

ARTICLE 13: Amend Chapter 80: Demolition Delay Bylaw

*Majority Vote
Required*

Sponsor: Historical Commission

Motion: That the Town amend General Bylaw Chapter 80: Demolition Delay; as set forth below, with proposed changes shown in underline for additions and strikethrough for deletions.

§ 80.1. Intent and purpose.

This bylaw is adopted for the purpose of preserving and protecting significant buildings and structures within the Town which constitute or reflect distinctive features of the architectural, cultural, political, economic, or social history of the Town; to encourage owners of such buildings and structures to seek out persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings and structures rather than demolish them and by furthering these purposes to promote the public welfare, to preserve the resources of the Town. To achieve these purposes the Westford Historical Commission (herein after the "Commission") is empowered to advise the Building Commissioner with respect to the issuance of permits for demolition of significant buildings and structures.

§ 80.2. Definitions. [Amended 5-5-07 ATM Art. 17]

Applicant – Any person or entity that files an application for a demolition permit. If the applicant is not the owner of record of the premises upon which the building or structure is situated, then the owner must indicate on or with the application his/her assent to the filing of the application.

Application – An application for the demolition of a building or structure.

Building – Any combination of materials capable of being used as shelter for persons, animals or property.

Commission – The Westford Historical Commission.

Commissioner – The Westford Building Commissioner.

Demolition - the act of pulling down, destroying, removing or razing a building or structure, or a significant portion thereof that results in a change in the footprint, or removing 25 % of the structure as measured in gross square feet.

A. The term "demolition" shall not include the ordinary maintenance or repair or an addition to any building or structure. "Demolition" as used herein shall be deemed to include Demolition by Neglect.

B. The moving of a building or structure off its foundation to another foundation or the systematic removal, effacement or destruction of the exterior architectural elements which define or contribute to the

historic character of a building or structure listed on or within an area listed on the National or State Registers of Historic Places.

Demolition by Neglect - a process of ongoing damage to the fabric, viability and/or functionability of a building or structure leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building or structure from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

Demolition permit – The permit issued by the Commissioner as required by ~~the state building code for demolition or removal of a building or structure~~ herein.

Historically significant building or structure - Any building or structure which is:

- A. importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town, the Commonwealth of Massachusetts or the United States of America; or
- B. ~~is~~ historically or architecturally important by reason of period, age, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

Mitigation – actions taken to partially compensate for the demolition of a preferably preserved building or structure, including without limitation: removal of the building or structure to a new location; offering the building or structure for removal to a new location; monetary support for same; incorporation of part or all of the building or structure into a new building or structure; submitting any replacement building or structure to design review by the Commission; and recordation and visual documentation of the existing building or structure.

Preferably Preserved - Any historically significant building or structure, which because of the important contribution made by such building or structure to the town's historical or architectural resources, is in the public interest to preserve, rehabilitate or restore.

Premises - The parcel of land on which an historically significant building or structure is or was located and/or any adjoining parcels of land under common ownership and control.

Removal - to transfer a building or structure from its existing location or foundation.

Structure – Any combination of the materials assembled, constructed, erected or maintained at a fixed location and placed permanently or temporarily in or on the ground.

§ 80.3. Regulated buildings and structures. [Amended 5-5-07 ATM Art. 17].

- A. A building or structure listed on, or is within an area listed on, the National Register of Historic Places or the State Register of Historic Places, or the subject of a pending application for listing on either of said Registers; or
- B. A building or structure located within 200 feet of the boundary line of any federal, state or local historic district; or
- C. A building or structure included in the Inventory of the Historic Assets of the Commonwealth, or designated by the Commission for inclusion in said inventory including those buildings and structures listed for which complete surveys may be pending; or
- D. A building or structure determined by vote of the Commission to be historically or architecturally significant in terms of period, style, and method of building construction based on the following criteria:
 - Ⓐ1. Properties listed or pending listing on the State Register of Historic Places and the Inventory of Historic Assets of the Commonwealth for the Town of Westford.
 - Ⓑ2. Properties in whole or in part in existence in or before a rolling 85-year timeframe based upon the calendar year in which the demolition permit application was filed with the Building Commissioner. If a building or structure is of unknown age, it shall be assumed it is over 85 years old for the purposes of this bylaw.
 - Ⓒ3. Properties that appear on the 1855 Symmes Maps.
 - Ⓓ4. No demolition permit shall be issued for a regulated building or structure without full compliance with the provisions of this bylaw.

