TOWN OF WINCHESTER

MIDDLESEX COUNTY, MASSACHUSETTS
HISTORICAL COMMISSION
TOWN HALL
WINCHESTER, MASSACHUSETTS 01890

Meeting Minutes

Date/Room: August 8, 2016
Winchester Town Hall (Waterfield Room)

Members Present: Heather von Mering (Chair), Bruce Hickey (vice-chair), Jenny Adams, Janet Boswell, and Jack LeMenager

Members Absent: Michelle McCarthy, and John Clemson

Also Present: Brian Szekely – Town Planner
Maureen Meister, Planning Board
Kathryn Hughes, 145 Cambridge Street
Vicki Krikorian, 41 Arlington Street
Diane Hinzpeter, 2 Blossom Hill Rd.
Tony Conte, 80 Harvard Street

A quorum being in attendance, the hearing was called to order at 7:36pm.

Updates

Chair von Mering reported that she had received a communication from the Wright-Locke Farm Conservancy board of directors that they are not interested in pursuing in a Local Historic District designation for the farm. The Commission will proceed with the Board of Selection for a LHD comprising the Town Hall, town Library, Lincoln School and McCall Middle School.

The Planning Board is at present considering Rules and Regulations Governing Section 7.3 Center Business District (CBD), and would like the Commission's participation in shaping Section 6: Guidelines for Existing Historically Significant Buildings. Planning Board is meeting at 7:30 on August 9 to open discussion of the regulations, but, due to the unavailability of Commission members, the Commission's participation has been postponed to the August 23 meeting.

Winchester By-Law, Chapter 14 Discussion

Chair von Mering opened the discussion by inviting public comments. Tony Conte said he intends "to oppose this as a matter of principal," saying that he doesn't believe that the town has any business imposing itself on the rights of property owners.

The Commission commenced a section-by-section discussion of the revisions, as prepared by Vice-chair Hickey and Chair von Mering, and made the following agreements:

- Section 1 – Purpose: Von Mering took issue with the last sentence, saying it is arbitrary. She argued that the real purpose of this bylaw is to stabilize the town for future generations. It was agreed to flip the sentence and delete the arbitrary language.
- Section 2 – Definitions
    - Section 2.1: The Commission agreed that there needs to be greater delineation between "owner" and "applicant," and that the terms are not always clear throughout the bylaw.
    - Section 2.2: It was agreed to delete the first half of the second sentence, to change the word "premises" to "same lot," and "Demolition" in last line to "Permit."
    - Section 2.5 (a): Change the words "is listed" to "are recorded on."
      (c) delete "…or prior thereto."
    - Divide the sub-paragraph at the end in half, moving the first half about the safety issue to section 3.4, and the last half, beginning with "For the purpose of…" to an appropriate place in section 3. Delete the last sentence.
    - Section 2.6: Add "Public" before the word "Hearing" in the first sentence, and add citation of the "Massachusetts Open Meeting Law (M.G.L. c.30A §§18-25)."
- Section 3 – Procedures
    - Section 3.1: Change the sub-title to "Application for a Permit." There was also agreement to change the actual application to ensure that an applicant's signature acknowledges that they had received a copy of this bylaw.
        - Strike sub-sections (e) and (f).
    - Section 3.3 Break sub-section (a) into two subsections: (a) Eligible Buildings. (b) Preliminary Determination of Historical Significance
        - (b) Therefore becomes (c) Expand title to "….if need for hearing." Add "business days," as in 7 business days and 10 business days
    - Section 3.4: Combine sub-sections (b) and (c).
        - Sentiment of the commission (4-1, with Hickey in the minority) is to compel a new owner to reapply and go through a hearing to determine historical significance.
    - 3.7 (a): add "…by majority or tie vote" and, in sub-section (b), add "…by majority vote."
    - Strike 3.13
- Section 7: It was agreed that this section belongs with Section 3 under Procedures and directed Hickey to make that change.
    - Also, the amount of the assessed fee should reflect the current cost of completing a Survey Form rather than a specific number.
    - In reference to the outside consultant, it should specify a "…Professional preservation consultant mutually agreeable to both applicant and commission…"

Hickey will revise the bylaw accordingly and present the revision to the Commission prior to its next meeting, at which the Commission will cast a final vote on the proposed changes prior to submission a warrant for consideration by the Fall 2016 Town Meeting.

