

**Choosing The Right Way: A Comparative Analysis of Entitlement Methods for Private  
Large-Scale Developments in Boston**

by

Dmitry Baskin

B.S., Construction Management, 1999

Florida International University

Masters of Business Administration, 2003

University of Miami

Submitted to the Department of Architecture  
in Partial Fulfillment of the Requirements for the Degree of Master of Science in Real Estate Development

at the

Massachusetts Institute of Technology

September, 2007

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Signature of Author \_\_\_\_\_  
Department of Architecture  
July 27, 2007

Certified by \_\_\_\_\_  
Peter Roth  
Lecturer, Department of Architecture  
Thesis Supervisor

Accepted by \_\_\_\_\_  
David Geltner  
Chairman, Interdepartmental Degree Program in  
Real Estate Development

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## **ABSTRACT**

In order to keep up with changing urban landscapes, zoning regulations need to be altered and revised to maintain the most appropriate land use. Boston, Massachusetts is a city that has experienced considerable demographic evolution in the past 100 years. In efforts to remain current with the growing and changing needs of the commercial and residential community, developers have employed various methods to permit their projects. Specifically for large projects that do not conform to the underlying zoning constraints, entitlements can be obtained via zoning variances & special permits, creation of a Planned Development Area, a map amendment changing the zoning designation of their site, or use of a Chapter 121A agreement. Each of these methods can be used under specific conditions, relating to the project's context, size, location, and dimensions. Four case studies are presented which highlight the individual entitlement methods; data was obtained via interviews with the developers, Boston Redevelopment Authority staff, industry attorneys, and consultants involved in the case projects. Since the procedures for obtaining entitlements can be challenging, it is necessary to understand the appropriate path to take in order to select the correct method. A decision tree has therefore been developed to assist in determining the most suitable course based on the specific variables of each project. Although the overall process for permitting a project can be lengthy and taxing, knowing the proper steps to take and maintaining a level of flexibility can greatly assist in attaining a successful outcome.

Thesis Supervisor: Peter Roth

Title: Lecturer, Department of Architecture

TABLE OF CONTENTS

CHAPTER I

Introduction ..... 5

Entitlement Options

    Zoning Variance & Special Permit ..... 6

    Planned Development Area ..... 8

    Map or Text Amendment ..... 9

    Chapter 121A ..... 10

Entitlement and the Community ..... 12

Political and Civic Engagement ..... 13

Article 80 Large Project Review ..... 14

Methodology ..... 20

CHAPTER II

Case Study 1: 44 Prince St. Zoning Variance

    Project Description ..... 22

    Proposed re-development ..... 22

    Surrounding Neighborhood ..... 23

    Developer Hurdles & Community Concerns ..... 24

    Entitlement Process ..... 25

    Conclusion ..... 26

CHAPTER III

Case Study 2: Midway Project Planned Development Area

    Project Description ..... 27

    Proposed re-development ..... 28

    Surrounding Neighborhood ..... 29

    Developer Hurdles & Community Concerns ..... 30

    Entitlement Process ..... 31

    Conclusion ..... 33

CHAPTER IV

Case Study 3: Blessed Sacrament Redevelopment Map Amendment & Special Permit

Project Description .....	34
Proposed re-development .....	35
Surrounding Neighborhood .....	35
Developer Hurdles & Community Concerns .....	36
Entitlement Process .....	39
Conclusion .....	41

CHAPTER V

Case Study 4: 10 Saint James Avenue Project Chapter 121A

Project Description .....	42
Proposed re-development .....	42
Surrounding Neighborhood .....	43
Developer Hurdles & Community Concerns .....	44
Entitlement Process .....	45
Conclusion .....	46

CHAPTER VI

Conclusion	
Decision Tree .....	47
Recapitulation .....	50
References .....	52

## CHAPTER I

### *Introduction*

Growing cities present both challenges and opportunities for urban planners, regulating agencies and developers who are trying to manage growth in a dynamic and often contentious environment. Boston, Massachusetts is a model example of a progressive urban development wherein commercial growth and rapid expansion have been ongoing since the times of the American Civil War. Existing neighborhoods were replaced with business enterprises and available land was purchased for speculative housing developments (Holleran). This laissez-faire re-development approach was curbed in the 1950's with the enactment of a master city plan, the adoption of a zoning code and the establishment of the Boston Redevelopment Authority (BRA), a regulatory agency created for the purpose of planning and regulating the direction of development and re-development within the city. The initial zoning regulations were created to provide direction for new development, however without much consideration for public input. In 1989, BRA took on the initiative of re-zoning all the neighborhoods within Boston to create an updated community-based zoning code (the "Code").

All new development projects deemed to have a significant impact on the city, or that require zoning relief are reviewed by BRA. If a proposed development is noncompliant with the Code, a developer must seek relief from the specific zoning regulations (Coyle). There are several different strategies by which to obtain the necessary relief, including specific zoning variances and/or special permits, Planned Development Area designation, map or text amendments to the Code, and the use of Chapter 121A. All these entitlement methods differ significantly and can be used only under certain circumstances. The purpose of this thesis is to explore these entitlement methods, and to determine under what circumstances each are

appropriate. An Entitlement Decision Tree is proposed to assist developers in selecting an appropriate method for entitling a specific project.

### *Entitlement Options*

#### Zoning Variance & Special Permits

A common entitlement method for projects requiring relief from specific requirements of the Code is the zoning variance ("Variance"). Specific provisions include a change in allowable uses, dimensional constraints such as height, floor area ratio (FAR), or setbacks, and other requirements such as parking and loading. Variances from such specific provisions can be pursued if it can be demonstrated that their approval will not have a negative effect on the surrounding area, however the Code requires that four specific conditions must be established. First, the project must be hindered by special circumstances unique to the site or must have some anomaly that would deprive the developer of reasonable use of the land if a variance was not granted. Second, the developer must exhibit substantial hardship due to the limitations of the code, which the granting of the minimum variance would be necessary to alleviate. Third, the variance must be aligned with the intent and purpose of the Code, and will not be detrimental to the surrounding neighbors or community. Lastly, the project must comply with the Development Impact Project provisions, Section 80B-7, of the Code. This section outlines policies and procedures for job creation and affordable housing that are to be provided as a condition for the approval of the necessary Variance(s).

A Variance is a viable option for projects that do not qualify for other types of zoning relief. This method is typically used for smaller projects that the developer feels will not be

heavily opposed, since a shortcoming of this approach is the ease by which an abutter can challenge a Variance and stall the project or derail it altogether.

Chapter 40A, Section 10 of the General Laws of Massachusetts outlines the powers and duties of the Zoning Board of Appeal (ZBA) in granting variances. The process begins with the developer submitting the proposed project to the Building Inspector for permitting. If the project does not conform to the Code, the Building Inspector issues a denial letter referencing which specific provisions of the Code the project violates. Denial of a permit can then be appealed to the ZBA. Subsequently, the ZBA will hold a public hearing and vote to approve or deny the variance (Part I. Administration of the Government).

Any person aggrieved by the decisions of the ZBA may appeal to the Superior Court or Housing Court (the “Court”) within 20 days of a decision being filled with the Building Commissioner. The Court may require the appellant to provide a bond set by the Court but not exceeding twenty-five thousand dollars for appealing a variance. Upon appeal, the Court will reconsider the case and make a determination about the variance (“Chapter 665 acts of 1956”).

In addition to a Variance, special permits allow for specific zoning relief of nonconforming uses. The ZBA is empowered to allow deviations from the zoning code for reasons that align with community interests and sound urban planning. In order to be approved for a special permit, the developer must demonstrate that: the proposed project is an appropriate location for the proposed use; the use will not impact the neighborhood; the use will not create a hazard to people or vehicles; the use will not create a nuisance; or that adequate facilities will be provided to support the proposed use (“Article 6: Conditional Uses”). The process of obtaining a special permit is similar to that of a zoning variance and is often done simultaneously.

### Planned Development Area

Use of a Planned Development Area (PDA) is another effective entitlement strategy used by developers for project permitting. This method provides relief with respect to dimensional, design and use nonconformities for a specific project. When allowed, PDA is available for parcels of 1 acre or more and generally provides for greater flexibility than the underlying Code. A development plan for a PDA would include the details of the proposed project such as: its location and linkage to the community; the types of uses; proposed building dimensions and its context within the surrounding neighborhood; overall design and concept, including traffic circulation and parking considerations. This method is superior to other rezoning strategies for large mixed-use private developments; if a proposed project is PDA approved it is incorporated into the zoning code. This method is widely used for projects, within the PDA criteria, which would otherwise require numerous variances or alterations to the Code.

Pursuant to section 3 of the Boston Zoning Code's Enabling Act, after meeting the Large Project Review criteria and having conducted the appropriate community reviews, the BRA can make a recommendation to the Boston Zoning Commission (the "Commission"), a board of citizens appointed by the mayor, concerning the proposed project and the underlying PDA zoning. The Commission then holds a public hearing to receive community feedback on the BRA recommendations and ultimately votes on the proposed plan. A vote of at least seven of the eleven commissioners is needed to adopt, reject or amend the proposed PDA plan. Decisions of the Commission must also be approved by the mayor, although the vote of nine commissioners can override a mayoral rejection. Once approved, the PDA plan is overlaid onto the proposed site and effectively changes the site specific zoning ("Article 3: Establishment of Zoning Districts").



### Map or Text Amendment

A map or text amendment is a change in the Code whereby specific language in the Code or the designation of subdistrict boundaries related to a particular development parcel is changed to permit a proposed project. Neighborhoods consist of a mix of various zoning sub-districts that govern the buildings and uses within those areas. In certain circumstances, it may be more appropriate for a site to have the same zoning type as a neighboring zoning district and therefore a map amendment would be appropriate. In another circumstance, it may be more appropriate to change the language within the code to better reflect the needs of the specific subdistrict zoning. This scenario is best accomplished with a text amendment.

The process for attaining a map or text amendment begins with a petition to the Boston Zoning Commission (BZC) for an amendment to the zoning code. Although any Boston resident, property owner or public agency can be the petitioner, BRA is typically asked to serve as the proxy. Since BZC is required to seek a recommendation of the proposed amendment from BRA, it behooves the developer to initiate the process with the involvement of BRA. A determination on the petition is made by BRA staff and forwarded to BRA board. Following a board vote, BRA decision is submitted to BZC, who then hold a public hearing to allow for community outreach. Once all outside input is considered, BZC reassemble and vote on whether or not to adopt the proposed amendment. If the vote is in favor of the request, the amendment goes to the mayor for approval. If the amendment is vetoed, it is then cast back to BZC where a majority vote of nine out of the possible eleven commissioners is required to override the ruling. If approved, the amendment is incorporated into the zoning code and can be appealed through the court system (Roth).