§ 80.4. Procedure. [Amended 5-5-07 ATM Art. 17]

- A. No demolition permit for a regulated building or structure as defined in Section 80.3 shall be issued without following the provisions of this bylaw.
- B. An applicant proposing to demolish a building or structure subject to this bylaw shall file with the Building Commissioner 7 copies of a demolition permit application containing the following information:
 - 1. The address of the building or structure to be demolished.
 - 2. The owner's name, address and telephone number.
 - 3. A description of the building or structure.
 - 4. A statement of the reason(s) for the proposed demolition and data supporting said reason(s), including where applicable, data sufficient to establish any economic justification for demolition.
 - 5. A brief description of the proposed reuse, reconstruction or replacement, if any.
 - 6. Photographs of the building or structure and of its immediately neighboring properties.
- ~~A. C.~~ The Commissioner shall forward a copy of each demolition permit application for all regulated buildings or structures identified in section 80.3 of this bylaw to the Commission within 7 days after the filing of such application. No demolition permit shall be issued at that time.
- ~~B. D.~~ Following the receipt of such application, the Commission shall determine within 45 days after the Commission's next regularly scheduled meeting whether the building or structure is historically significant or if less than a complete demolition is proposed, whether the work to be done will materially diminish its historical significance and explore alternatives to demolition. The date of a regularly scheduled Commission meeting shall be defined as the third Wednesday of the month. The applicant for the permit shall be entitled to make a presentation to the Commission if he/she makes a timely request (at least 7 days prior to the scheduled meeting date) in writing to the Commission.
- ~~C. E.~~ If the Commission determines that the building or structure is not historically significant, or where less than a complete demolition is being proposed that the work to be done will not materially diminish its historical significance, then it shall so notify the Commissioner and the applicant in writing and the Commissioner may issue a demolition permit.

- Ⓓ. F. If the Commission determines that the building or structure is historically significant, and that the proposed work would materially diminish its historical significance, it shall notify the Commissioner and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. If the Commission fails to notify the Commissioner and the applicant of its determination within 30 days after its determination in 80.4.B, then the building or structure shall be deemed not historically significant and the Commissioner may issue a demolition permit.
- Ⓔ. G. Within 30 days after the applicant is notified that the Commission has determined that a building or structure is historically significant, the applicant for the permit shall submit to the Commission 7 copies of a demolition plan which shall include the following information:
- a1. A map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures
 - b2. Photographs of all ~~street façade~~ elevations
 - e3. A description of the building or structure to be demolished
 - d4. A statement of the reason for the proposed demolition and data supporting said reason, including, where applicable, data sufficient to establish any economic justification for demolition, and
 - e5. A brief description of the proposed reuse of the parcel on which the building or structure to be demolished is located.
- Ⓕ. H. The Commission shall hold a public hearing within 30 days of receipt of the demolition plan referenced in section ~~80.4.D~~ 80.4.F with respect to the application for a demolition permit, and shall give public notice of the time, place, and purposes thereof at least 14 days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the Commission shall deem entitled to notice. The costs associated with the preparation of abutters list and notifications as well as publication in a local newspaper will be borne by the Demolition Permit Applicant. Within 60 days after its receipt of the demolition plan, the Commission shall file a written report with the Commissioner on the demolition plan which shall include the following:

- a1. A description of age, architectural style, historic association and importance of the building or structure to be demolished
- b2. A determination as to whether or not the building or structure should preferably be preserved.

G. I. The Commission shall determine that a building or structure should preferably be preserved only if it finds that the building or structure is an historically significant building or structure which, because of the important contribution made by such building or structure to the Town's historical and/or architectural resources, it is in the public interest to preserve, rehabilitate or restore.

H. J. If, following the demolition plan review, the Commission does not determine that the building or structure should preferably be preserved, or if the Commission fails to file a report with the Commissioner within the time limit set out in section 80.4 above, then the Commissioner may issue a demolition permit.

I. K. If, following the demolition plan review, the Commission determines that the building or structure should preferably be preserved, then the Commissioner shall not issue a demolition permit for a period of 6 12 months from the date of the filing of the Commission's report unless the Commission informs the Commissioner prior to the expiration of such 6 12-month period that it is the determination of the Commission there is no likelihood of preserving, restoring or rehabilitating the building or structure or that ~~the Commission~~ is satisfied that the applicant for the demolition permit has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure, or the applicant has agreed to accept a demolition permit on specific conditions approved by the Commission. During the 6 12-month review period, the Commission shall invite the applicant to participate in an investigation of alternatives to demolition and the Commission shall notify the Massachusetts Historical Commission, the Town Planner or any other interested party in an effort to obtain assistance in obtaining preservation funding or in finding an adaptive use of the building or structure which will result in its preservation.

L. If a preferably preserved building or structure is being replaced by a new building or structure, no permit for demolition of said building or structure shall be granted until all plans for future use and development of the site have been filed with the Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit. All

approvals necessary for the issuance of such building permit including without limitation any necessary zoning variances or special permits must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

M. No permit for erection of a new building or structure on the site of an existing historically significant building or structure may be issued prior to issuance of a permit for demolition of such existing building or structure.

N. A demolition permit issued by the Commissioner on a regulated building or structure is valid for a period of 6 months. If the building or structure found earlier to have been subject to the demolition delay provisions of this bylaw is not demolished within 6 months and an extension is then sought from the Commissioner for the originally issued demolition permit, the applicant must then apply to the Commission for a new determination of historical or architectural significance if it is evident that there has been a change either in the nature of the project or the ownership interest. The Commission may issue an extension, or it may require the applicant to reapply.

