promoting mixed-use development in Midtown; to revitalize Midtown as the region's center for performing and visual arts by rehabilitating historic theaters and creating new cultural facilities for the city's nonprofit arts community; to protect the quality of life and provide for expansion of the thriving Chinatown neighborhood by creating affordable housing and business opportunities, and by controlling institutional expansion in the area; to preserve Boston's historic resources and public open spaces, which provide enjoyment to all residents and visitors and which increase land values in their proximity, by virtue of historic, aesthetic, and environmentally beneficial qualities; to provide new and expanded facilities for community services; and to create a new residential neighborhood downtown by encouraging the development of housing which is affordable to all segments of the community.

SECTION 38-21. Restrictions on Change of Use or Occupancy of Theaters. The Commissioner of the Inspectional Services Department shall not issue a change of use or occupancy permit for any Theater within the Midtown Cultural District, as identified in the Midtown Cultural District Plan, except in accordance with the provisions of this section.

1. Demolition of Unsafe Theaters. The Commissioner of the Inspectional Services Department may issue a demolition permit where the Theater or building is unsafe and demolition is required pursuant to the provisions of the Commonwealth of Massachusetts State Building Code.

2. Authorized Change of Use or Occupancy of Theaters. Excepting the provisions of paragraph 1 of this section, the Commissioner of the Inspectional Services Department shall issue a change of use or occupancy permit for any Theater within the Midtown Cultural District under the provisions of Article 6 only if the Board of Appeal finds, after reviewing the recommendations, if any, of appropriate City departments and agencies, and appropriate community and neighborhood organizations in the Midtown and Chinatown areas, and in addition to all other conditions required under Section 6-3, Section 6-3A, and Section 6-4, where applicable, that: (a) change of use or occupancy of the Theater structure will not unduly diminish the historic character of the Midtown Cultural District as a cultural, entertainment, and theatrical showcase, taking into consideration: (i) current physical characteristics of the Theater that affect its suitability for use as a Theater, including but not limited to seating capacity, interior configuration, and location; (ii) history of its use as a Theater; (iii) the likelihood of its future use for

Theater production; and (iv) the Applicant's plans for replacement of the Theater structure with performing arts facilities supportive of the objectives and specifications of the Midtown Cultural District Plan. In its approval of a conditional use under this Section 38-21.2, the Board of Appeal shall attach as conditions and safeguards, at a minimum, that: (b) the Applicant for any Proposed Project on the lot containing a portion or all of the former site of the Theater either (i) replace that Theater with a fully equipped new Theater or other cultural facility of a condition, size, and type which is appropriate, under the circumstances pertaining at the time of the permit application, to contribute to the balance of cultural facilities responsive to the needs of the Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) substantially rehabilitate or cause the substantial rehabilitation of an existing Theater, in accordance with the provisions of paragraph 3 of this Section 38-21; and (c) the Applicant provide evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Midtown Cultural District Plan; or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee). In the case of a new Theater, the new Theater must provide for sufficient facilities to support Theater operations, such as administrative offices, rehearsal studio space, dressing room/green room space, and storage space, as identified in the Midtown Cultural District Plan. In the case of a Theater in a building or an interior designated as a Landmark, such permit must also be authorized by the Boston Landmarks Commission, in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. The Applicant shall also enter into an agreement for substantial rehabilitation of an existing Theater, as detailed in Section 38-25, where applicable.

3. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval under this Section 38-21 consists of: (a) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its anticipated use, as detailed in the Midtown Cultural District Plan; or (b) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a façade restoration, may also be included in qualifying as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, raking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of a original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, parking, or improvements to mechanical systems alone.

ARTICLE 85 – DEMOLITION DELAY

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.

APPENDIX F – Major Discretionary Approvals²²⁰

Agency	Permit/Approval	Date received
Executive Office of Environmental Affairs – MEPA Office	Environmental Impact Review	01/25/02
Boston Redevelopment Authority	Large Project Review	Final Adequacy Determination – 01/07/04
Boston Redevelopment Authority	Planned Development Area Developmental Plan	Certificate of Vote – 01/09/04
Boston Zoning Commission	Planned Development Area Developmental Plan and Overlay District Designation	Map Amendment adopted – 12/17/03 Approved by Mayor – 12/22/03
Boston Redevelopment Authority	Urban Renewal Plan Modification	Certificate of Vote – 01/09/04
Boston City Council	Urban Renewal Plan Modification	City Council Order – 12/17/03 Approved by Mayor – 12/22/03
Department of Housing and Community Development	Urban Renewal Plan Modification	Approval – 04/28/04
Massachusetts Historical Commission/Massachusetts Department of Environmental Protection/Boston Landmarks Commission	State Register Review/Demolition Delay Review	Memorandum of Agreement – 09/11/03

²²⁰ Letter from Matthew Kiefer to the ISD, BLC Archives, Boston, MA, 4/30/2004

APPENDIX H – Acronyms

ABCC	Alcoholic Beverages Control Commission
BLB	Boston Licensing Board
BLC	Boston Landmarks Commission
BRA	Boston Redevelopment Authority
BSA	Boston Society of Architects
BSA HRC	BSA Historic Resources Committee
DPIR	Draft Project Impact Report
FOTG	Friends of the Gaiety
FPIR	Final Project Impact Report
ISD	Inspectional Services Department
MCD	Midtown Cultural District
MCDP	Midtown Cultural District Plan
MDEP	Massachusetts Department of Environmental Protection
MHC	Massachusetts Historical Commission
MOA	Memorandum of Agreement
PNF	Project Notification Form
PPCAC	Park Plaza Civic Advisory Committee
SAH	Society of Architectural Historians

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