## Chapter 121A

Chapter 121A is an alternative, indirect path to zoning relief. Enacted in 1945, this law encourages development in deteriorated, blighted or substandard areas of the city (Kennedy). The process allows a developer to negotiate an alternative tax payment instead of the stipulated real estate and personal property taxes. The agreement remains effective for a minimum of fifteen years and can be extended by another 25 years if certain amenities are included. Those amenities provide community benefits such as employment of minorities and community residents, preservation of open space, rehabilitation of historic buildings, providing handicapped facilities and providing subsidized housing for low and moderate income persons (Urban Redevelopment Corp. Ch. 121A). Pursuant to the General Laws of Massachusetts, Chapter 121A and Massachusetts Regulations 760 CMR 25.00, Urban Renewal Corporations are authorized to redevelop projects incorporating residential, commercial, industrial, civic, recreational or historic uses in areas that are considered substandard, blighted, or decadent (Urban Redevelopment Corp. Ch. 121A). Under Chapter 121A, a development can be made exempt from real estate and personal property taxes, betterments and special assessments. In lieu of tax payments, developers can negotiate alternative payment methods. In addition, the statute allows, in specific circumstances, for private developers or housing authorities such as the BRA to utilize powers of eminent domain to assemble development sites (Urban Redevelopment Corp. Ch. 121A).

It is important to note that a Chapter 121A agreement does not abate tax payments to local and federal governments; rather, it provides for an opportunity to negotiate an agreement for better tax treatment. As part of the negotiated payment structure, the Urban Renewal Corporations are required to pay a minimum excise tax to the State Department of Revenue based on an established formula in Section 10 of the statute. Furthermore, local municipalities

are authorized to negotiate additional payments to be made directly to the city. Massachusetts General Law also classifies Urban Renewal Corporations as limited dividend corporations, and therefore they are not allowed to earn more than an 8 percent return on investment annually. Excess profits are garnered for the use of the city, up to a certain limit, and the remainder must be put back into the project (Urban Redevelopment Corp. Ch. 121A).

In Boston, the process of entering into a Chapter 121A agreement begins with the developer submitting an application to BRA for the approval of a proposed project and for its consent to form an Urban Renewal Corporation to undertake that project. The application describes why the project is necessary and provides details on the proposed structures and facilities. After holding a public hearing, BRA will make a determination based on: the appropriateness of the project, if it's practicable, if it's aligned with the cities master plans, if it's in the best interest of the public, and if the development of the project will provide a public benefit. If the application is approved, BRA will produce a report containing the agreed upon rules and regulations of the agreement which is forwarded to the mayor for approval. Once the approvals have been granted, the BRA issues a certificate of approval and consent that authorizes the developer to file as an Urban Renewal Corporation for the purposes of undertaking the Chapter 121A project. Furthermore, the newly formed corporation will then be required to sign 6A and 18C agreements. The 6A agreement is a contract between the developer and the city council defining the stipulations for payments-in-lieu-of taxes and all the surrounding provisions. After the 6A agreement has been signed, the developer and BRA must execute the regulatory agreement as stated in section 18C of Chapter 121A. This outlines the financial costs and rules and regulations specific to the project, such as stipulating the cap of an 8 percent maximum

annual return on investment. After BRA board votes to enter into a 6A and 18C agreement, the project can be permitted by the building inspector.

Although Chapter 121A has been effective in mitigating tax issues for decades, progressive legislation has negatively impacted such incentives. The passing of Proposition 2-1/2 in 1980 changed the way property taxes were levied throughout the Commonwealth. This law restricts a municipality from increasing aggregate tax levy's from all sources by more than 2-1/2 percent annually (Levy Limits: A Primer on Prop. 2 1/2). This legislation effectively provided for reliable projections of future tax liability, a process previously referred to as "tax smoothing." Chapter 121A agreements have decreased since the enactment of Proposition 2-1/2 because the new statute limits provide a predictable tax environment for all properties (Urban Redevelopment Corp. Ch. 121A). However, for projects located in blighted or substandard neighborhoods, or on land with deteriorated building stock, Chapter 121A can be a valuable tool in securing entitlement, and is still utilized in complicated large scale developments.

### *Entitlement and the Community*

The entitlement process in Massachusetts is notoriously tedious and complicated with multiple levels of approvals incorporating the municipal, state and in some cases even Federal approvals. Since zoning is an issue that affects the overall community by changing what is currently accepted, the process can become political. Local citizens and community organizations potentially affected by the project can voice their approval or disapproval to local legislatures and the mayor. In addition, significant developments can alter a neighborhood and in many cases increase density of use, traffic and have other environmental and urban design impacts on a community. As a result, local officials often assess linkage fees (a payment

approximated to be equivalent to the impact costs of the development onto the community) to help offset the impact of a large development. In addition to fees or in some cases in lieu of them, officials may require a developer to provide certain public amenities. For example, if a project is located in a residential neighborhood, the developer might be required to provide a community park for the area. Similarly, if a development is on the waterfront, the developer might be required to fund the construction of a boardwalk, to encourage public use of the waterfront. Overall, mitigation negotiations are another way in which the community can receive a benefit from the development.

### *Political and Civic Engagement*

A developer is encouraged to obtain community support in the proposed development prior to seeking any zoning relief. Since a unified voice and organized planning groups can provide clear direction as to the needs and concerns of the community, BRA encourages civic organizations to take an active role in developments proposed for their areas. Strong opposition from community groups could undermine a proposed project. Since BRA has initiated a community-based zoning system, the community's unified voice holds strong influence on BRA's zoning determinations. The further away a proposed project is from what the community wants, the more tension and opposition is created. This translates into strong community lobbying efforts and can effectively change a project, stall its implementation or defeat it all-together.

Some community organizations are more effective than others. Those organizations that are well organized and have a clear development vision are more effective than others that may have only a handful of activists and no unified voice. In neighborhoods in and around Boston, where there are more owner-occupied houses, there will also be better organized community

organizations with an agenda for their area. In contrast, downtown areas that are mainly surrounded by office and commercial buildings and have fewer owner-occupied dwellings have less unified community opposition to development.

### *Article 80 Large Project Review*

Regardless of the zoning method, the case studies presented in this thesis are within the criteria of Article 80 Large Project Review and this will direct how the project will move through the re-zoning process. The Article 80 Large Project Review is a zoning code stipulation that applies to any development in Massachusetts that is 50,000 square feet or more and dictates the proper procedures a developer is required to follow in order to ensure the adequate planning, review and community input has been done.

The process begins with a developer submitting a comprehensive development program to BRA with the following components: transportation, environmental protection, urban design, historic resources, infrastructure systems, site plan, tidelands and development impact project. It is important for the proposed development to address each component to ensure that all possible impacts have been considered and measures taken to mitigate any foreseeable issues. This proposed project submission initiates the review process.

Article 80 Large Project Review can be up to a four-step process that introduces the project to the community and provides for feedback from both the community and governing agencies to better align interests. The first step is a consultative meeting with BRA and key constituents to identify potential issues and the necessary coordination with other agencies. When the developer submits a Project Notification Form (PNF) the review process is initiated and the community has 30 days to comment on the proposed project. This is further facilitated by

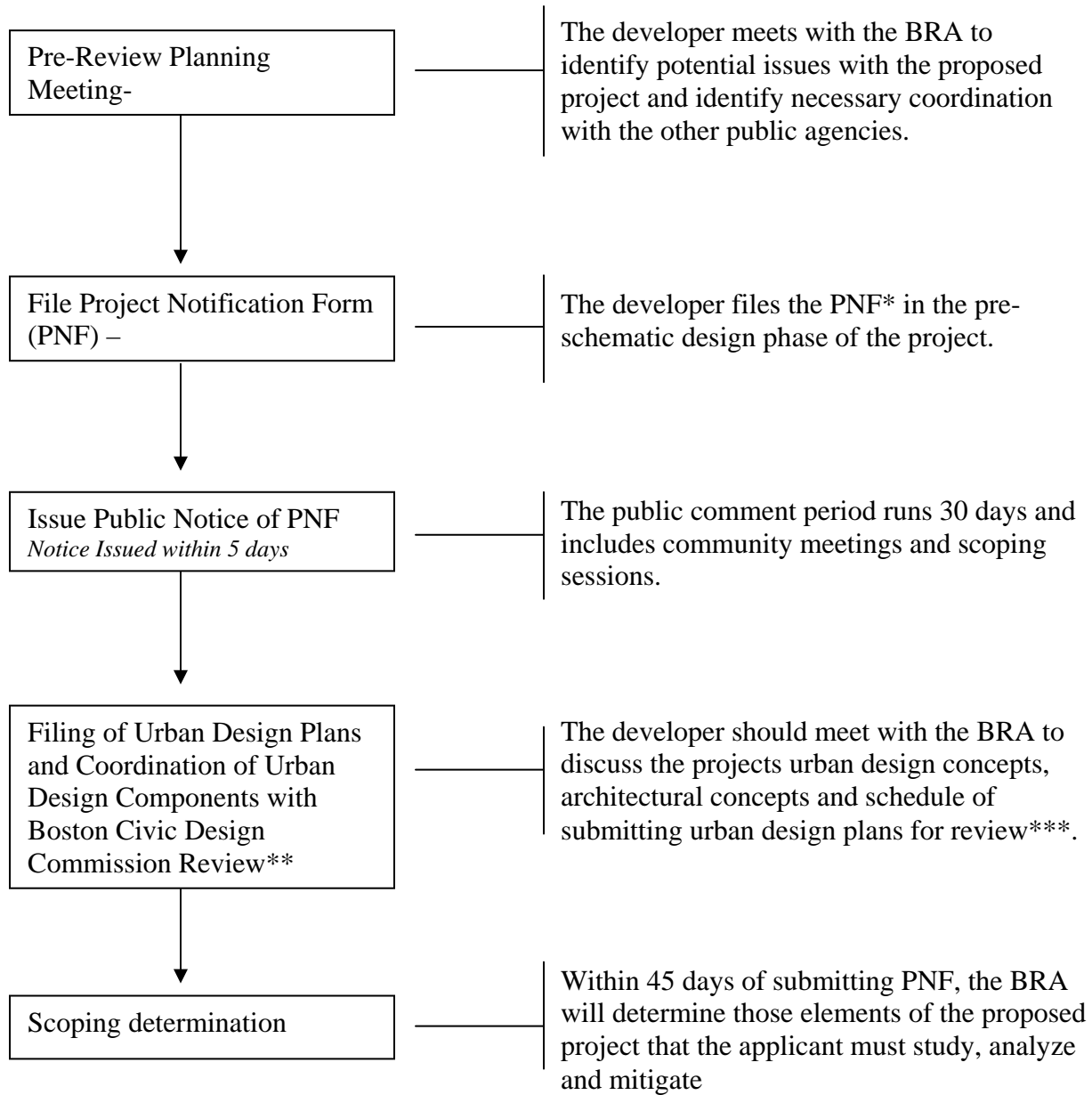
community meetings throughout the duration of the review period and scoping sessions which determine those items described in the PNF that the developer must study, analyze and mitigate (Article 80 Development Review and Approval) (Figure 2.).

