



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

**Meeting Minutes**

**Date/Room:** August 29, 2016  
Winchester Town Hall (Waterfield Room)

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

**Members Absent:** John Clemson

A quorum being in attendance, the hearing was called to order at 7:42.

**Winchester By-Law, Chapter 14 Discussion**

The Commission considered the latest iteration (dated August 26) of the By-Law. There was discussion of Janet Boswell’s proposed revision of the Purpose section of the By-Law, and the Commission crafted the section to be shorter and more succinct. The Commission also made additional minor word and phrase changes to the proposed By-Law, principally for consistency throughout. (Updated revision attached.)

*Motion* That the Historical Commission approve the Chapter 14 By-Law language, as discussed, for release to Mass Historical Commission and Town Counsel, and to made available online to the general public, for review and feedback. The motion was made and seconded. The motion was approved unanimously.

6 in Favor      0 Opposed      VOTED  
Absent: Clemson

**Meeting Minutes**

*Motion* That the Historical Commission approve the minutes of the August 22 meeting, as corrected. The motion was made and seconded. The motion was approved unanimously.

6 in Favor      0 Opposed      VOTED  
Absent: Clemson

**Next Meeting**

The next scheduled meeting will be held on Monday, September 12, 2016 in the Mystic Valley room at 7:30 P.M.

It was moved and seconded to adjourn at 9:24 P.M.      VOTED

Respectfully submitted,  
Jack LeMenager, Recording Secretary

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Heather von Mering, Chair      Date

## CHAPTER 14

### PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

#### Section 1. PURPOSE

This by-law is adopted to preserve and protect 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 preserve, rehabilitate and restore such buildings and 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 another Lot and shall include owners of Lots directly opposite on any public or private street way.

2.2. “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.

2.3. “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 Law, c. 40A, sec. 8D.

2.6. “Demolition” shall mean any act of (a) pulling down, tearing down, destroying, removing, or razing a Building or substantially all of a Building, (b) moving a Building from its site or foundation from its current location or changing its footprint, 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 recorded on, or is a contributing Building within an area listed on, the National Register of Historic Places or State Registers 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, 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 not so evidenced to the Commission, it shall be assumed that such Building is older than 1940 for the purposes of this by-law.

2.8. "Hearing" shall mean a public hearing of the Commission at which the Commission determines if an Eligible Building is a Historically Significant Building in accordance with Section 3.5 hereof and the Demolition thereof should be delayed in accordance with Section 3.6 hereof.

2.9. "Historically Significant Building" shall mean an Eligible Building that meets the criteria set forth in Section 3.5 of this by-law.

2.10. "Lot" shall mean a legally subdivided parcel of land ascertainable by recording deed or plat.

2.11. "Permit" shall mean a permit issued for the Demolition of a Building.

### **Section 3. PROCEDURES**

3.1. Application for Permit. An application to the Town building department for a Permit shall be made, or cosigned by, the owner of record listed in the registry of deeds or land court, as applicable, 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 Permit 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, if available, tax assessment records and/or other indicia evidencing the building's date of construction;
- (d) A brief description of the building(s) which are the subject of such application;
- (e) Identification of any existing safety issues;
- (f) A photograph or photograph(s) of the Eligible Building; and
- (g) Acknowledgment by the Applicant of receipt of the by-laws.

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 and to the Town Planner. No Permit shall be issued (a) until receipt by such commissioner of written notice from the Commission pursuant to Sections 3.3(c), 3.6(a), 3.8 or 3.9 below, (b) until the fifteen (15) Business Days have passed under Section 3.3(c), or (c) except following a delay in accordance with Section 3.6(b).

3.3. Determination of Eligible Buildings.

- (a) **Eligible Buildings.** The chairperson, vice-chairperson or other person authorized by the Commission including without limitation a Town employee or consultant (such person, an “Authorized Person”), shall determine whether the Building that is the subject of the Permit application is an Eligible Building. If inadequate information exists in the Permit application, such Authorized Person may deem the Building referenced in the application to be an Eligible Building or refer the Building to the Commission for a determination as to whether it is an Eligible Building and therefore a Hearing shall be convened by the Commission.
- (b) **Preliminary Determination of Historical Significance.** Upon a determination that the Building is an Eligible Building, the Authorized Person may determine based on the information set forth in such application and otherwise available to such Authorized Person (e.g., visual inspection, familiarity with the history or neighborhood, information provided by sources other than the Applicant, etc.) that such Eligible Building is presumptively not a Historically Significant Building and therefore no Hearing needs to be convened by the Commission.
- (c) **Notice to Building Commissioner of no Hearing; Failure to Notify Building Commissioner.** If an Authorized Person determines that the Building is not an Eligible Building or that no Hearing needs to be convened under Sections 3.3(a) or (b), respectively, the Authorized Person shall notify the building commissioner in writing within ten (10) Business Days of receipt of the copy of the application that this by-law does not apply to the Building and the building commissioner shall not be prohibited from issuing a Permit as a result of this by-law. After the expiration of fifteen (15) Business Days from the date the Authorized Person received the copy of the application, if the building commissioner has not received notification that the Building is an Eligible Building subject to a Hearing, the building commissioner shall not be prohibited from issuing a Permit as a result of this by-law.
- (d) **Notice to Building Commissioner of a Hearing.** If the Building is determined or deemed to be an Eligible Building subject to a Hearing as determined under Sections 3.3(a) and (b), the Authorized Person shall notify the building commissioner in writing within ten (10) Business 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 unless and until a Hearing is held as set forth herein.

