

R Philip Dowds

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CAMBRIDGE MA.

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Thursday, January 22, 1998

CAMBRIDGE CITY COUNCIL

c/o CITY CLERK
City Hall
Cambridge, MA 02139

Attn: **Mayor Pro Tempore Frank Duehay**
Re: **Illegal Demo at 784 Memorial Drive**

Dear Mayor Pro Tempore Duehay and Members of the Council:

I have observed that contractors are tearing down buildings at 784 Memorial Drive (the "Polaroid" site), and I understand that this work is proceeding without a building / demolition permit. If so, I'm greatly disturbed that the City seems so indifferent to violation of State law. As an Architect registered to practice in Massachusetts, I am well familiar with 780 CMR, the "State Building Code" (SBC), and here's what it says about demo and permits:

Is a "building" permit required for demolition? You bet. The SBC sometimes makes generic use of the word "building" to cover all kinds of construction activity, including un-building. But SBC 110.1 spells it out:

"It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a building or structure ... without first filing a written application with the building official and obtaining the required permit therefor."

Is the work at 784 Mem Drive "demolition"? You bet. SBC 110.3 specifically itemizes the few (very few) exemptions to the permit requirement of 110.1. By way of SBC 110.3.4, a class of construction called "ordinary repairs", is exempt from the permit requirement, but 110.3.4 goes on to state:

"Ordinary repairs shall not include the cutting away of any wall, partition or portion thereof..."

In other words, 110.3.4 is quite explicit in stating the requirements for a building / demolition permit *do* apply to the window, wall, and partition removals now under way at 784 Mem Drive.

Is "dismantling" a class of construction activity distinct from "demolition"? No. The SBC makes no systematic use of the word "dismantling", offers no definition of this word, and thus does not create any distinction between "demolition", "dismantling",

4-1

"selective removals", "tearing down", "wrecking", "imploding", or any other semantic hair-splitting.

Is a "debris removal permit" a substitute for a "demolition" permit? No. The SBC does not establish "debris removal" as a class of construction activity different from "building" or "demolition". The topic of debris is addressed in SBC 111.5, which says in part:

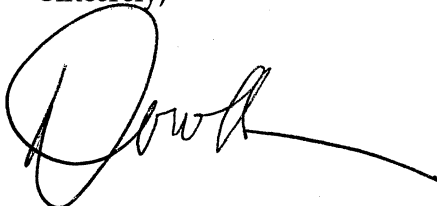
"As a condition of issuing a permit for the demolition, renovation, rehabilitation, or other alteration of a building or structure, <Mass General Law> requires that the debris resulting therefrom shall be disposed of in a properly licensed solid waste facility." Representations of legal disposal of debris shall be made on "... a form ... attached to the office copy of the building permit."

In other words: The required building / demolition permit is necessary before you are allowed to turn your building into debris — and you can't get one of those without saying how you will legally dump this debris, once you've created it. By SBC, there is no such thing as a "debris removal permit" distinct from the "demolition permit".

That an owner, developer and/or contractor will occasionally engage in subterfuge to evade the requirements of law is not a surprise. That our City will tolerate or support such subterfuge is, unfortunately, also not a surprise. But for me, it's always a disappointment.

I enclose herewith photocopies of the relevant SBC pages. As always, feel free to contact me when you have questions or comments. As always, feel free to do something.

Sincerely,



R Philip Dowds AIA

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enclosures:

780 CMR sixth edition, pp 19, 20, and 22

4-2

780 CMR: STATE BOARD OF BUILDING REGULATIONS AND STANDARDS
THE MASSACHUSETTS STATE BUILDING CODE

ventilation, energy conservation and sanitary requirements of 780 CMR as necessary to insure the public health, safety and general welfare.

110.2.3 Termination of approval: The building official may terminate such special approval and order the demolition of any such construction at the discretion of the building official.

110.3 Exemptions: A building permit is not required for the following activities, such exemption, however, shall not exempt the activity from any review or permit which may be required pursuant to other laws, by-laws, rules and regulations of other jurisdictions (e.g. zoning, conservation, etc.).

1. One *story* detached accessory buildings used as tool or storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet.

2. Fences six feet in height or less.

3. *Retaining walls* which, in the opinion of the building official, are not a threat to the public safety health or welfare and which retain less than four feet of unbalanced fill.

4. Ordinary repairs as defined in 780 CMR 2. Ordinary repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam, column or other loadbearing support, or the removal or change of any required *means of egress*, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, mechanical system, *fire protection system*, energy conservation system or other work affecting public health or general safety.

5. Greenhouses: A building permit or notice to the building official is not required for the construction of greenhouses covered exclusively with plastic film (in accordance with St. 1983, c. 671). (This exemption does not apply if the greenhouse is to be used for large assemblies of people or uses other than normally expected for this purpose.)