Step two of the Article 80 process continues with the developer's response to BRA-issued scoping documents. After the scoping determination is complete, BRA may decide to waive further review, otherwise the developer prepares a Draft Project Impact Report (DPIR) that outlines the proposed measures to mitigate, limit or minimize the project impacts as outlined in the scoping determination report. The DPIR is made available for public review and comment after which the Preliminary Adequacy Determination (PAD) report is issued, listing any additional items that the developer must fulfill to be in full compliance with the scoping determination (Figure 3).

The next step continues with the approved PAD. The developer prepares a Final Project Impact Report (FPIR) outlining the scoping report, additional PAD items and proposed mitigation that the project will provide. After another public review, the BRA board will vote to approve, conditionally approve or disapprove the FPIR (Figure 4).

After the FPIR is approved, the BRA will sign a Cooperation Agreement with the developer and issue a certificate of compliance ensuring that all project impact items have been satisfactorily mitigated. The agreement outlines the covenant between the city and the developer as to what the project must deliver. The process culminates with the issuance of a construction permit which signifies that all required materials and reviews have been satisfactorily completed and the project can commence with construction (Figure 5).

**STEP 1. – Project Notification Form and Scoping Determination**



**Figure 2.** Process of achieving project approval under Article 80 of the Boston zoning code. Step 1 filing PNF and scoping determination. \* denotes the content of the PNF will include the following components: 1) Program, 2) Area Photographs, 3) Site diagram, 4) Massing diagram 5) Floor plan diagrams 6) Building section diagrams, 7) Preliminary zoning calculation 8) Preliminary Development Impact Project (DIP) information, if project is a DIP, 8) Preliminary green building information. \*\* refers to if a proposed project is within the jurisdiction of the Boston Civic Design Commission, then the BRA will forward to them, within 5 days, the PNF for their review and comment.\*\*\* outline of the urban design plan submission is as follows: 1)



The developer should file schematic urban design plans, drawings, and specifications for review by the BRA within 15 days prior to filing the Draft Project Impact Report. 2) Design Development Plans and Contract Documents – The developer may file design development plans after the BRA has approved the schematic design plans. After the approval of the design development plans, the developer can then file the Contract Documents.

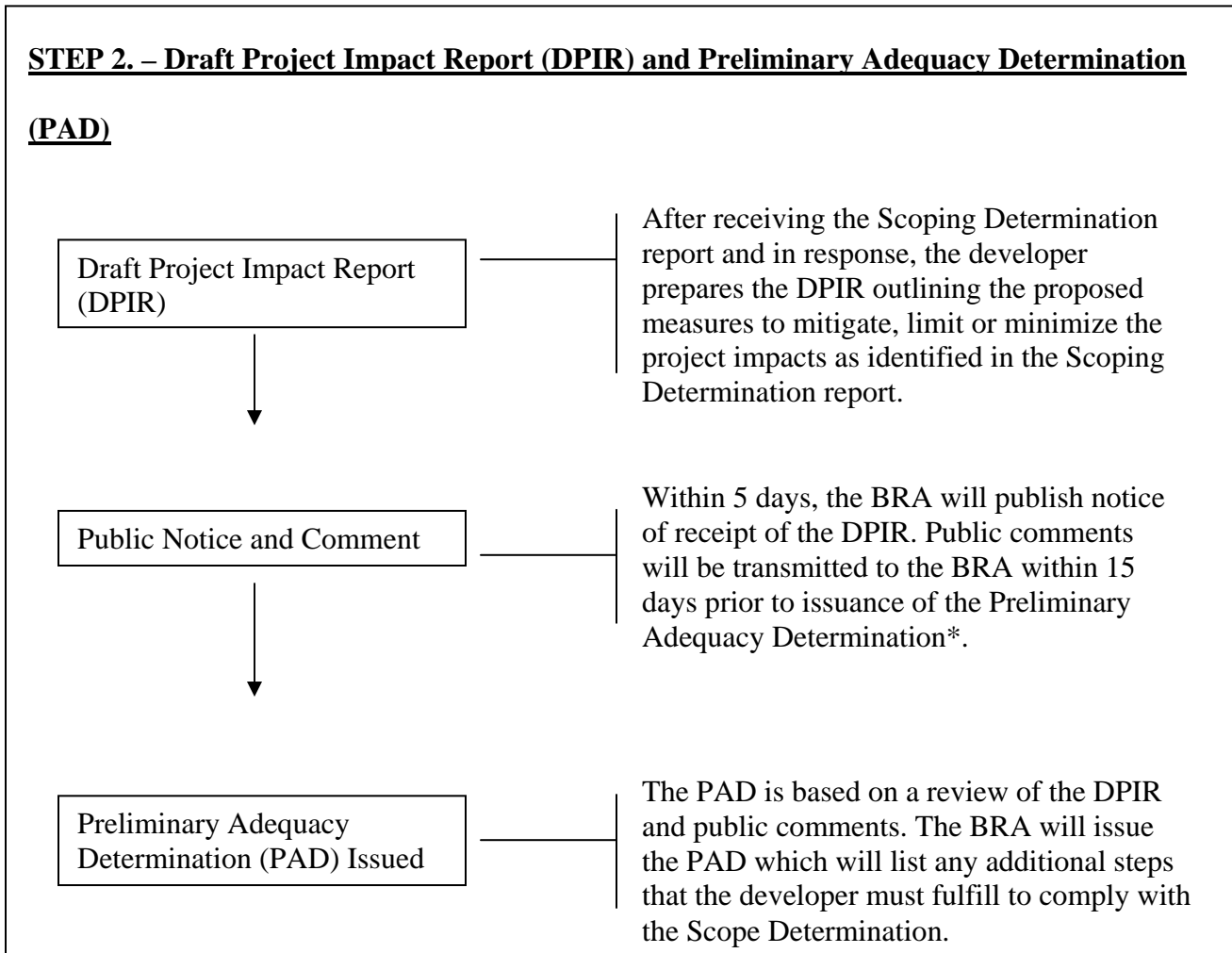


Figure 3. Process of achieving project approval under Article 80 of the Boston zoning code. Step 2 Preparing DPIR and PAD. \* clarifies that the issuance of PAD is dependent on the proposed projects size and location.

**STEP 3. – Final Project Impact Report (FPIR) and Adequacy Determination**

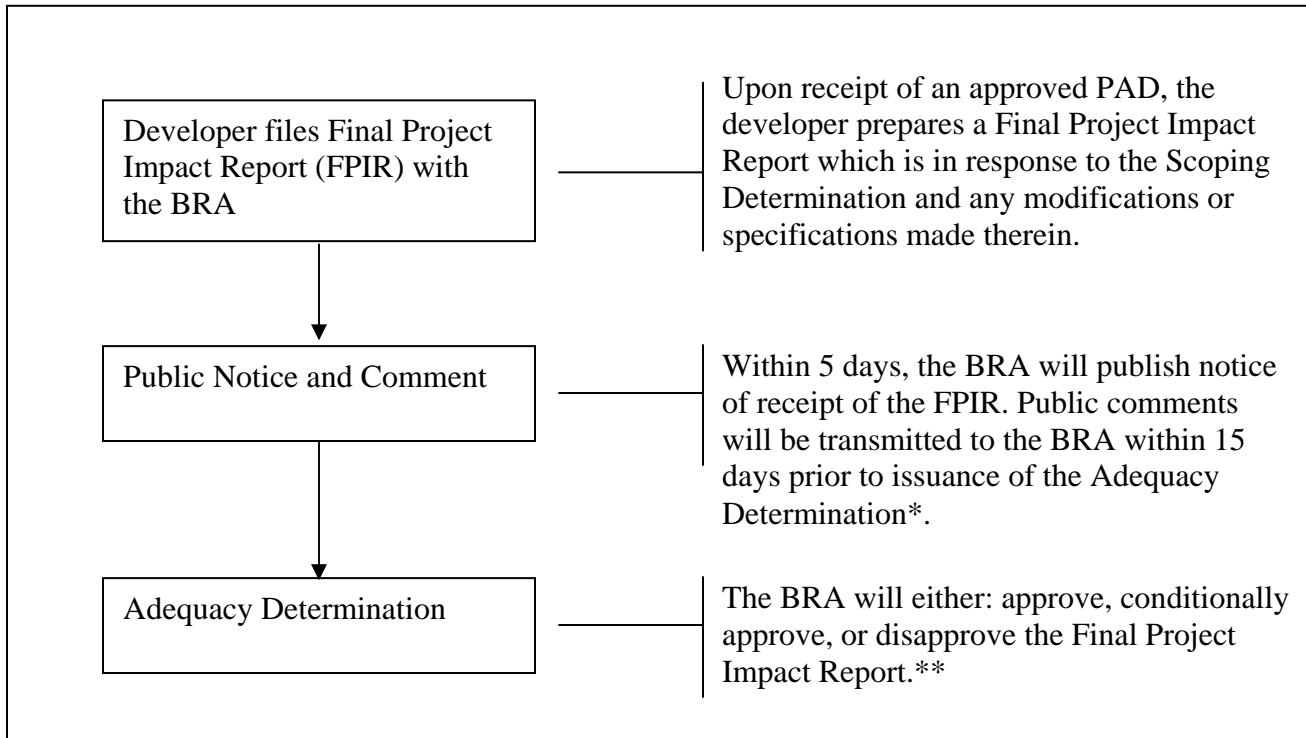


Figure 4. Process of achieving project approval under Article 80 of the Boston zoning code. Step 3 Preparing FPIR and adequacy determination. \* refers to the issuance of a PAD is dependent on the proposed projects size and location. \*\* clarifies the result of the possible outcomes: 1) If the Adequacy Determination disapproves of the FPIR then the BRA will provide a detailed list of items that are not in compliance with the Scoping Determination. The developer would have to revise and resubmit the FPIR. 2) If the Adequacy Determination conditionally approves of the FPIR, then additional information, studies and mitigation issues may be necessary assuming that all else is in compliance with the Scoping Determination.

