



Town of Winchester

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Board of Selectmen Meeting
Tuesday, November 1, 2016

BUSINESS

Docket Item G - 2: Article 3: Preservation of Historically Significant Buildings –
Historical Commission / Town Planner

Supporting Documents:

G - 2: Fall Town Meeting Warrant Article 3.

Action Required:

G - 2: Hear presentation and consider / vote a recommendation to
Town Meeting Members.

ARTICLE 3: To see if the Town will approve the amendment and restatement of Chapter 14 of the Code of By-Laws of the Town of Winchester, "Demolition of Historic Buildings," by deleting such Chapter in its current state in its entirety and substituting the following in its place:

CHAPTER 14

PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

Section 1. PURPOSE

This by-law is adopted to promote the preservation and protection of Historically Significant Buildings within the Town that reflect distinctive features of historical, architectural, archeological and culture significance to the Town and to limit the detrimental effect of Demolition on such features of the Town. Through this by-law, owners of Historically Significant Buildings are encouraged to consider alternatives to demolition that will preserve, rehabilitate and restore such buildings while residents of the Town are alerted to proposed and impending Demolitions.

Section 2. DEFINITIONS

As used in this chapter:

2.1. "Abutters" shall mean any owner of a Lot touching a Lot on which an Eligible Building is located and shall include owners of Lots directly opposite such Lot on any public or private street or way.

2.2. "Applicant" shall mean any person(s) or entity(ies) who files an application for a Permit to Demolish a Building. If the Applicant is not the owner of the Building, the owner must indicate on or with the application for a Permit its assent to the filing of the application.

2.3. "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 is Historically Significant, a garage, out-building or carriage house located on a Lot of an Eligible Building shall be considered a separate "Building" and indicated as such in the application for a Permit submitted to the Building Department.

2.4. "Business Day" shall mean any day other than a Saturday, Sunday or other day on which the government of The Commonwealth of Massachusetts is authorized or required by law to be closed for business.

2.5. "Commission" shall mean the Winchester Historical Commission, created by vote of Winchester Town Meeting pursuant to Massachusetts General Laws, Chapter 40, section 8D.

2.6. "Demolition" shall mean any act of (a) pulling down, tearing down, destroying, or razing a Building or substantially all of a Building, (b) moving a Building from its site or foundation from its current location, or (c) commencing the work of any of the foregoing.

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

- (a) which is listed individually on, or is a contributing Building within a district listed on, the National Register of Historic Places or State Register of Historic Places,
- (b) which is included in the Massachusetts Historical Commission's "Inventory of Historic and Archeological Assets of the Commonwealth", or
- (c) which was constructed during or before 1940.

For the purposes of clause (c) above, evidence that a Building was constructed during or before 1940 shall be determined from sources including Town building or tax assessment records, other historical records, or other reliable independent sources including information provided by the Applicant as is reasonably acceptable to the Commission.

2.8. "Hearing" shall mean a public hearing of the Commission held for the purposes of determining if an Eligible Building is a Historically Significant Building in accordance with Section 3.5 and the Demolition thereof should be delayed in accordance with Section 3.6.

2.9. "Historically Significant Building" shall mean an Eligible Building that the Commission determines meets the criteria set forth in Section 3.5.

2.10. "Lot" shall mean a parcel of land with definite boundaries ascertainable by recorded deed or plan.

2.11. "Permit" shall mean a permit issued by the Building Department authorizing the Demolition of a Building.

Section 3. PROCEDURES

3.1. Application for Permit. An Applicant seeking a Permit from the Building Department to Demolish a Building shall, in addition to or as part of such application form and information required by the Building Department, submit to the Building Department the following:

- (a) The address of the Building to be demolished;
- (b) The Applicant's name, address, telephone number and email address (if any), and if the application is not submitted by the Owner of the Building, the owner's information and consent to the application;
- (c) A brief description of the Building(s) to be demolished, together with information, if available to the Applicant, as to the date of construction of the Building (such as a copy of the original building permit application, tax assessment records or other historical records); the condition of the Building(s) and other information that the Applicant would like to submit to describe the reason for the Demolition; and
- (d) A photograph or photograph(s) of the Building.

At the time of the application, each Applicant will be provided with a copy of or reference to this bylaw describing the procedures for the Commission's review of the Permit application. Within three (3) Business Days after receipt of an application for a Permit, the Building Department shall transmit a copy of the application to the chairperson and vice-chairperson of the Commission and to the Town Planner for review in accordance with this bylaw.