O. Alternatives to Demolition and Mitigation

1. If the Commission makes a final determination that the building or structure is preferably preserved, the Commission shall invite the owner of record of the building or structure, the Commissioner, and the Town Planner to participate in an investigation of alternatives to demolition including but not limited to incorporation of the building or structure into the future development of the site; adaptive reuse of the building or structure; utilization of financial incentives to rehabilitate the building or site; searching for a new owner willing to purchase and preserve, restore or rehabilitate the building or structure or moving the building or structure.

2. If the commission imposes a demolition delay and/or if alternatives to demolition are developed in the public hearing which are acceptable to the applicant and/or owner, then the commission may enter into an agreement with such applicant and/or owner providing for such alternatives and a time period for implementation of same.

3. A copy of said agreement shall be filed with the Commissioner and any other applicable town department, and thereafter no work shall

be done on the building or structure except in accordance with the terms of said agreement unless and until a new demolition permit application is filed and processed hereunder.

P. Notwithstanding the above, the Commissioner may issue a demolition permit for a preferably preserved building or structure after receipt of written advice from the Commission to the effect that either of the following applies:

1. The Commission is satisfied that there is no reasonable likelihood that either the owner or some other reasonable person or group is willing to purchase, preserve, rehabilitate, or restore said building or structure, or:
2. The Commission is satisfied that for at least 12 months the owner has made continuing, bona fide, and reasonable efforts to locate a purchaser to preserve, rehabilitate, and restore the subject building or structure, and that such efforts have been unsuccessful.

Q. Enforcement

The Commissioner shall institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a violation or threatened violation thereof.

§ 80.5. Determination of applicability.

An owner of a regulated building or structure may petition the Commission for a determination of applicability of the bylaw. Within 30 days after its determination in ~~80.4.B~~ 80.4.D, the Commission shall determine whether the building or structure is historically significant. The applicant for the permit shall be entitled to make a presentation to the Commission if he/she makes a timely request in writing to the Commission. The determination by the Commission of whether a regulated building or structure is historically significant shall be made in writing signed by the Commission and shall be binding on the Commission for a period of 5 years from the date thereof.

§ 80.6. Emergency demolition.

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the Commissioner. If possible and as soon as practical after the receipt of such a request, the Commissioner shall arrange to have the property

inspected by a board consisting of himself/herself, the Chairman of the Commission, the Chairman of the Board of Health, and the Chief of the Fire Department, or their respective designees. After inspection of the building or structure and, to the extent possible, consultation with this Board, the Commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to immediate demolition of the building or structure which would protect the public health or safety. If the Commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition permit under the provisions of this section 80.6 they shall prepare a written report describing the condition of the building or structure and the basis for his/her decision to issue an emergency demolition permit with the Commission. Nothing in this section 80.6 shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by chapter 143, section 6-10 of the Massachusetts General Laws. In the event that a Board of Survey is convened under the provisions of section 8 of said chapter 143 with regard to any building or structure identified in section 80.3 of this bylaw, the Commissioner shall request the Chairman of the Commission or his/her designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the Commission. Nothing in this bylaw shall restrict the authority of the Commissioner to require the applicant to take reasonable action to prevent the need for required demolition of an historically significant building or structure, which may include securing the building or structure and making it safe so that it does not present an imminent and substantial danger to the public.

§ 80.7. Administration.

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw. Administrative and advertising fees shall be borne by the petitioner/applicant. The Commission may delegate authority to a municipal employee to assist in the collection of administrative and advertising fees from the Applicant.

The Commission may review and revise its regulations and fee schedules from time to time, following an advertised public hearing. Any amendments to these regulations shall take effect upon filing a copy of the amendments with the Westford Town Clerk's Office.

§ 80.8. Non-compliance.

- A. The Commission and the Commissioner are each authorized to institute any and all proceedings in law or equity, as they deem necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.
- B. No building permit shall be issued with respect to any premises upon which a significant building or structure has been voluntarily demolished in violation of this bylaw for a period of ~~22~~ 24 months after the date of the completion of such demolition. ~~As used herein "premises" includes the parcel of land upon which the demolished significant building was located~~ unless the building permit is for the faithful restoration referred to herein or unless otherwise agreed to by the Commission.
- C. Upon a determination by the Commission that a building is a preferably preserved significant building or structure, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Commissioner. Should the owner fail to secure the building or structure, the loss of such building or structure through fire or other cause shall be considered voluntary demolition for the purposes of section 80.6.
- D. Anyone who demolished a building or structure identified in section 80.3 of this bylaw without first obtaining and complying fully with the provisions of a demolition permit, shall be subject to a fine of ~~not less than \$100 not more than~~ \$300. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building or structure is completed or unless otherwise agreed to by the Commission.
- E. Notwithstanding the foregoing, before a building permit application may be submitted for new construction that would faithfully replicate the exterior of the demolished preferably preserved building or structure, plans for such replication shall be subject to prior review and approval by the Commission, whose review shall consider use of materials, design, dimensions, massing, arrangement of architectural features, execution of decorative details, and other relevant factors.

§ 80.9. Severability.

If any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court authority, every other section, paragraph and part shall continue in full force and effect.