Meeting Minutes

Chair Heather von Mering requested that all members review the July 11, 2016 public meeting minutes.

Motion That the Historical Commission approve July 11, 2016 public meeting minutes as amended. The motion was made and seconded. The motion was approved unanimously.

5 in Favor 0 Opposed VOTED
Absent: McCarthy and Clemson

Chair Heather von Mering requested that all members review the July 27, 2016 public meeting minutes.

Motion That the Historical Commission approve July 27, 2016 public meeting minutes as amended. The motion was made and seconded. The motion was approved unanimously.

5 in Favor 0 Opposed VOTED
Absent: McCarthy and Clemson

Next Meeting

The next scheduled meeting will be held on August 22, 2016 in the Mystic Valley room at 7:30 P.M.

It was moved and seconded to adjourn at 10:15pm. VOTED

Respectfully submitted,

Jack LeMenager

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Heather von Mering, Chair Date

CHAPTER 14 **Draft 8-3-16**

PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

Section 1. PURPOSE

This by-law is adopted to preserve and protect historically significant buildings within the Town which reflect distinctive features of the architectural, cultural, political or social history of the Town and to limit the detrimental effect of Demolition on the character, historical or architectural heritage or resources of the Town. Through this by-law, owners of Historically Significant Buildings are encouraged to seek ways to preserve, rehabilitate or restore such buildings and residents of the Town are alerted to impending Demolitions of Historically Significant Buildings. By preserving and protecting Historically Significant Buildings, [and the streetscapes and neighborhoods which they influence,] this by-law promotes the public welfare by making the Town a more attractive and desirable place in which to live and work.

Section 2. DEFINITIONS

As used in this chapter:

2.1. "Applicant" shall mean any person or entity who files an application for a Permit with respect to an Eligible Property. If the Applicant is not the owner of such Eligible Property, the owner must indicate on or with the application for a Permit its assent to the filing of the application.

2.2. "Building" shall mean a combination of any materials, having a roof, to form a structure for the shelter of person or property. For purposes of determination by the Commission of whether an Eligible Building would be Historically Significant, a garage, out-building or carriage house located on the premises of an Eligible Building shall be considered a separate "Building," as indicated in the application for Demolition submitted to the Building Department.

2.3. "Commission" shall mean the Winchester Historical Commission, created by vote of Winchester Town Meeting pursuant to Massachusetts General Law, c. 40A, sec. 8D.

2.4. "Demolition" shall mean any act of (i) pulling down, tearing down, destroying, removing, or razing a Building, (ii) moving a Building from its site/foundation or changing its footprint from its current location, or (iii) commencing the work of any of the foregoing.

2.5. "Eligible Building" shall mean any Building or portion thereof located in the Town

(a) which is listed on, or is a contributing Building within an area listed on, the National or State Registers of Historic Places ("National Register"),

(b) which is included in the Massachusetts Historical Commission's "Inventory of Historic and Archeological Assets of the Commonwealth" (the "Inventory"), or

(c) which was constructed during or before 1940 or prior thereto.

Provided, however, that a Building subject to application for a Permit that otherwise is determined by the Commission to be an Eligible Building may, at the discretion of the Commission, be demolished if such Building presents safety issues to the community or emergency conditions which may exist which merit Demolition. For the purposes of clause (c) above, the date of such Building shall be evidenced by the applicant pursuant to a certificate of occupancy, Town real estate tax assessment records or other indicia evidencing the Building's date of construction, which is reasonably acceptable to the Commission. If the age of a Building is unknown, it shall be assumed that such Building is older than 1940 for the purposes of this by-law. [Hardship exception?]

2.6. "Hearing" shall mean a Hearing of the Commission that is convened in accordance with Sections 3.3, 3.4, and 3.5 hereof wherein the Commission shall determine if an Eligible Building which is the subject of the application for a Permit is a Historically Significant Building in accordance with Section 3.6 hereof and the Demolition thereof should be delayed in accordance with Section 3.7 hereof.