110.4 Form of application: The application for a permit shall be submitted in such form as determined by the building official but in all cases shall contain, as a minimum, the information required on the appropriate sample uniform building permit application forms in *Appendix B*. The application for a permit shall be accompanied by the required fee as prescribed in 780 CMR 114.0 and the construction documents as required in 780 CMR 110.7 and 110.8, where applicable.

110.5 By whom application is made: Application for a permit shall be made by the owner or lessee of the *building or structure*, or agent of either. If application is made other than by the owner, the written authorization of the owner shall accompany

the application. Such written authorization shall be signed by the owner and shall include a statement of ownership and shall identify the owner's authorized agent, or shall grant permission to the lessee to apply for the permit. The full names and addresses of the owner, lessee, applicant and the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

Note: It shall be the responsibility of the registered contractor to obtain all permits necessary for work covered by the Home Improvement Contractor Registration Law, M.G.L. c. 142A. An owner who secures his or her own permits for such shall be excluded from the guaranty fund provisions as defined in M.G.L. c. 142A. Refer to 780 CMR R6 and M.G.L. c. 142A for additional information regarding the Home Improvement Contractor Registration Program.

110.6 The securing of a building permit by the owner, or the owner's authorized agent, to construct, reconstruct, alter, repair, demolish, remove, install equipment or change the use or *occupancy* of a *building or structure*, shall not be construed to relieve or otherwise limit the duties and responsibilities of the licensed, registered or certified individual or firm under the rules and regulations governing the issuance of such license registration or certification.

110.7 Construction documents: The application for permit shall be accompanied by not less than three sets of *construction documents*. The building official is permitted to waive, or modify the requirements for filing construction documents when the building official determines that the scope of the work is of a minor nature. When the quality of the materials is essential for conformity to 780 CMR, specific information shall be given to establish such quality, and 780 CMR shall not be cited, or the term "legal" or its equivalent used as a substitute for specific information.

110.8 Engineering Details, Reports, Calculations, Plans and Specifications: In the application for a permit for *buildings and structures* subject to construction control in 780 CMR 116.0, the *construction documents* shall contain sufficient plans and details to fully describe the work intended, including, but not limited to all details sufficient to describe the structural, *fire protection*, fire alarm, mechanical, light and ventilation, energy conservation, architectural access and egress systems. The building official may require such calculations, descriptions narratives and reports deemed necessary to fully describe the basis of design for each system regulated by 780 CMR. In accordance with the provisions of M.G.L. c. 143, § 54A all plans and specifications shall bear the original seal and original signature of a

engaged in directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition in those categories of *building* and *structures* for which the BBRS does not require a license, provided that those municipalities which have established licensing requirements for construction supervisors prior to January 1, 1975, may maintain their existing licensing requirements.

108.3.6 Registration of Home Improvement Contractors: In accordance with the provisions of M.G.L. c. 142A, no home improvement contractor, or organization or firm shall be involved in the improvement of any existing owner occupied one to four family residential building unless said home improvement contractor has registered with the BBRS in accordance with the rules and regulations for the registration of Home Improvement Contractors as set forth in 780 CMR R6.

108.3.7 Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors: The rules and regulations for the Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors shall be as set forth in 780 CMR R7.

108.4 Enforcement: Whoever violates the provisions of 780 CMR 108.0 or any rules and regulations promulgated hereunder, or who falsifies or counterfeits a license, registration or certification issued by the BBRS, or who fraudulently issues or accepts such a license, registration or certification shall be punished as provided in 780 CMR 118.0 or shall be subject to any other penalty provided for by law.

780 CMR 109.0 APPROVAL

109.1 Approved materials and equipment: All materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

109.2 Used materials and equipment: Used materials, equipment and devices which meet the minimum requirements of 780 CMR for new materials, equipment and devices shall be permitted; however, the building official may require satisfactory proof that such materials, equipment and devices have been reconditioned, tested, and/or placed in good and proper working condition prior to approval.

109.3 Alternative materials and equipment:

109.3.1 General: The provisions of 780 CMR are not intended to limit the appropriate use or installation of materials, appliances, equipment or methods of design or construction not specifically

prescribed by 780 CMR, provided that any such alternative has been approved. Alternative materials, appliances, equipment or methods of design or construction shall be approved when the building official is provided acceptable proof and has determined that said alternative is satisfactory and complies with the intent of the provisions of 780 CMR, and that said alternative is, for the purpose intended, at least the equivalent of that prescribed in 780 CMR in quality, strength, effectiveness, *fire resistance*, durability and safety. Compliance with specific performance based provisions of 780 CMR, in lieu of a prescriptive requirement shall also be permitted as an alternate.

109.3.2 Evidence submitted: The building official may require that evidence or proof be submitted to substantiate any claims that may be made regarding the proposed alternate.

109.3.3 Tests: Determination of acceptance shall be based on design or test methods or other such standards approved by the BBRS. In the alternative, where the BBRS has not provided specific approvals, the building official may accept, as supporting data to assist in this determination, duly authenticated engineering reports, formal reports from nationally acknowledged testing/ listing laboratories, reports from other accredited sources. The costs of all tests, reports and investigations required under these provisions shall be borne by the applicant.