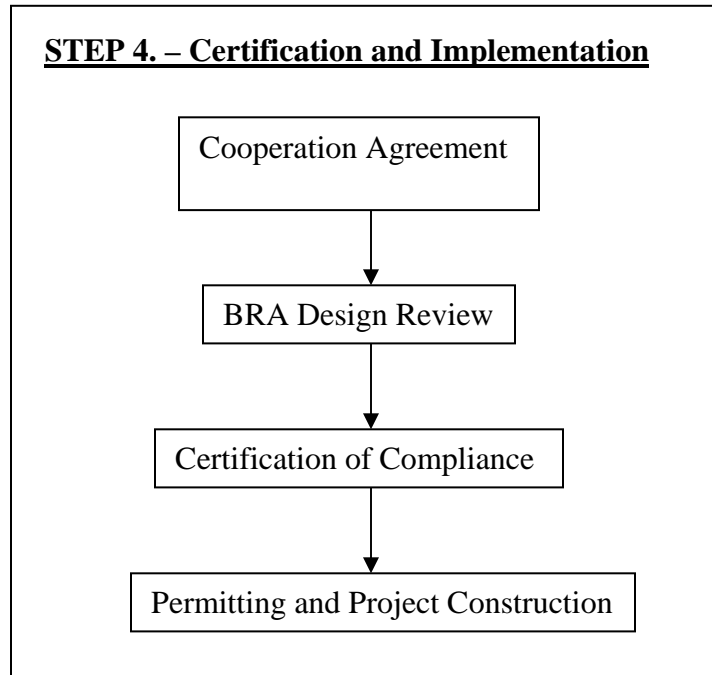


Figure 5. Process of achieving project approval under Article 80 of the Boston zoning code. Step 4 Certification and implementation

## *Methodology*

The purpose of this thesis is to analyze appropriate entitlement methods for large-scale projects. This qualitative assessment was performed by conducting case studies on four projects, each having gone through one of the above mentioned entitlement methods. Initially, agents from BRA were interviewed to determine the overall landscape of the various entitlement methods and to identify appropriate case studies for this research. The resulting list was then filtered through several criteria. First, the project must be a candidate for the Article 80 Large Project Review process. Projects that are required to go through this process have similar community outreach requirements and are over 100,000 square feet in size. Another filter was to obtain a representative cross-section of Boston neighborhoods. It was important to ensure that the analysis was not solely focused on one area and become biased to the local politics and zoning initiatives of the area. Finally, the remaining projects were further narrowed down by the developers' willingness to participate in the study. The developers' insight and background was helpful in understanding the specific requirements with each zoning method.

Four projects were chosen to represent each type of entitlement method and each participant was asked a series of questions to adequately understand the reasons for choosing one strategy over another. Figure 1 shows the questions that were asked to provide a framework for conversation through the course of the interview. In addition to case studies, two zoning attorneys, two zoning consultants and the staff members from BRA were interviewed. This provided context to the zoning environment and feasibilities for various zoning procedures.

1. For private large scale developments, what is your opinion on the effectiveness of zoning variances, Chapter 121A and PDA entitlement strategies?
2. How do you see developers utilizing each of the three strategies?
3. Under which conditions would you see a developer using one method over another?
4. Which projects have recently gone through each of the different entitlement methods?
5. What are some hurdles that you see developers struggling with in the entitlement process?
6. What obstacles need to be overcome to gain traction for the entitlement of a project?
7. What factors should be considered when choosing an entitlement process?
8. Do you see many projects that overlap two or more entitlement methods?
9. How much input is there from the BRA in choosing the appropriate zoning strategy?
10. What are some decision factors used in determining if a project will be approved or denied?
11. Are there certain communities in Boston where a specific entitlement method is more effective?

Figure 1. The questions used during the interview process. In order to address specific uncertainties regarding the zoning process, a standard line of questions was useful for attaining information.

## CHAPTER II

### *Case Study 1: 44 Prince St. Zoning Variance*

#### Project Description

The 44 Prince Street project was a vacant building acquired by Gilchrest and Associates with the intent of constructing a fifty-five unit condominium building and the first single family residence to be built in the area in the past 150 years (Blanton). The site was formerly owned by the Catholic Archdiocese of Boston. Purchased in 1946, the Church built St. Leonard's Parish Hall, a community center for the local residents. After 57 years of service, the center was finally sold to the developer, Gilchrest and Associates (Tara). The existing structure was demolished and Gilchrest and Associates proceeded with plans to re-develop the site to meet the growing demand for quality housing as well as adding some vitality to the underutilized site. During the interview, Byron Gilchrest of Gilchrest and Associates discussed how his vision for re-developing the site would necessitate changing the zoning and would thus require undergoing the entitlement process. Because the project site was less than an acre and not within a Planned Development Area (PDA), it did not qualify as a candidate for a PDA and was not considered blighted or substandard thereby disqualifying a Chapter 121A strategy. Since the neighboring subdistricts were a similar zoning, there would be no benefit in a Map Amendment, so as a result Gilchrest and Associates were only able to entitle the project using zoning variances.

#### Proposed re-development

The proposed development is situated on a 26,000 square foot parcel located between Prince and Parmenter Streets in the heart of Boston's North End District. Gilchrest and Associates had proposed building a six-storey development with one level of underground

parking that could accommodate 70 cars. While the building would consist of 55 residences sorted amongst a mix of one and two bedroom units, two bedroom townhouses and a detached private residence, the ground floor would accommodate the building's amenities such as concierge, community space and landscaped private gardens (Jackson).

### Surrounding Neighborhood

The North End has the distinction of being one of the oldest neighborhoods in Boston. Since its settlement in the 1630's, this neighborhood has been home to some of Boston's most notable residents. Waves of immigration have come through the area including; the Irish in the 1800's; Jew's in the 1900's; and the Italians in the 20<sup>th</sup> century, still comprising the demographic majority. This square half-mile neighborhood is bordered by Interstate 93 to the west and the waterfront to the north and east. The densely settled area leaves little room for additional development and most projects have been on a smaller scale due to space constraints.

Despite the density in the area, there is still opportunity for larger developments in the form of infill projects throughout the neighborhoods and along the North End's waterfront portion. This area has historically been utilized for maritime purposes, but due to the decline in demand for maritime industrial uses, it has more recently been recognized for its potential redevelopment, primarily for housing. Examples of projects that are in the various stages of the development process in this neighborhood include:

Battery Wharf

*under Construction* - 400,000 square feet 150 room Hotel with 103 condominium units and 42,500 square feet of ground floor retail space.

Lovejoy Wharf – Hoffman Building      *Board Approved* - 458,134 square feet. 250  
condominium units with ground floor retail

585 Commercial Street      Under Review – 117,808 square feet. 80 luxury  
Condominiums, 140 parking spaces, café, spa,  
fitness center, lap pool and public marina

#### Developer Hurdles & Community Concerns

Opposition for 44 Prince Street grew even before Gilchrest and Associates bought the property. In 1946, the archdiocese of Boston purchased the land and built, with funds raised from the community, St. Leonard's Parish Hall as a neighborhood community center. The facility operated in this charitable capacity for fifty-seven years until it was sold in 2003, earning a considerable profit (Tara). The community protested the sale since they felt that the center was in large part a community benefit that should stay with the community. In light of this, many residents opposed any new development on the site especially luxury condominiums. They were concerned that higher priced housing would push out the local immigrant working class and thus change the demographics and character of the neighborhood. Furthermore, other issues surfaced which spurred debate and fueled the community's involvement in the process. These points of contention included: height, noise, traffic, lack of parking, and potential structural damage to their buildings as a result of adjacent new construction. Through several community meetings and conversations with the neighborhood leaders and spokesmen, the developer, Byron Gilchrest of Gilchrest and Associates, was able to address each concern. The height concern was mitigated



by scaling the project from six stories at the street to five stories towards the rear. To mitigate noise, Mr. Gilchrest outfitted all the abutters with air-conditioning units so that they could close their windows and not hear the ongoing construction. To ensure ample parking, the project would provide 70 off-street parking spaces for the 55 condominium units. Also, the concern over structural damage to the surrounding buildings was resolved by hiring an engineering consultant to ensure that the surrounding structures were not compromised in any way as a result of the construction. By speaking with the neighborhood residents directly and listening to their concerns, Mr. Gilchrest was better able to respond to their needs and foster support (Gilchrest).

#### Entitlement Process

Since the project proposed by Gilchrest would increase the density of the site by converting it from a community center to luxury condominiums and require additional height, it was necessary for Gilchrest to obtain zoning relief. To obtain the necessary entitlements for this new development, Gilchrest Associates decided to pursue zoning variances which was an appropriate path because of the size and scale of the project. Since the lot was less than an acre, it did not qualify under PDA regulations. Furthermore, the site was well regarded and maintained, so it would not be a candidate for urban renewal. The challenge of obtaining the necessary zoning variances involves the uncertainty of community support and the possibility that an aggrieved party would appeal a decision of the ZBA to grant the variance. Any abutter can legally challenge the variance and delay or stop the project.

## Conclusion

Local politics have a great deal of influence on a project. Various special interest groups that concern themselves with traffic impact, shadow, aesthetics, etc. all have concerns that need to be recognized and mediated to gain their support. The more backing that can be fostered for the project, the greater the likelihood for achieving the necessary approval. In fact, BRA has empowered local communities with the ability to effectuate change through the voice of their local constituent groups. Through community meetings citizens have a forum to voice their concerns. Success in the permitting process comes from a conscious effort to recruit support from the community, and addressing opposition by offering meaningful changes in the program.

## CHAPTER III

### *Case Study 2: Midway Project Planned Development Area*

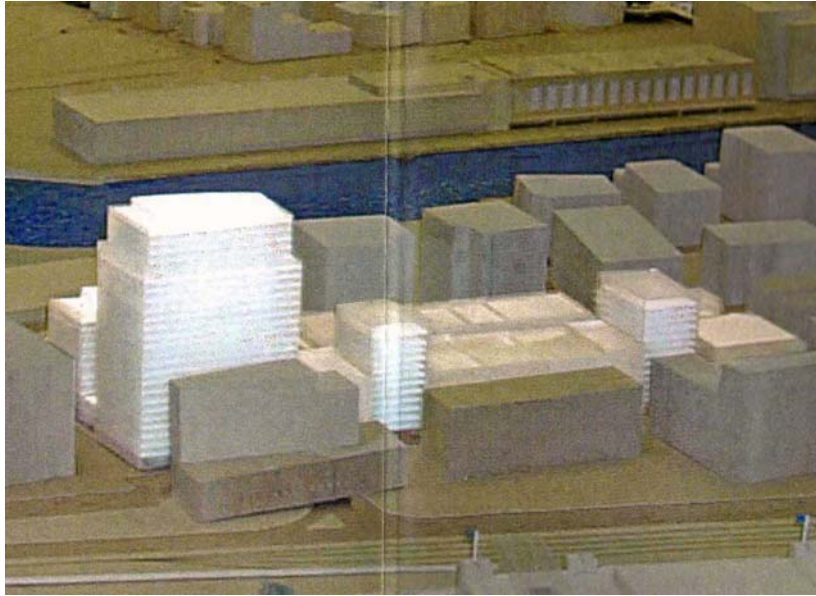
#### Project Description

The Midway project entailed the re-development of 6.8 acres in the Fort Point District of South Boston. The site contained 18 existing buildings that were once used as ancillary buildings to the civil war effort. The uses within these structures supported the growing manufacturing industries that fueled the war effort. Prior to their sale for redevelopment, the buildings had fallen into disrepair and had been either vacated or in some cases were used as warehouses and self-storage. Recognizing the deteriorating stature of the area and taking steps to spur its revitalization, BRA's vision was to strengthen linkages with the waterfront and to foster a vibrant 24-hour neighborhood of mixed uses. It also intends for new development to maintain and improve on the architectural significance of the current buildings so that the unique style of the area is maintained and seamlessly meshes with the existing urban fabric. To progress their initiative, BRA developed the South Boston Waterfront Interim Planning Overlay District to provide new zoning regulations and allow for higher densities and greater floor area ratios (FAR). This would overlay the existing zoning in the Fort Point area to provide more incentives for development.