2.7. "Historically Significant Building" shall mean an Eligible Building that meets the criteria set forth in Section 3.6 of this by-law.

2.8. "Permit" shall mean a permit issued by the building commissioner for the Demolition of a Building pursuant to an application.

Section 3. PROCEDURES

3.1. Demolition Application. An application to the Town building department for a Permit shall be made or cosigned by the owner of record at the time of application. The building commissioner shall provide each Applicant for a Permit with a copy of this by-law and require each Applicant to acknowledge receipt of the by-law. The Demolition application shall contain the following:

(a) The address of the building to be demolished;

(b) The owner's name, address , telephone number and email address;

(c) Copy of the original building permit application, tax assessment records and/or other indicia evidencing the building's date of construction;

(d) [A brief description of the building;

(e) The reason for requesting a Permit;

(f) A brief description of the proposed re-use, reconstruction or replacement of the Eligible Building; and

(g) A photograph or photograph(s) of the Eligible Building.]

3.2. Notice of Application to Commission. Upon receipt of an application for a Permit for a Building, the building commissioner shall forward a copy thereof to the chairperson and vice-chairperson of the Commission. No Permit shall be issued at that time.

3.3. Determination of Eligible Buildings.

(a) Eligible Buildings; Presumptive Determination. The chairperson, vice-chairperson or other person authorized by the Commission including without limitation a Town employee or consultant, shall determine whether the subject of the Permit application is an Eligible Building based on available information. If inadequate information exists in the Permit application, the chairperson, vice-chairperson or other person so authorized by the Commission may deem the Building referenced in the application to be an Eligible Building, and therefore a Hearing shall be held. Upon a determination that the Building constitutes an Eligible Building, the chairperson, vice-chairperson or such other person may determine based on the information set forth in such application and otherwise available to such person (e.g., visual inspection, familiarity with the history or neighborhood, etc.) that such Eligible Building is presumptively not a Historically Significant Building with the effect being that no Hearing needs to be convened by the Commission provided, however, that if any other such person or member of Commission disagrees with such determination, then a Hearing shall be convened by the Commission.

(b) Notice to Building Commissioner. If the Building is determined or deemed to be an Eligible Building subject to a Hearing as determined under Section 3.3(a), the chairperson, vice-chairperson or other authorized person shall notify the building commissioner in writing within seven (7) days of receipt of the copy of the Application that this by-law does apply to the Building and that no Permit may be issued at that time. After the expiration of ten (10) days from the date the chairperson or vice chairperson received the copy of the Application, if the building commissioner has not received notification that the Building is an Eligible Building, the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the Permit.

3.4. Historically Significant Buildings Subject to Prior Permit Applications.

(a) No Change in Ownership. In the event that an Applicant has previously applied for a Permit for an Eligible Building, received a determination from the Commission that such Building is a Historically Significant Building, does not Demolish (with the meaning of Section 2.4 hereof) such Building and then reapplies for a Permit of such Building after any delay period imposed by the

Commission, such Applicant shall not be subject to a Hearing so long as (x) no material change has occurred since such determination with respect to the criteria set forth in Section 3.6 as they relate to such Building or its surroundings and (y) such Applicant has remained the owner of such Building since the date of such determination.

(b) Conveyance Where Permit Not Previously Issued. [In the event that an Applicant has previously applied for a Permit for an Eligible Building, is the record owner of such Eligible Building, received a determination from the Commission that such building is a Historically Significant Building, is not (nor is its contractor) issued a Permit, does not Demolish (with the meaning of Section 2.4 hereof) such Building and then conveys the property on which the Building resides after, or during, any delay period imposed by the Commission, any future owner thereof [shall re-apply for a Permit and] shall be subject to a Hearing to the extent such future owner desires to Demolish such Building.]

(c) Conveyance Where Permit Previously Issued. [In the event that an Applicant has previously applied for a Permit for an Eligible Building, is the record owner of such Eligible Building, received a determination from the Commission that such Building is a Historically Significant Building, is (or its contractor is) issued a Permit after any delay period imposed by the Commission, does not demolish (with the meaning of Section 2.4 hereof) such Building, and then conveys the property on which the Building resides, any future owner thereof [[shall re-apply for a Permit and] shall be subject to a Hearing to the extent such future owner desires to Demolish such Building[1]/***Alternative:*** shall not be subject to a Hearing or subsequent delay period [so long as no material change has occurred since such determination with respect to the criteria set forth in Section 3.6 as they relate to such Building or its surroundings.] Such future owner may act on the Permit without any requirement to reapply for such Permit and will not be subject to a Hearing.]