3.2. Required Notification to Issue Permit. The Building Commissioner shall not issue a Permit for the Demolition of a Building unless the Building Commissioner has received a notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner under any one of items (a) through (d) in this Section 3.2, or the Building Commissioner has not received any notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner on or before thirty (30) Business Days after the date of the Permit application is transmitted by the Building Department under Section 3.1. Notifications to the Building Commissioner shall be that:

- (a) the Building is not an Eligible Building pursuant to Section 3.3(a), or
- (b) the Building is an Eligible Building and the Commission (or an Authorized Person) has determined it is not a Historically Significant Building pursuant to Section 3.3(b), or
- (c) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building but has not imposed a demolition delay pursuant to Sections 3.6(b), 3.8 or 3.9; or
- (d) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building and imposed a demolition delay pursuant to Section

- 4.6(b); and no Permit shall be issued until a further notification is given to the Building Commissioner reporting that the period of demolition delay imposed by the Commission for a Historically Significant Building has ended, whether at the end of the time imposed by the Commission or at such earlier date pursuant to Sections 3.8 or 3.9; or
- (e) the Applicant and the Commission have agreed to extend the time for the Commission's determination that an Eligible Building is a Historically Significant Building and/or whether to impose a demolition delay, and the period of such extension.

Nothing in this Section is intended to prevent the Building Commissioner from issuing a Permit to Demolish a Building for the reasons in Section 3.13.

3.3. Determinations of Eligible Buildings and those of No Historical Significance.

- (a) **Eligible Buildings.** The Commission chairperson, vice-chairperson, Town Planner or other Town employee designated by the Commission (such person being an "Authorized Person") within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1 shall (i) determine if the Building described in the application is an Eligible Building based on information submitted with the Permit application, any additional information submitted by the Applicant, review of Building Department and tax assessor's office records, other public records or historical data and the results of any prior review of the Building to determine if it was an Eligible Building, and (ii) notify the Applicant and the Building Department of such determination. If the Authorized Person, within such ten (10) Business Day period is unable to make a determination that a Building is an Eligible Building based on available records, the Permit application shall be referred to the Commission for a determination at a Hearing to establish whether the Building is an Eligible Building. The Applicant is encouraged to present any information with the Permit application that the Applicant believes will assist the Authorized Person or Commission in making its determination. The Hearing will be held not later than twenty (20) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.
- (b) **Preliminary Determination of No Historical Significance.** Upon a determination that the Building is an Eligible Building, the Authorized Person may further determine based on the information submitted with the Permit application, any additional information submitted by the Applicant, review of building department and assessor's office records and other public records or historical data, visual inspection, familiarity with the history or neighborhood, or prior review of the Eligible Building by the Commission and determination of no Historical Significance, that an Eligible Building is presumptively not a Historically Significant Building and not subject to the delay provisions of this bylaw and shall notify the Applicant and the Building Department of its determination, such notice to be provided within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.

3.4. Determination of Historical Significance by Commission; Public Hearing. Subject to any preliminary determination under Section 3.3(b), the Commission shall determine at a Hearing and based on the Criteria set forth in Section 3.5 whether an Eligible Building proposed for Demolition is a Historically Significant Building. The Hearing shall be held within twenty (20) Business Days after the date the Permit Application is transmitted by the Building Department pursuant to Section 3.1, unless the

Commission and the Applicant jointly agree to extend the time for the Hearing. The Commission shall give public notice of the Hearing not less than five (5) days prior to the date of the Hearing by posting notice at Town Hall and by mailing notice of the date, time, location and subject matter of the Hearing to the Applicant, Abutters and to other persons deemed by the Commission to be affected.

3.5. 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 American history, architecture, archeology, engineering and culture of the Town, such building shall be considered a "Historically Significant Building". An Eligible Building's Historical Significance shall be evidenced by demonstrating that the Eligible Building has a quality of significance in American history, architecture, archeology, engineering and/or culture and which possesses integrity of location, design, setting, materials, workmanship, feeling and/or association, and:

- (a) is associated with events that have made a significant contribution to the broad patterns of our history,
- (b) is associated with the lives of significant persons in our past,
- (c) embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction, or
- (d) has yielded or may be likely to yield, information important to history or prehistory.¹

3.6. Commission's Determinations at Hearing: Demolition Delay.

(a) Not a Historically Significant Building. If at a Hearing (i) the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is not a Historically Significant Building pursuant to Section 3.5 or (ii) there is a tie vote (in which case the Commission shall be deemed to have determined that the Eligible Building is not a Historically Significant Building), the Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.

(b) Historically Significant Building. If at a Hearing the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is a Historically Significant Building pursuant to Section 3.5, the Commission shall further determine if it will require a twelve (12) month delay in the Demolition of the Historically Significant Building. The Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.

3.7. Alternatives to Demolition. At any time during the Hearing, prior to the issuance of the Commission's determinations, or during the period of Demolition delay, the Commission may invite the Applicant, and any other persons deemed affected by the proposed Demolition, to participate in a discussion of alternatives to Demolition including but not limited to: incorporation of the Building into

¹ The criteria for determination of Historical Significance set forth in clauses (a) –(d) are the Criteria for Evaluation found in the Code of Fed.Regs., Title 36, Part 60 (<https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf>)

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 Historically Significant Building.

3.8. Unconditional Early Issuance of Permit. The Commission, after its determinations of Historical Significance and imposition of Demolition delay, may reduce or eliminate the period of delay and/or may impose conditions on the Demolition and shall notify the Building Commissioner of its revised determination, if:

- (a) the Commission is satisfied that there is no reasonable likelihood that either the Applicant 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 (which time period may precede the date of the Permit application) the Applicant or owner of the Historically Significant Building 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 the Historically Significant Building.