To obtain the project approvals, the development team pursued the establishment of a Planned Development Area (PDA). This is a preferred method of entitlement since it is less likely to be challenged in court. Unlike a zoning variance, which can be held up and overturned by opposition from an aggrieved abutter, the PDA is a legislative action that has the standing of law and is therefore less likely to be overturned.

### Proposed re-development

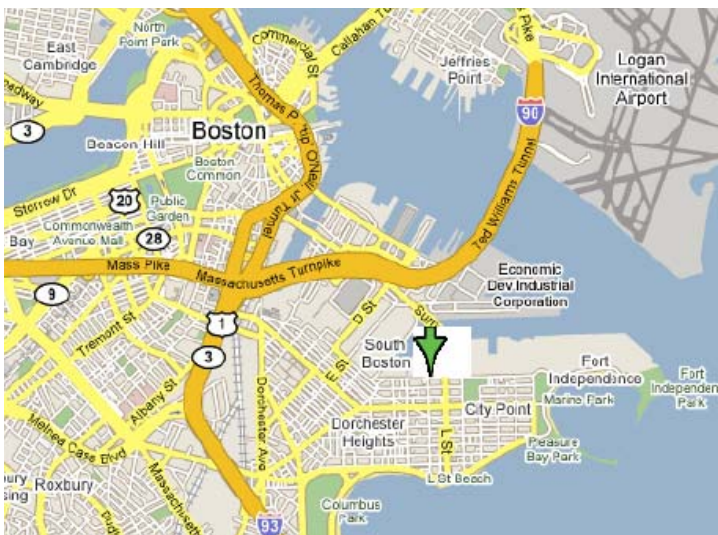
The objectives of the Midway project were three-fold. First, the developers, Beacon Capital Partners (Beacon Capital), wanted to preserve and rehabilitate the existing 5-7 storey warehouse buildings that still maintained their architectural integrity. Re-use of the existing buildings promotes the idea of sustainability and maintaining the historical identity of the area. Second, the project was intended to replace undesirable buildings that were dilapidated with no redeeming qualities, and to develop vacant lots within the development area with infill buildings of similar size and character to the historic ones. Third, the development would utilize the south end of the site for larger signature buildings of office and research and development uses. These structures would be the gateway into the Fort Point area from the south and provide a sense of identity for the development. To accomplish these goals, the project was divided into two phases. Phase one involved renovating four of the existing buildings in order to provide 125,000 square feet of residential live/work space for artists, and 127,000 square feet of retail and office space. Phase two continued with the rehabilitation of existing structures and proposed the construction of four buildings to improve the vacant lots. This phase would add 1,200 new parking spaces and 1.5 million square feet of mixed use development consisting of research and development (R&D), office, retail, gallery and restaurants (Midway Fort Point District).



Model of the Midway project set in its neighborhood context. The white buildings represent the overall development program. The larger buildings at the south end of the site are the signature buildings planned for phase two. The surrounding grey buildings are representative of the existing structures. The model shows the massing of the proposed development within the neighborhood setting.

### Surrounding Neighborhood

The Fort Point District is the region of South Boston that flanks the Fort Point Channel,



Graph 2: Map of South Boston in relation to Boston

the body of water that feeds into the

Boston Harbor. South Boston was a

remote peninsula that was annexed

by Boston in 1804; a year later, the

city of Boston built a bridge to

physically connect the two areas.

This bridging began the growth of

the district which was further

accelerated by the construction of the

Old Colony Railroad (“Fort Point, Boston”). The following map shows the location of South

Boston in connection with the City of Boston. These improvements provided South Boston with the ability to become a hub of industry in the years leading up to the Civil War. Throughout the war, this central location was ideal for the development of facilities including: shipyards, refineries, machine shops, and iron foundries (“South Boston”). Workers, primarily Irish immigrants coming to America to escape Ireland’s Great Famine of 1845, flocked to the area to fill the tremendous manpower needs of the factories (“Great Irish Famine”).

As the need for heavy manufacturing subsided in South Boston, the former manufacturing and warehouse facilities became obsolete and underutilized. However, in the 1980’s, The Massachusetts Bay Transit Authority built a new tunnel linking the South Boston waterfront with the rest of Boston, thereby making the area more accessible. In addition, government initiated projects such as the construction of a Convention and Exhibition Center and a Federal Courthouse created more development interest in the district. To properly channel development, BRA began the initiative of creating a master development plan for the area. Details of the plan were to: outline the design guidelines, public improvements, dimensional limitations, and use regulations of future developments. On July 22, 1999 the South Boston Waterfront Interim Planning Overlay was approved and established the vision for redevelopment of South Boston and the Fort Point Channel (Boston's Fort Point District a Landmark of New England's Maritime and Industrial Past).

#### Developer Hurdles & Community Concerns

The process of redeveloping the Midway site posed several challenges due to community opposition. Beacon Capital received criticism from the Fort Point Cultural Coalition on the premise that the proposed project was not sufficiently meeting the needs of the neighborhood.

Attracted by the large affordable spaces of the former manufacturing buildings, artists began to relocate to South Boston and specifically to Fort Point during the mid 1970's. As of the 1980's, organizations such as the Fort Point Arts Community, Fort Point Cultural Coalition, Fort Point Development Corporation and Seaport Alliance for a Neighborhood Design had all been established to ensure the future affordability and vitality of the artist community. In order to be more effective, these organizations have unified their voice in response to the proposed developments in the Fort Point District. With regard to the Midway project, community groups were concerned about losing affordable artist studios and the displacement of local artist. To mitigate these concerns, Beacon Capital allowed one building to be exclusively available for affordable artist housing and live/ work space. The development maintained the inclusionary zoning requirement of providing 15 percent affordable housing units (Midway Fort Point District).

Other community concerns were traffic impact and the depletion of available open space. In response to traffic concerns, Beacon Capital contributed to the plan of constructing an access road from the Seaport District to South Boston. This linkage attribute reinforced the areas connection with Boston and provided for better access to and from South Boston. As for the debate on open space, the developers redesigned the project to incorporate significantly more land for use as public open space.

### Entitlement Process

The Midway project was entitled through a PDA under the South Boston Waterfront Interim Planning Overlay District initiative. The as-of-right zoning description for the site was an M-4 or restricted manufacturing zoning district. This underlying zoning district allowed for

office uses, but not for residential uses or artist live/work space (Midway Fort Point District). Despite the existing zoning type, artists began settling into the area. This demographic shift illustrated the necessity to update the zoning code. In addition, the dimensional requirements set forth under the restricted manufacturing zoning also did not conform to the existing structures on the site and would not be appropriate for the scale and size of certain components of the proposed new development. Since the area was PDA eligible, Beacon Capital chose to pursue this strategy for project approvals. Other methods, such as Chapter 121A, were also considered but determined to be inappropriate for this particular development program. The restriction on return on investment, being capped at 8 percent, made this method financially unfeasible. Prior to filing the Project Notification Form (PNF) and throughout the Article 80 process, Beacon Capital initiated an outreach program to speak with local neighborhood representatives, political leaders, abutting property owners and local artist organizations. In addition, the developer met with representatives from various government agencies such as BRA, Boston Transportation Department, Boston Landmarks Commission and the Massachusetts Historical Commission. The comments and feedback obtained from these informal discussions benefited the development in two ways. First, it engaged the community and introduced the development in a cooperative manner by responding to feedback regarding the communities concerns, and thus shaped the project accordingly. Second, addressing the community officials provided the developer with insight into what possible issues would arise and afforded them the opportunity to develop early mitigation strategies (Midway Fort Point District).

Beacon Capital then proceeded by filing the Letter of Intent with BRA; the response of BRA was to recommend that the Mayor establish an Impact Advisory Group (IAG). The IAG is a group of fifteen members nominated by the Mayor which is comprised of two state senator



nominees, a state representative, a district city councilor and eleven other community members that are recommended by local residents, businesses and community organizations. The main purpose of the IAG is to act as a liaison between BRA and the community in advising BRA on impact and mitigation of a proposed development.

The community associations were an integral part of the entitlement process and were responsible for significant changes within the project. As a result of numerous negotiations with the interested parties, the final approved project reflected the resolution of several key issues: 30 percent residential use was programmed into the development and additional affordable housing was provided.

### Conclusion

Beacon Capital successfully navigated the entitlement process to create its vision of the Midway project (later renamed the Channel Center). Although the project encountered its share of opposition, the zoning effort was nonetheless successful. By engaging the community early in the process, Beacon Capital was able to mitigate potential issues and avoid delays in the formal process.

## CHAPTER IV

### *Case Study 3: Blessed Sacrament Campus Redevelopment Map Amendment & Special Permit*

#### *Project Description*

The Blessed Sacrament Campus Redevelopment project was a redevelopment of 3.1 acres in the Jamaica Plain neighborhood of Boston. Prior to development, the site had seven existing buildings including: a church, two schools, a rectory, a convent, an ancillary garage, and a physical plant space. In redeveloping the "campus", it was important to maintain the integrity of the historic structures, while adapting them to suit the goals of the project. Furthermore, the developer proposed two additional buildings to accommodate a mixed-use program of housing, retail, educational, and community space (Blessed Sacrament Campus Redevelopment). Development goals were carefully aligned with the interests of the Jamaica Plain Neighborhood Council; a local elected body that held a number of community meetings to consider re-use for the campus as soon as the Archdiocese announced the closing of the church, and were refined through community outreach and interaction initiatives.

The existing zoning designation of the site, single family housing, was not consistent with the existing building stock on the campus or with the proposed development plan. Therefore, in order for the project to move forward, either the zoning designation(s) for the site would need to be changed, or a great number of variances would need to be obtained. PDA's were not allowed in the underlying Jamaica Plain Neighborhood District thus an alternative strategy was needed. The project team pursued a Map Amendment to obtain the required zoning relief in order to permit the proposed retail, community, multifamily residential and office uses that were proposed for the project. A Map Amendment extended the existing adjacent Neighborhood Shopping (NS) subdistrict onto the southern portion of the site, and extended the

bordering Multifamily Residential (MFR) subdistrict onto the northern portion of the site. With such a Map Amendment, the project would be almost entirely as-of-right.