3.5. Notice of Hearing. The Commission shall hold a Hearing on an application for Demolition of an Eligible Building within twenty-one (21) days of receipt of the copy of the application unless the Commission and the Applicant shall jointly agree to extend the period. The Commission shall give public notice of the Hearing by publishing notice of the time, place and purpose of the Hearing in a local newspaper at least five (5) days before such Hearing. At least five (5) days before such Hearing, the Commission shall mail a copy of such notice to the Applicant, to the owners of property abutting the property which is the subject of the Hearing, and to other parties deemed by the Commission to be affected thereby.

3.6. Criteria for Determination of an Eligible Building being a Historically Significant Building. If at such Hearing the Commission determines that the Demolition of the Eligible Building would be detrimental to the character, historical or architectural heritage or resources of the

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[1] Note that if such future owner does not re-apply for a Permit but utilizes an existing Permit prior to expiration, then no re-application for a Permit would be needed and the Commission may not be aware of change in ownership. One solution is to terminate any Permit upon a transfer of the related premises and Building but that may be beyond our scope.

Town, such building shall be considered a "Historically Significant Building". The determination by the Commission that the Demolition of such Eligible Building would be detriment to the character, historical or architectural heritage or resources of the Town may include the following criteria:

(a) Historical Importance. Consideration of whether the Eligible Building is:

1. Associated with events that have made a significant contribution to the broad patterns of our history,

2. Associated with the lives of significant persons in our past,

3. Embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic value, or that represents a significant and distinguishable entity whose components may lack individual distinction, or

4. That have yielded or may be likely to yield, information important to history or prehistory.

(b) Architectural Importance. Consideration of whether the Eligible Building:

1. Portrays the environment of a group of people in an era of history characterized by a distinctive architectural style,

2. Embodies the distinguishing characteristics of an architectural type,

3. Is the work of an architect, master builder, or craftsman whose individual work has influenced the development of the Town, or

4. Contains elements of architectural design, detail, materials or craftsmanship, which represents a significant innovation; or

(c) Geographic importance. Consideration of whether the Eligible Building:

1. Is part of, or related to, a square, park, or other distinctive area, or

2. Represents an established and familiar visual feature of the neighborhood, district, street, context, Town center, or the community as a whole due to its unique location or its physical characteristics.

3.7. Determinations at Hearings.

(a) Not a Historically Significant Building. If at a Hearing the Commission determines that an Eligible Building is not a Historically Significant Building pursuant to Section 3.6 hereof, the Commission shall notify the building commissioner within ten (10) days of

such determination. Upon receipt of such notice (or, after the expiration of fifteen (15) days from the date of the Hearing, if the building commissioner has not received notification from the Commission of its determination) the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the Permit.

(b) Historically Significant Building. If at a Hearing the Commission determines that an Eligible Building is a Historically Significant Building pursuant to Section 3.6 hereof, the Commission shall notify the building commissioner within ten (10) days of such determination. Upon receipt of such notice, within ten (10) days of such Hearing, the Commission shall so advise the Applicant and the building commissioner and no Permit may be issued until twelve (12) months after the date of the application for a Permit is received by the Building Department except as set forth in Sections 3.9 and 3.10 below.

3.8. Alternatives to Demolition. At a Hearing or within ten (10) days of the determination at such Hearing that an Eligible Building is a Historically Significant Building, the Commission shall invite the owner of record thereof and any other persons deemed appropriate to participate in an investigation of alternatives to Demolition including but not limited to: incorporation of the Building into the future development of the site; adaptive re-use of the Building; utilization of financial incentives to rehabilitate the Building; rezoning; or seeking a new owner willing to purchase and preserve, restore or rehabilitate the Building.