3.9. Conditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.6, the Building Commissioner may issue a Permit subject to conditions agreed to by the Commission and the Applicant and the owner (if the Applicant is not the owner) of a Historically Significant Building at any time after receipt of written agreement from the Commission and the Applicant and the owner stating that the Commission is satisfied that Demolition of the Historically Significant Building, subject to the conditions specified in such agreement, is the outcome most likely to secure the intent of this by-law and that the Applicant and owner (if the Applicant is not the owner) agree to abide by the conditions specified.

3.10. Appeals. An appeal may be taken to the board of appeals by an Applicant or owner, as the case may be, regarding a determination by the Commission under Sections 3.6(b) or Section 5 that the related Eligible Building is a Historically Significant Building. Such appeal must be made within twenty (20) Business Days after the date of such determination by the Commission.

3.11. Communications. All written notifications under this Chapter 14 shall be made by hand delivery, the U.S. Postal Service, electronic mail, facsimile transmission (with confirmation of receipt in writing by other means) or overnight delivery service.

3.12. Historically Significant Buildings Subject to Prior Permit Applications.

- (a) No Change in Ownership. In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building was determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by the same Applicant (or owner if the initial Application was not submitted by the owner), then such Building shall not be subject to a Hearing nor any further period of delay so long as (1) the ownership of the Building has not changed since the date of the Commission's initial

determination, and (2) there is no new information about the Building's significance in history, architecture, archeology, engineering or culture in accordance with the Criteria set forth in Section 3.5 that was not known to the Commission at the time of the initial determination.

- (b) **Effect of Conveyances.** In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building is determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by a different Applicant or owner, the Permit application shall be subject to review by the Commission in accordance with this bylaw in the same fashion as any other Permit application.

3.13. **Overriding Safety Issue or Emergency Conditions.** Nothing in this by-law shall restrict the authority of Building Commissioner to order the Building owner, or the Town, to demolish a building at any time if the Building Commissioner determines that the condition of the Building or part of it presents an imminent and substantial danger to the public health or safety. The Building Commissioner shall endeavor to provide the Chairperson and Vice-Chairperson of the Commission and the Town Planner with prior written notice of its issuance of a Permit in connection with the foregoing.

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 of it.

4.2. **Demolitions In Violation of By-Laws.** No building permit shall be issued with respect to any Lot upon which an Eligible Building has been intentionally demolished in violation of this by-law for a period of two (2) years after the date of the completion of such Demolition. The Demolition of an Eligible Building pursuant to a Permit issued on the basis of incorrect information shall be considered to be an intentional Demolition in violation of this by-law.

4.3. **Vacant Historically Significant Buildings.** The owner of a Building that the Commission has found to be a Historically Significant Building shall be responsible for properly securing such Building, if vacant (excluding temporary vacancies), to the satisfaction of the Building Commissioner. Should the owner fail to secure the Building, the loss of the Building (e.g., fire) may be considered an intentional Demolition for the purposes of Section 4.2.

4.4. **Regulations, Fees.** 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.

Section 5. Application for Pre-emptive Determination of Historical Significance

An owner of a Building may at any time request a review by the Commission as to the Historical Significance of such Building through submission to the Town Planner. Within ninety (90) days following receipt of such request, the Commission shall conduct such review at a regularly scheduled meeting of the Commission and notify Abutters. At the meeting and based upon information available to the Commission including information provided by the owner, the Commission shall make a

determination that (i) such Building is a Historically Significant Building, (ii) such Building is not a Historically Significant Building, or (iii) there does not exist sufficient information to make a determination as to the Historical Significance of such Building.

If the Commission determines such Building is not a Historically Significant Building, the determination will run with the Building, unless, following the determination and upon the later submission of an application for a Permit, it is found that the Building is associated with previously unknown significance in American history, architecture, archeology, engineering and culture as set forth in Section 3.5.

If the Commission determines there is insufficient information available in the reasonable opinion of the Commission to make such a determination or the Commission determines that such Building is a Historically Significant Building and such owner disagrees, such owner may, in either case and at its sole cost and expense, hire or request the Commission to hire a consultant, which consultant is mutually acceptable to the Commission and the Applicant, to complete a Massachusetts Historical Commission Survey Form if no up-to-date Form exists and provide additional relevant information to the Commission as such owner may elect.

Upon receipt of such Form and additional information, as applicable, at a regularly scheduled meeting of the Commission, with notice to Abutters, the Commission shall reassess its prior determination and advise the owner of any change to its prior determination.

Section 6. EXISTING EXCLUSIONS

Notwithstanding anything contained in this by-law to the contrary, property owners of Eligible Buildings who elected to be excluded from the application of this by law in accordance with a 2001 amendment to this by-law² shall continue to be excluded and the exclusion shall apply to their respective successors and assigns provided, however, the current property owners of such Eligible Buildings may rescind such election at any time by notification in writing to the Commission.

Section 7. 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.

(Historical Commission)

² Section 6 of the 2001 amendment to this by law permitted property owners of Eligible Buildings a one-time "opt out" from the protections afforded by these by laws.