### *Proposed re-development*

Once the Blessed Sacrament Campus goals and objectives were defined, the subsequent challenge was to create an appropriate development program. Of the eight existing buildings totaling 74, 512 square feet, five buildings would be restored and two new buildings would be built. The extensive redevelopment would create 53 new residential condominiums, 28 single room occupancy (SRO) units, 36 cooperative rental apartments, 150 parking spaces, 11,000 square feet of retail, office and administrative spaces, and approximately 1-acre of open “green” space, as well as continued use of the school building by the community organization Community Providers Adolescent Services (COMPASS). All of the housing would be mixed-income with the majority being affordable. The joint venture development team of Jamaica Plain Neighborhood Development Corporation (JPNDC) and New Atlantic Development Corporation (NADC) joined under the name Church Square Community Partners LLC (CSCP). To aid in the funding of the project, CSCP applied for development subsidies from numerous city and state sources. The redevelopment program was carefully crafted through dozens of community meetings and an extensive outreach effort to produce the final development plan (Blessed Sacrament Campus Redevelopment).

### *Surrounding Neighborhood*

The Jamaica Plain (JP) area, a neighborhood south of Boston, has a rich history stemming back to 1667. The area was originally settled by wealthy farmers and because of the large natural

lake, was a popular summer resort for Bostonians. The 19<sup>th</sup> century brought new technologies such as the streetcar which improved the regions connection to Boston, thus making it more convenient for residents to leave the crowded city and move to an adjoining suburb. Large migrations of German and Irish immigrants added to the rapidly increasing population, causing the area to change into a more urban neighborhood (“Jamaica Plain, Massachusetts”).

Beginning in the 1950’s and continuing until the early 1990’s, sections of JP had significantly deteriorated into blighted areas with high levels of arson and petty crime; by the 1980’s a revitalization movement was underway to help improve the region. The areas low rents and proximity to Boston began to attract college students and local artists. As the resurgence built momentum in the 1990’s, the former neglected areas were purchased for redevelopment into: affordable housing, shopping centers, supermarkets as well as other public and private uses. JP’s current neighborhoods exhibit a cross section of diverse cultures, races and ethnicities making the area particularly heterogeneous. The area is attractive to local artist as well as young professionals and young couples. The dynamic mix of residents has created vitality in the community and a resurgence of the neighborhood (“Jamaica Plain, Massachusetts”).

### *Developer Hurdles & Community Concerns*



Figure 1. Photograph of Rectory building during its early years of operation

The Blessed Sacrament Redevelopment project benefited from broad support in the community, including many local community organizations and neighbors. Although the project provided public benefits in line with the vision of the Neighborhood Council, two camps of opposition surfaced. The first was Historic Hyde Square, a community organization which

was advocating for the preservation of the historic integrity of the site, opposing any changes to existing buildings. Specifically, they were lobbying to keep the Rectory intact on its original site, and to reduce the scale of the proposed new construction. Though CSCP originally proposed demolishing the Rectory, the Boston Landmark Commission made the determination that the 1894 wood framed structure had significant historic value and should be incorporated into the redevelopment plan. Figure 1 shows a historic photograph of the rectory during its early years, and Figure 2 illustrates the structure in its state at the time of permitting discussions. This stipulation created a challenge for the development team as the Rectory was situated on a prime corner of the site that was programmed to accommodate apartments with ground floor retail and underground parking. This particular corner of the site was vital for the activation of the retail portion of the development. By re-using the Rectory building as six affordable residential condominiums but relocating it out of the way of the new development and away from this high



Figure 1. Current photograph of the Rectory building as it stood at the time of the development proposal

value corner, CSCP was able to compromise on the issue (Roth).

The other opposing group included several abutters living in single family homes to the north of the site. This group of homeowners collectively established the Sunnyside Neighborhood

Association (SNA) to properly organize and voice their opposition to certain aspects of the proposed

development. Initially opposed to the large quantity of affordable housing proposed by the developer, particularly the Single Room Occupancy re-use of the Convent. SNA feared that their efforts to gentrify the area and raise property values would be compromised by the significant

amount of affordable housing proposed. This sentiment was resented by supporters of the project, including the city's Zoning Commission, who praised the developer for its determination and creativity in providing various types of mixed-income housing. (Ruch) In reaction to broad support for the affordable housing agenda, SNA reassessed its stance and shifted its efforts to protest the proposed density of the project, or what they claimed to be a lack of adequate review by responsible city agencies. Touting the benefits of maintaining a campus-like feel to the project, SNA felt it was critical to decrease the density of the development to maintain this quality (O'Brien). To further its motives, SNA produced schematic drawings depicting its interpretation of the scale of development. Figure 3 is a rendering of SNA's concept with the Rectory in its original location and the construction of two much smaller new buildings, one on either side of the existing church. This model contrasts sharply with CSCP's vision for the project; as illustrated in Figure 4, where the bulk of new development was intended to be concentrated on the "high value" corner of the existing Rectory. This corner would be redeveloped to facilitate the lively and active pedestrian environment by adding a newly constructed 52, 590 square foot, four story, mixed-use structure with underground parking (Roth).

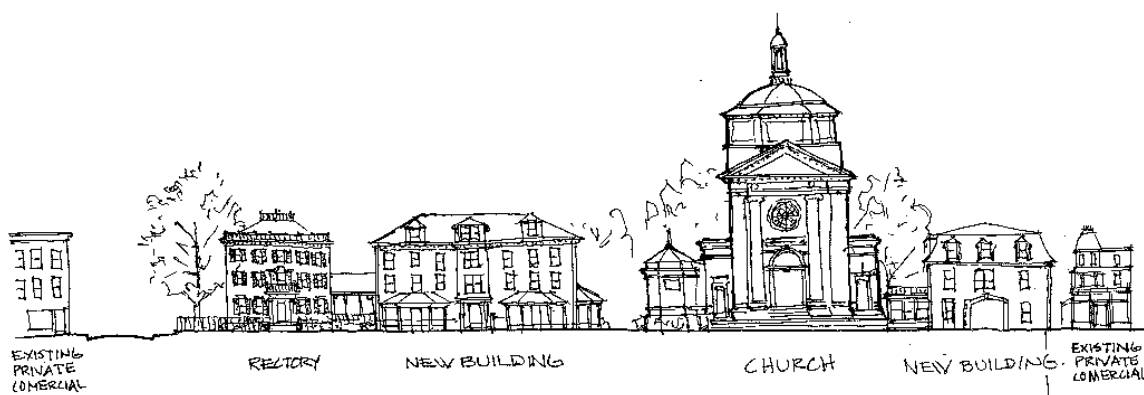


Figure 3. Sunnyside Neighborhood Association's concept of what they believe would be an appropriate scale for the Centre Street elevation of the Blessed Sacrament project. The Rectory is maintained in its current location, and 2 new low density structures are added to the sides of the church.



Figure 4. CSCP proposed re-development of the Blessed Sacrament Campus Centre Street elevation. The depiction has the rectory moved further down Creighton Street to allow for the larger mixed-use structure on the corner of Centre Street and Creighton Street.

The development team attempted to mitigate some of SNA’s concerns by adjusting the design of the proposed new mixed-use building to reflect a step down in height at both ends of the building. This effort to listen and respect the opinion of the abutters was not sufficient for SNA, and it maintained their opposition to the project.

### *Entitlement Process*

The project team met with various neighborhood associations, including Hyde Jackson Main Streets, The Hyde Square Business Association, the Hyde Square Task Force, the Jamaica Plain Neighborhood Council, and the Boston Landmarks Commission. The meetings helped CSCP align its proposed development plan with the community’s interests and bring together a project that would be widely supported. Unbeknownst to the developers, a small but influential group of abutters was organizing to oppose the development. At the onset, the development team assumed it would use the traditional Variance method to entitle the project. However, as SNA gained momentum and became more vocal, it became evident that the initial strategy would no longer be appropriate, as SNA members included abutters who would have legal standing to

appeal variances if granted by the Zoning Board of Appeal. Prior to filing its Notice of Intent to file a PNF, the developers began to consider the Map Amendment entitlement method.

A Map Amendment is similar to a PDA in that it is a change to the zoning code, in particular the zoning map. Since it is a legislative action, a Map Amendment has the same standing as law and is difficult to appeal. Pursuant to the Boston Zoning Code, Section 55-1, the Boston Zoning Commission (BZC) has the obligation and responsibility to promote the highest and best use of land in accordance with the Jamaica Plain Neighborhood Plan. This plan establishes guidelines to support responsible growth and development.

Because the Blessed Sacrament Re-development plan echoed the same principles of smart growth set forth in the Neighborhood Plan, and was supported broadly by the community, a Map Amendment seemed to make good sense. Once the BZC votes to approve the Map Amendment, then it is incorporated into the zoning code and has the standing of law.

The site had an as-of-right zoning designation for single family residential houses. This was not consistent with the existing structures on the site, nor was it appropriate for the overall program supported by the Neighborhood Council. A Map Amendment would provide for the most appropriate use of the land by extending the adjacent Multifamily Residential zoning designation over the north end of the site, and extending the Neighborhood Shopping subdistrict over the south portion of the site. This change would bring the as-of-right zoning of the site much closer to what the proposed development would need.

Even with the new Map Zoning, CSCP still had to submit for one Conditional Use permit and one Variance to complete all the components of the necessary entitlements. The Conditional Use permit was needed to address the SRO component of the project, which would be more efficiently developed as a Lodging House than as Multi-family housing. The need for the



Variance resulted from the community's desire for less retail and lower heights for the proposed mixed-use building at the "high value corner" of the site. In response, the developer reduced the height of the building at both ends from four storeys to three. In doing so, the residential space cut out from the top floor was relocated to the ground floor. This then created the need for a variance, because the new Map Amendment changed that section of the site to a NS district (which only allows commercial uses on the first floor) (Roth).

### Conclusion

Church Square Community Partners were able to successfully obtain the required entitlements to proceed with the Blessed Sacrament Re-development by listening to the community, fostering support and being flexible. Although SNA maintained its opposition to the project, CSCP's strategy of pursuing a Map Amendment was a key decision that decreased the chance of appeal and facilitated the project's entitlement process. Given the majority community support, BRA approval, and applicability of the adjacent zoning, the Map Amendment proved to be the best entitlement method for the Blessed Sacrament redevelopment project.

## CHAPTER V

### *Case Study 4: 10 St. James Ave. Project Chapter 121A*

#### Project Description

The 10 St. James Ave. project was the first speculative office building to be built in Boston within the prior eight years. Developers Anthony Pangaro and Joseph Larkin of Macomber Development Associates had completed the site assembly and acquisitions for the new development site by 1991 and proceeded by obtaining the necessary entitlements needed in order to carry out their envisioned project. In 1995, they were approved for the Chapter 121A status and PDA zoning but it was not until 1998 when Millennium Partners joined the venture (adding additional financing) that the project finally broke ground. This extended timeline was due primarily to the sluggish office market in Boston in the 1990's where high vacancy rates and low rent stifled development. (Curran).