- (e) **Overriding Safety Issue or Emergency Conditions.** 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 exist which merit Demolition.

3.4. **Notice of Hearing.** Based on the determination made pursuant to Section 3.3(a) but subject to Section 3.3(b), the Commission shall hold a Hearing on an application for Demolition of an Eligible Building within twenty (20) Business 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 Eligible Building which is the subject of the Hearing, and to other parties deemed by the Commission to be affected thereby.

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 such Eligible Building has a quality of significance in American history, architecture, archeology, engineering and culture and which possesses integrity of location, design, setting, materials, workmanship, feeling and 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.<sup>1</sup>

3.6. **Determinations at Hearings.**

- (a) **Not a Historically Significant Building.** If at a Hearing (i) the Commission determines by a majority vote that an Eligible Building is not a Historically Significant Building pursuant to Section 3.5 hereof or (ii) there is a tie vote (in which case the Commission shall be deemed to have determined that such Eligible Building is not a Historically Significant Building), the Commission shall notify the building

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<sup>1</sup> The criteria for determination of Historical Significance set forth herein are the Criteria for Evaluation found in the Code of Federal Regulations, Title 36, Part 60 (<https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf>)

commissioner within ten (10) days of such determination or deemed 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 shall not be prohibited from issuing a Permit, subject to the requirements of the State Building Code, other applicable law and the by-laws of the Town.

(b) Historically Significant Building. If at a Hearing the Commission determines by a majority vote that an Eligible Building is a Historically Significant Building pursuant to Section 3.5 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 the building commissioner shall be prohibited from issuing a Permit 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 3.8 and 3.9 below.

3.7. 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 may invite the owner of record thereof and may invite 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.

3.8. Unconditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.6, 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.

3.9. 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 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.

3.10. Appeals. An appeal may be taken to the board of appeals with respect to a determination by the Commission that the subject of a Permit application is a Historically Significant Building pursuant to Sections 3.6(b) or 5.

3.11. 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.

3.12. Historically Significant Buildings Subject to Prior Permit Applications.

- (a) No Change in Ownership. In the event that an application for a Permit has previously been submitted with respect to an Eligible Building, such Building is determined by the Commission to be a Historically Significant Building, such Building is not Demolished and then an application for a Permit is submitted with respect to such Building after any delay period has been imposed by the Commission, then such Building shall not be subject to a Hearing so long as (i) the ownership of such Building has not changed since the date of such determination by the Commission, and (ii) following such determination, it has not been found that such Building is associated with previously unknown significance in history, architecture, archeology, engineering or culture as set forth in Section 3.5.
- (b) Effect of Conveyances. In the event that an application has previously been submitted for a Permit for an Eligible Building, such Building is determined by the Commission to be a Historically Significant Building, such Building is not Demolished, the Lot on which the Building resides after or during any delay period imposed by the Commission is conveyed, then any future owner of such Building who desires to Demolish such Building shall re-apply for a Permit and shall be subject to these by-laws including potentially a Hearing.

#### **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 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. 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 to so secure such Building, the loss of such Building (*e.g.* fire) shall 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 Preliminary Determination**

An owner of a Building may at any time request a review by the Commission as to the Historic Significance of such Building. Within sixty (60) days following receipt of such request and upon notice to the owners of property abutting such Building, the Commission shall make a determination at a regularly scheduled meeting of the Commission as to whether such Building is a Historically Significant Building. If the Commission determines such Building is not a Historically Significant Building, such determination will be in perpetuity, so long as such property owner continues to own the Building, unless, following such determination, it is found that such Building is associated with previously unknown significance in American history, architecture, archeology, engineering and culture as set forth in Section 3.5.

However, if 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, 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 and forward it to the Commission. Upon receipt of such survey form, the Commission shall reassess its prior determination and advise such owner of any change to its prior determination. A fee for an initial determination and any reassessment will be assessed by the Commission and payable by such owner (to cover the cost of the survey form).

#### **Section 6. EXISTING EXCLUSIONS**

Notwithstanding anything contained herein 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 hereto,<sup>2</sup> 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 thereof 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.

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<sup>2</sup> 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.

### **CRITERIA FOR EVALUATION<sup>3</sup>**

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

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<sup>3</sup> The Criteria for Evaluation are found in the *Code of Federal Regulations, Title 36, Part 60*, and are reprinted here in full.