3.9. Unconditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.7, the building commissioner may issue a Permit for a Historically Significant Building at any time after receipt of written advice from the Commission to the effect that either:

(a) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building,

(b) The Commission is satisfied that for at least twelve (12) months the owner has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore such Building, and that such efforts have been unsuccessful, or

(c) The Commission is satisfied that it is in the best interest of the community, as assessed by the Commission to allow the Demolition of such Building.

3.10. Conditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.7, the building commissioner may issue a Permit subject to conditions agreed to by the Commission and the record owner of a Historically Significant Building at any time after receipt of written advice from the Commission and such owner to the effect that the Commission is satisfied that Demolition of the Historically Significant Building subject to the conditions specified in such writing is the outcome most likely to secure the intent of this by-law and that the Applicant agrees to abide by the conditions specified.

3.11. Appeals. An appeal from a determination by the historical Commission that the subject of a Permit application is a Historically Significant Building may be taken to the board of appeals.

3.12. Communications. Unless another form of communication is expressly specified herein, all written communications under this Chapter 14 shall be made by the U.S. Postal Service, electronic mail, facsimile transmission (with confirmation of receipt in writing by other means) or overnight delivery service.

3.13. Record of Eligible Buildings. A listing of all Eligible Buildings [as defined in clauses (a) and (b) of the definition thereof] shall be kept by the Commission and shall be available to the public.[2]

Section 4. ENFORCEMENT AND REMEDIES

4.1. Enforcement by Building Commissioner. The building commissioner is authorized to institute any and all proceedings in law or equity as the building commissioner deems necessary and appropriate to obtain compliance with the requirement of this by-law, or to prevent a violation thereof.

4.2. Demolitions In Violation of By-Laws. No building permit shall be issued with respect to any premises upon which an Eligible Building has been voluntarily demolished in violation of this by-law for a period of two (2) years after the date of the completion of such Demolition. As used herein "premises" includes the parcel of land upon which the demolished Eligible Building was located. The Demolition of an Eligible Building pursuant to a Permit issued on the basis of incorrect information shall be considered to be voluntary Demolition in violation of this by-law.

4.3. Vacant Historically Significant Buildings. Upon a determination by the Commission that a building is a Historically Significant Building, the owner shall be responsible for properly securing such Building, if vacant, to the satisfaction of the building commissioner. Should the owner fail so to secure such Building, the loss of such building through fire or other cause shall be considered voluntary Demolition for the purposes of section 4.2.

4.4. [Regulations, Fees, Delegation. The Commission may adopt such rules and regulations as are necessary to administer the terms of this by-law. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this by-law. The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a Commission staff member or consultant.]

Section 5. SEVERABILITY

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

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[2] Discuss ability to keep records of all Eligible Buildings.

Section 6. EXISTING EXCLUSIONS

Notwithstanding anything contained herein to the contrary, property owners of Eligible Buildings protected pursuant to the 2001 amendment to this by-law who have previously notified the Commission of their request to be excluded from the protections hereof in accordance with such amendment, shall continue to be excluded from such protective status and such election to be removed from the protective status of this by-law shall "run with the land."

Section 7. Application for Preliminary Determination

If a property owner with an Eligible Building located thereon wishes at any time to have a [preliminary/pre-emptive] determination of Historical Significance of such Eligible Building, such owner may request a review by the Commission as to the Historic Significance of such Building [through the Town Planner]. Within sixty (60) days following such request, the Commission shall make a determination at a regularly scheduled meeting of the Commission as to whether such Building is a Historically Significant Building in accordance with Section 3.6 hereof. If the Commission determines such Building is not a Historically Significant Building, such determination will be in perpetuity unless there are modifications/additions to the architecture of such Building that is of historical significance, and/or such Building becomes associated with an event that is of historical merit, and/or a person or persons of historical merit becomes associated with such Building. However, if there is insufficient information available to the Commission to make such a determination and/or the Commission determines that such Building is a Historically Significant Building and such owner disagrees, such owner may, at its sole cost and expense, hire or request the Commission to hire an outside consultant to complete a Massachusetts Historical Commission Survey Form and forward to the Commission. Upon receipt of such Form, the Commission shall reassess its prior determination and advise such owner of any change to its prior determination. The fee for an initial determination and any reassessment will be $350 in the aggregate.

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