#### Proposed re-development

The final development plan was to construct a new 19-storey office building, renovate an adjacent 10-storey historic structure and create a three-storey retail Galleria. In addition to the 755,000 square feet of gross floor area, the project also provides for a three-level underground parking garage offering 400 parking spaces along with various other facilities (Miller and Russo). This proposed development significantly rehabilitates an underutilized and deteriorated corner of Back Bay. The former uses of the site included a Bus Terminal on one site and a 10-storey furniture manufacturing facility (built in 1913) on the adjacent site (Curran). The combined entitlements strategies of Chapter 121A and PDA allowed the development to achieve the projects highest and best use potential.

## Surrounding Neighborhood

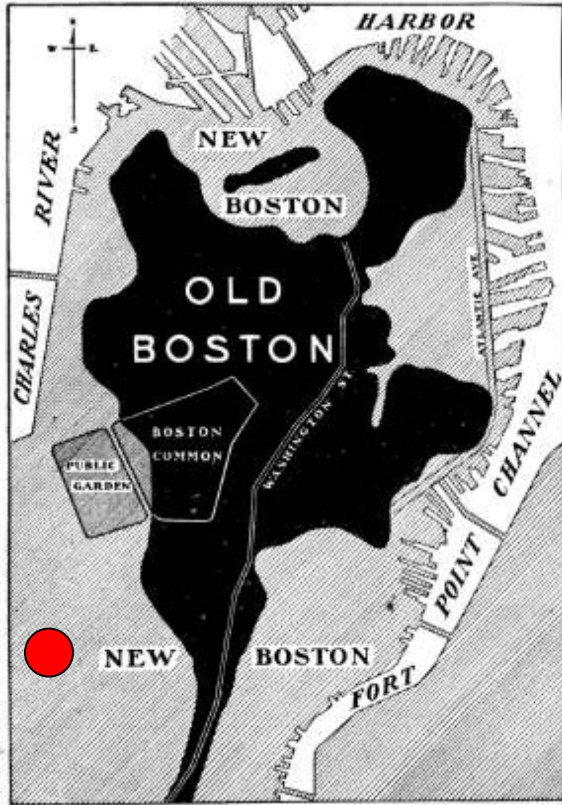
The Back Bay neighborhood is renowned for its high-end properties and exclusive retail space. This district is bordered on the north by the Charles River, on the east by Arlington Street,

on the west by Charlesgate East and on the south by the Massachusetts Turnpike. As with most areas in Boston, Back Bay was created as a land reclamation project beginning in 1820. This initiative filled in parts of the Charles River causing the original land mass to nearly double in size. By 1857, the area of the Back Bay was completely filled in and

developments were allowed to commence. The grey area in Figure 1 surrounding old Boston illustrates the amount of land added during the infill project.

The newly planned community was modeled after Haussmann's renovation of Paris in the mid-19<sup>th</sup> century ("Back Bay, Boston, Massachusetts").

Haussmann had applied sound urban planning concepts to transform Paris, France from a maze of small streets into a modern city with broad streets and more green space ("Haussmann's renovation of



**Figure 1:** Illustration of the size of Boston prior to the infill initiative. The black shading represents the original land mass of Boston and the surrounding gray area is the land that was reclaimed and added to the commonwealth. The Back Bay area is represented by the red dot.

Paris"). The same concepts were followed by the Back Bay architects Arthur Gilman and

Gridley James Fox Bryant. Strict guidelines produced a well integrated and uniform community

of masterfully appointed three and four-storey brownstones with appropriately scaled and planned infrastructure. The high quality developments and modern amenities had attracted affluent Bostonians to the area. Through years of development and re-development, Back Bay has been able to retain its original charm and maintains a status as one of the premier neighborhoods in Boston.

### Developer Hurdles & Community Concerns

The development team encountered early resistance when it began to introduce its initial concept of demolishing and building new buildings on the 10 St. James Ave. site. In the original scheme, the developer proposed a 23-storey office tower on the former bus terminal site and a similar new development on the site of the adjacent furniture building. The proposed development would also incorporate a new retail arcade running the length of the site from St. James Ave. to Stuart Street. Neighborhood groups such as the Park Plaza Citizens Advisory Council (Park Plaza CAC) voiced their strong opposition to the proposed height of the project and the demolition of the adjacent furniture building, fearing that the development would be out of scale relative to the surrounding area and would cast shadows on the neighboring park. The Park Plaza CAC was also opposed to the demolition of the historic 10-storey furniture building due to its historically significant architecture (McCourt). In addition, eighteen months prior to the announcement of the proposed project, BRA had undergone an extensive zoning initiative to limit the height of new construction in the surrounding area to 155 feet (Ackerman). Although the site of the proposed development was just beyond the zoning initiative area, BRA intended to impose a similar scale on the site. To overcome this opposition, the developer worked with the Park Plaza CAC and BRA to create a mutually beneficial project. The height of the building was

decreased from the proposed 23-storey to 19-storey and the historic 10-storey furniture building was kept in tact, fully renovated and recast as an office building with ground floor retail (Verrilli). Furthermore, the developer worked closely throughout the entitlement process with Park Plaza CAC by considering their suggestions on issues such as: creating a human scale to the building, the design for the exterior lighting, and the overall aesthetics (McCourt)

### Entitlement Process

The existing project site at 10 St. James Ave. was considered to be detrimental to the growth of the community due to the unsightly bus terminal and the deteriorated surroundings which created an unsafe environment and as a result allowed for the option of negotiating a Chapter 121A agreement. This strategy provided the developer with the ability to negotiate better and more certain tax treatment than would otherwise be available. In negotiating the 121A agreement, the project team was required to sign 6A and 18C agreements. The 6A document outlined the payments that were negotiated in lieu of taxes and the 18C agreement stated the rules and regulations for compliance with the program.

The underlying zoning limited the height and use of the site which was another obstacle since the proposed project was nonconforming to the underlying zoning. The proposed development would need approval to change the use from a bus terminal and manufacturing facility to use as office and retail space. Since the zoning sub-district was PDA eligible the development team utilized the PDA strategy to obtain the approvals for the change of use and additional height.

To obtain the project approvals, the development team consented to provide several community benefits in addition to an assessed linkage fee. The benefits included: retention of the

historic building and its rehabilitation; provide public access to the Galleria at all hours; rebuild all the traffic signals associated with the development block; and improve the streetscape and sidewalks around the block (Pangaro).

The project site offered the flexibility of obtaining project approvals through PDA or Chapter 121A entitlement strategies. Although both methods would have provided the necessary approvals, the development team felt that the practical application of the PDA was clearer and more familiar to them. Nonetheless, the developers also pursued a Chapter 121A agreement to provide for tax certainty, which provided potential tenants the ability to project their portion of tax liabilities.

### Conclusion

By utilizing several entitlement strategies, the development team of Macomber Development Associates and the Millennium Partners were able to successfully create the most appropriate zoning for the project. The Chapter 121A agreement provided the developers with the opportunity to negotiate better tax treatment while the PDA entitlement provided the project with the necessary project approvals to maintain its feasibility.

The initial opposition to the project was mitigated by allowing for more community involvement and furthermore by incorporating the community organization's suggestions into the design and planning of the development. By supporting community outreach efforts, the developer was better able to assess the community's needs and plan accordingly.

## CHAPTER VI

### *Conclusion*

#### Decision Tree

The thesis proposes a qualitative approach to selecting an entitlement method with the use of a decision tree that filter through a series of questions to match an appropriate entitlement method with the criteria of a proposed project. The questions were extrapolated through a series of interviews, case studies and qualitative assessments with the goal of determining the decision factors related to using one entitlement method as opposed to another. The decision tree, illustrated in Figure 5, assumes that the proposed project meets the criteria for Article 80 Large Project Review. The procedures for BRA review and community outreach under Article 80 are required for each of the various entitlement methods, although additional outreach and reviews may be necessary as a result of the specific approval strategy.

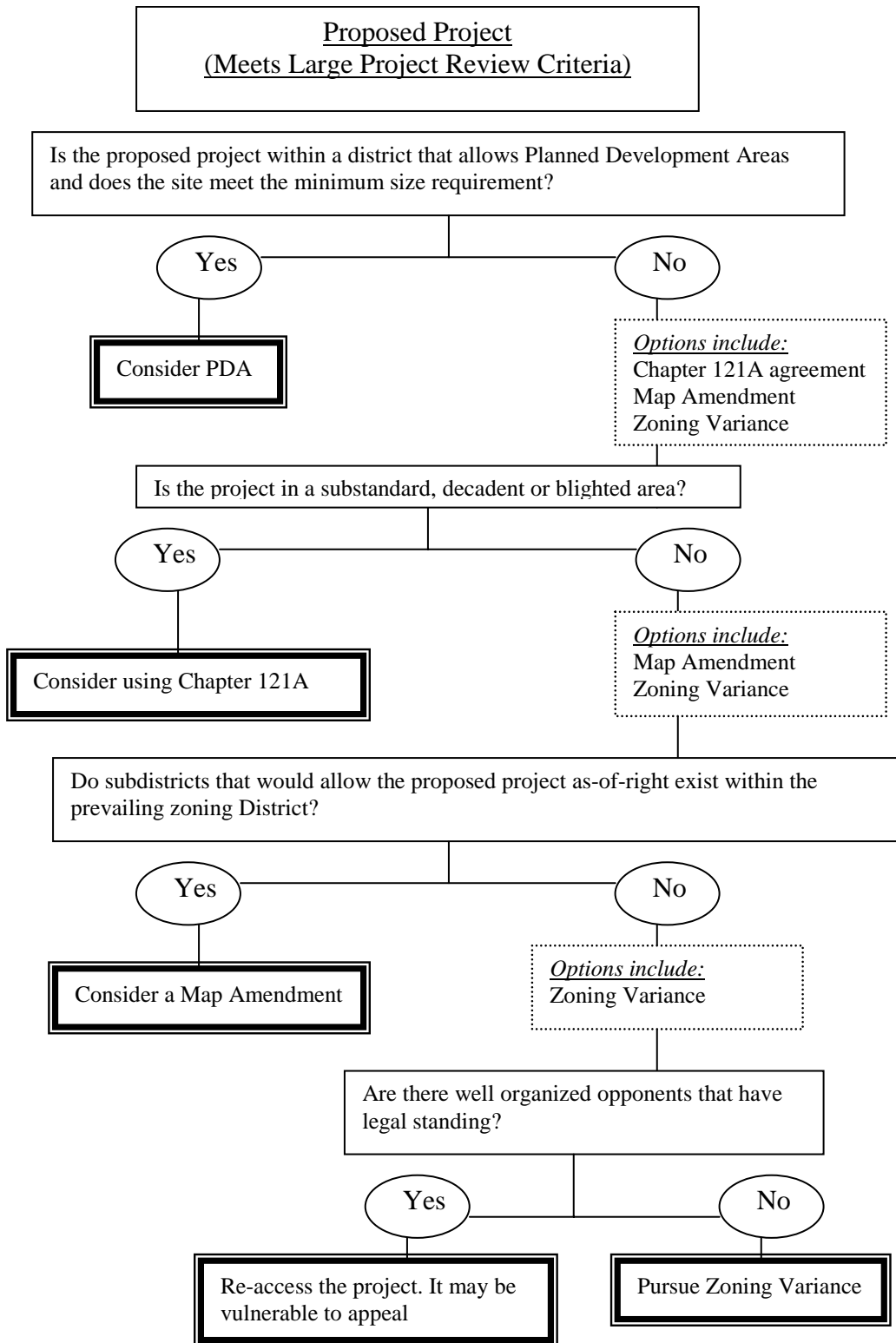


Figure 5: Illustration of an entitlement strategy Decision Tree. The appropriate entitlement method is determined by filtering through key criteria components specific to the development. The highlighted boxes represent the various project approvals that would be best suited for the proposed project. The dotted line reflects the potential for utilizing two zoning methods.