109.3.4 Approval by the Construction Materials Safety Board: The building official may refer such matters to the Construction Materials Safety Board in accordance with 780 CMR 123.0 for approval.

780 CMR 110.0 APPLICATION FOR PERMIT

110.1 Permit application: It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a *building* or *structure*; or to change the use or *occupancy* of a *building* or *structure*; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 CMR without first filing a written application with the building official and obtaining the required permit therefor.

110.2 Temporary Structures:

110.2.1 General: A building permit shall be required for temporary structures, unless exempted by 780 CMR 110.3. Such permits shall be limited as to time of service, but such temporary construction shall not be permitted for more than one year.

110.2.2 Special approval: All temporary construction shall conform to the structural strength, fire safety, *means of egress*, light,

780 CMR: STATE BOARD OF BUILDING REGULATIONS AND STANDARDS
THE MASSACHUSETTS STATE BUILDING CODE

applications for permits and amendments thereto within 30 days after filing thereof. If the application or the construction documents do not conform to the requirements of 780 CMR and all pertinent laws under the building official's jurisdiction, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of 780 CMR and all laws and ordinances applicable thereto, the building official shall issue a permit therefor.

111.2 Zoning: In accordance with the provisions of M.G.L. c. 40A or St. 1956, c. 665 as amended, no permit for the construction, alteration, change of use or moving of any *building* or *structure* shall be issued if such *building* or *structure* or use would be in violation of any zoning ordinance or by-law.

111.3 Railroad right-of-way: No permit to build a *structure* of any kind on land formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the state shall be issued without first obtaining, after public hearing, the consent in writing to the issuance of such permit from the Secretary of the Executive Office of Transportation and Construction, all in accordance with M.G.L. c. 40, § 54A.

111.4 Water Supply: No permit shall be issued for the construction of a *building* or *structure* which would necessitate the use of water therein, unless a supply of water is available therefor, either from a water system operated by a city, town or district, or from a well located on the land where the *building* or *structure* is to be constructed, or from a water corporation or company, as required by M.G.L. c. 40, § 54.

111.5 Debris: As a condition of issuing a permit for the demolition, renovation, rehabilitation or other alteration of a *building* or *structure*, M.G.L. c. 40, § 54 requires that the debris resulting therefrom shall be disposed of in a properly licensed solid waste disposal facility as defined by M.G.L. c. 111, § 150A. Signature of the permit applicant, date and number of the building permit to be issued shall be indicated on a form provided by the building department, and attached to the office copy of the building permit retained by the building department. If the debris will not be disposed of as indicated, the holder of the permit shall notify the building official, in writing, as to the location where the debris will be disposed.

111.6 Workers' Compensation: No permit shall be issued to construct, reconstruct, alter or demolish a *building* or *structure* until acceptable proof of insurance pursuant to M.G.L. c. 152, § 25C(6) has been provided to the building official.

111.7 Expiration of permit: Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however, for cause, and upon written request of the owner, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the building commissioner or inspector of buildings. Work under such a permit in the opinion of the building commissioner or inspector of buildings, must proceed in good faith continuously to completion so far as is reasonably practicable under the circumstances. It is the sole responsibility of the owner to inform, in writing, the building commissioner or inspector of buildings of any facts which support an extension of time. The building commissioner or inspector of buildings has no obligation under 780 CMR 111.7 to seek out information which may support an extension of time. The owner may not satisfy this requirement by informing any other municipal and/or state official or department.

For purposes of 780 CMR 111.7 any permit issued shall not be considered invalid if such abandonment or suspension of work is due to a court order prohibiting such work as authorized by such permit; provided, however, in the opinion of the building commissioner or inspector of buildings, the person so prohibited by such court order, adequately defends such action before the court.

111.8 Previous approvals: 780 CMR shall not require changes in the construction documents, construction or designated *use group* of a *building* for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been actively prosecuted within 180 days after the effective date of 780 CMR and is completed with dispatch.

111.9 Signature to permit: The building official's signature shall be attached to every permit; or the building official shall authorize a subordinate to affix such signature thereto.

111.10 Approved construction documents: When the building official has determined that the proposed construction conforms to the provisions of 780 CMR and other applicable laws, by-laws, rules and regulations under his/her jurisdiction, the building official shall stamp or endorse in writing the three sets of construction documents "Approved". One set of the approved construction documents shall be retained by the building official, one set by the head of the local fire department and the other set shall be kept at the construction site, open to inspection of the building official or an authorized representative at all reasonable times.

111.12 Revocation of permits: The building official shall revoke a permit or approval issued under the

Consent Communication #4

Communication was received from
R. Philip Dowds, regarding the
development at 784 Memorial Drive.

In City Council January 26, 1998

All items carried forward to be a part
of City Council Meeting of
February 2, 1998 on motion of
Councillor Sullivan.

In City Council February 2, 1998

PLACED ON FILE