The first filter determines whether the proposed project site is within a PDA eligible area. If so, then pursuing a PDA entitlement would be the preferred method. This strategy is favored by developers since approved PDAs are incorporated into the Code through legislative action and thus are less likely to be appealed. . If the area is not eligible, then the developer must determine if the project site is considered to be in a substandard, decadent or blighted area, and therefore potentially eligible for Chapter 121A tax agreement, an alternative form of project approval. If so, then the developer must analyze whether the benefit of customized tax treatment outweighs the restrictions attached to such an agreement. If so, then the developer has the option of pursuing Chapter 121A to entitle the project. If neither PDA nor Chapter 121A is suitable, then the developer has the option of pursuing the remaining approval methods of: Map Amendment, Special Permit, or Zoning Variance.

The next level of filter determines whether there are neighboring subdistricts that may be more appropriate for the project than the existing zoning subdistrict. If so, then a Map Amendment should be pursued. When considering this strategy, special consideration should be made to ensure that the proposed zoning treatment is not mistaken for “Spot Zoning”. This is the illegal practice of singling out a project site to have preferential zoning treatment. A zoning strategy may be considered “Spot Zoning” if it is: arbitrary, for the sole economic benefit of the owner, or fails to treat like properties alike (Roth). If a Map Amendment is not appropriate, then the developer's only remaining alternative is the traditional Zoning Variance. This is the entitlement method of last resort due to the high standards of hardship that must be exhibited and the ease by which it can be appealed. As a result, this method is typically used for projects that do not have much opposition from abutters or aggrieved persons.

## Recapitulation

This thesis illustrates various entitlement methods that are effectively used for large scale projects. Within these methods are similarities, but more importantly, subtle differences that makes each process unique to the specific conditions of the proposed development highlighted in each case study. Although the cases vary in approval method, they all have commonalities which underlie successful strategies for entitlement. A key element in achieving project approval involves community outreach and support. Developers indicated that the more community support that they were able to foster, the smoother the entitlement process went. In many cases, plans needed to be altered with regards to: dimensional characteristics, aesthetics, and type of use; therefore a certain level of flexibility was required in order to accommodate community concerns.

Although community consideration greatly facilitated the process, regardless of the entitlement method, certain strategies were less affected by opposition. Whereas the Zoning Variance is reliant on support from abutters and local neighborhood organizations, PDA, Map Amendment and Chapter 121A agreements are approved based on the merits of the proposed project. Specifically, the later three zoning types are rooted in legislative actions which are less affected by opposition.

In addition to varying levels of dependence on community support, each entitlement method has individual attributes which make it more applicable to a specific development. The PDA is a site-specific overlay that provides the necessary approvals for a particular project. In contrast, a Map Amendment is a rescripting of the zoning map to include the project site under a more appropriate zoning subdistrict. A Chapter 121A agreement is specific to the redevelopment of substandard areas and provides for certain financial incentives to stimulate development.

Lastly, the Zoning Variance is the method of last resort for obtaining relief for various nonconformities. Because of the nuances associated with each entitlement method, it is important to pursue the correct entitlement strategy in order to maximize the highest and best use for the project.

The decision tree was created to clarify the subtleties associated with choosing the appropriate entitlement method. The flow chart provides a qualitative analysis of the key decision factors that differentiate one entitlement method from another. Using this analysis, developers can more readily identify the appropriate entitlement method for their proposed project.

## References

### Works Cited

- Ackerman, Jerry. "23-Story Project Proposed." The Boston Globe 22 May 1990, City ed.  
LexisNexis. 21 July 2007. Keyword: 10 St. James Ave.
- "Article 3: Establishment of Zoning Districts." Boston Zoning Code and Enabling Act. Boston  
Redevelopment Authority. 17 July 2007  
<<http://cityofboston.gov/bra/pdf/ZoningCode/Article3.pdf>>.
- "Article 6: Conditional Uses." Boston Zoning Code and Enabling Act. Boston Redevelopment  
Authority. 26 July 2007 <<http://cityofboston.gov/bra/pdf/zoningcode/article6.pdf>>.
- "Back Bay, Boston, Massachusetts." Wikipedia, the Free Encyclopedia. May 2007. Wikipedia.  
17 July 2007 <[http://en.wikipedia.org/wiki/Back\\_Bay](http://en.wikipedia.org/wiki/Back_Bay)>.
- Blanton, Kimberly. "This New House Will Make History." The Boston Globe 16 June 2005. 16  
July 2007 <<http://www.boston.com>>.
- Boston's Fort Point District a Landmark of New England's Maritime and Industrial Past. Seaport  
Alliance for a Neighborhood Design. 2001. 7 July 2007  
<<http://www.bostonseaport.com/SAND/Archive/021219fphistory.html>>.
- "Chapter 665 of the Acts of 1956." Boston Zoning Code and Enabling Act. Boston  
Redevelopment Authority. 26 July 2007  
<<http://cityofboston.gov/bra/pdf/zoningcode/chapter665.pdf>>.
- Coyle, S. Zoning: Procedures for Master Plan/ PDA. Boston Redevelopment Authority. 1986.
- Curran, Karen. "Timing is Right for 10 St. James Avenue." The Boston Globe 26 Sept. 1998,  
City ed., sec. E1. LexisNexis. 21 July 2007. Keyword: 10 St. James Avenue.

"Fort Point, Boston." Wikipedia, the Free Encyclopedia. 24 Feb. 2007. Wikipedia. 17 July 2007  
<[http://en.wikipedia.org/wiki/Fort\\_Point,\\_Boston](http://en.wikipedia.org/wiki/Fort_Point,_Boston)>.

Gilchrest, Byron. Personal interview. 12 June 2007.

"Great Irish Famine." Wikipedia, the Free Encyclopedia. 20 July 2007. Wikipedia. 17 July 2007  
<[http://en.wikipedia.org/wiki/Great\\_Irish\\_Famine](http://en.wikipedia.org/wiki/Great_Irish_Famine)>.

"Haussmann's Renovation of Paris." Wikipedia, the Free Encyclopedia. 25 June 2007. Wikipedia.  
17 July 2007 <[http://en.wikipedia.org/wiki/Haussmann's\\_renovation\\_of\\_Paris](http://en.wikipedia.org/wiki/Haussmann's_renovation_of_Paris)>.

Holleran, M. Boston's "Changeful Times": Origins of Preservation and Planning in America.  
Baltimore: John Hopkins UP, 1998.

Humza, Tara. "City Councilor Tries to Save Parish." The Daily Free Press 10 Oct. 2003. 16 July  
2007 <<http://www.dailyfreepress.com>>.

Jamaica Plain Neighborhood and New Atlantic Development. Blessed Sacrament Campus  
Redevelopment. Church Square Community Partners, LLC. 2006.

"Jamaica Plain, Massachusetts." Wikipedia, the Free Encyclopedia. May 2007. Wikipedia. 17  
July 2007 <[http://en.wikipedia.org/wiki/Jamaica\\_Plain,\\_Massachusetts#Maps](http://en.wikipedia.org/wiki/Jamaica_Plain,_Massachusetts#Maps)>.

Kennedy, P C. Renegotiating Chapter 121A Agreements: Legal and Financial Considerations.  
Diss. Massachusetts Institute of Technology, 1986. 1986.

Marilyn, Jackson. "New Condos Sited in North End." Boston Homes: the Complete Guide 1 Oct.  
2004. 16 July 2007 <[www.homefind.com](http://www.homefind.com)>.

Massachusetts. Boston Redevelopment Authority. Article 80 Development Review and Approval.  
26 July 2007 <<http://cityofboston.gov/bra/pdf/ZoningCode/Article80.pdf>>.

Massachusetts. Division of Local Services. Massachusetts Department of Revenue. Levy Limits: a Primer on Proposition 2 1/2. 26 July 2007  
<<http://www.mass.gov/Ador/docs/dls/publ/misc/levylimits.pdf>>.

Massachusetts. The General Laws of Massachusetts. The 185th General Court of The Commonwealth of Massachusetts. Part I. Administration of the Government. 17 July 2007 <<http://www.mass.gov/legis/laws/mgl/40a-10.htm>>.

McCourt, June. Telephone interview. 23 July 2007.

Miller, Thomas A., and Jay Russo. Massachusetts. Economic Development Division. Boston Redevelopment Authority. Chairman's Statement on 10 St. James/ 75 Arlington Street Chapter 121A Project. 2005.

O'Brien, James. "SNA Effort Offers New Plan for Church Site." The JP Bulletin 16 Mar. 2006. 20 July 2007 <[http://www.historichydesquare.org/pdfs/bs\\_JPBulletin20060316.pdf](http://www.historichydesquare.org/pdfs/bs_JPBulletin20060316.pdf)>

Pangaro, Anthony. Phone interview. 30 July 2007.

The R.f. Walsh Company, I. Midway Fort Point District. Comp. Epsilon Associates, Inc. Beacon Capital Partners. 2001.

Roth, Peter. Personal interview. 17 July 2007.

Ruch, John. "Lawyers Enter Church Debate." Jamaica Plain Gazette 20 Oct. 2006. 18 July 2007 <<http://www.jamaicaplaingazette.com>>.

"South Boston." Boston's Neighborhoods. Boston Redevelopment Authority. 20 July 2007 <<http://cityofboston.gov/bra/neighborhoods/Neighborhoods.asp?action=ViewHood&HoodID=17>>.

Tara, Humza. "City Councilor Tries to Save Parish." The Daily Free Press 10 Oct. 2003. 16 July 2007 <<http://www.dailyfreepress.com>>.

Urban Redevelopment Corporations Chapter 121A Corporations. Commonwealth of

Massachusetts Department of Housing & Community Development. 2007.

Verrilli, Mike. "10 St. James Avenue." Emporis. 22 July 2007

<<http://www.emporis.com/en/wm/bu/?id=10streetjamesavenue-boston-ma-usa>>.