



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

Meeting Minutes

Date/Room: September 12, 2016
Winchester Town Hall (Mystic Valley Room)

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

Also Present: Mary Feeney, Bowditch & Dewey – Special Counsel
Qian Huang - 34 Farrow St
Feizhi Li – 34 Farrow St
Lisa Heller – 61 Sargent Rd
Kathryn Hughes - 140 Cambridge St
Diane Curry – 2 Blossom Hill Rd
John Natale – 45 Chester St

A quorum being in attendance, the hearing was called to order at 7:35.

Demolition Delay Public Hearing 34 Farrow Street

Review of the application to demolish the single family dwelling located at 34 Farrow Street.

The property is located in an area of Winchester that is considered historically significant by the State of Massachusetts. John Clemson reviewed the history of the property. The dwelling was built circa 1947 and does not have any historical or architectural significance.

Motion That the Historical Commission finds that the single family dwelling located at 34 Farrow Street, Winchester, MA is not a preferably preserved building and a demolition permit can be issued for this property. The motion was made by Janet Boswell and seconded. The motion was approved unanimously.

7 in Favor 0 Opposed VOTED

Demolition permit granted for the single family dwelling located at 34 Farrow Street, Winchester, MA. Heather von Mering closed the public hearing at 7:56PM.

Special Legal Counsel Chapter 14 By-Law review

Mary Feeney from Bowditch & Dewey, LLC has been retained by the Town to assist the Historical Commission with the new Chapter 14 By-Law that is due to go before Fall Town Meeting 2016. Discussion occurred in regards to the clarification and comments provided by Ms. Finney (see attachment).

Motion That the Historical Commission designate Heather von Mering (chair) and Bruce Hickey (vice-chair) as points of contact to Mary Fenney and are authorized to make revisions on behalf of the entire Historical Commission in regards to the Chapter 14 By-Law language. The motion was made and seconded. The motion was approved unanimously.

7 in Favor 0 Opposed VOTED

Meeting Minutes

Motion That the Historical Commission approve the minutes of the August 29, 2016 meeting, as presented. The motion was made and seconded. The motion was approved unanimously.

6 in Favor 0 Opposed VOTED

Absent: Michelle McCarthy

Wright-Locke Conservancy Board Appointment

Charlene Band is seeking reappointment as an appointed representative of the Winchester Historical Commission to the Wright- Locke Conservancy Board.

Motion That the Historical Commission approve the reappointment of Charlene Band as the appointed representative of the Winchester Historical Commission to the Wright- Locke Conservancy Board. The motion was made and seconded. The motion was approved unanimously.

6 in Favor 0 Opposed VOTED

Absent: Michelle McCarthy

Chapter 14 Revision FAQs

Janet Boswell and Jack LeMenager presented the HC with the most recent update of the FAQs.

Motion That the Historical Commission approve and accept the FAQ document as amended at table. The motion was made and seconded. The motion was approved unanimously.

6 in Favor 0 Opposed VOTED

Absent: Michelle McCarthy

Mass Historical Commission Review of By-Law

Heather von Mering will submit the By-law draft to Mass Historical once it is edited by Mary Feeney, Bowditch & Dewey – Special Counsel. This draft should be ready by Monday, September 19th.

Next Meeting

The public information sessions will be held on Monday, September 19th and Tuesday, September 20th in the Winchester Room beginning at 7:30pm. The Committee will have a scheduled meeting on Tuesday, September 20th at 8:30pm after the public information session has concluded.

It was moved and seconded to adjourn at 10:06 PM. VOTED

Respectfully submitted,
Lynn Stevens, Recording Secretary

Heather von Mering, Chair Date

From: "Feeney, Mary T."

Date: September 11, 2016 at 11:28:54 PM EDT

To: 'Heather von Mering'

Subject: Preliminary Questions on Historic Preservation Bylaw RE: FAQs

Hi Heather – I know we will have a complete discussion tomorrow, however I wanted to share these questions and comments with you in advance, to facilitate, or streamline that discussion. Some of these comments may seem overly detailed, however I am looking for where the bylaw may have unintended outcomes.

I am copying Wade on this email if that is the correct protocol for my communications with you.

1. What is covered by “Demolition”? I understand pulling down, tearing down, razing; but what is “removing”? Would that cover removal followed by replacement of a roof, of windows, of all of the siding, or other work to remove and replace deteriorated building conditions? What is meant by changing a building’s footprint? It is in the same clause as moving a building from its foundation; however I view a footprint as the outline of the exterior walls on the ground. Does this mean that if an entryway or patio is enclosed, or an addition to an existing building is added that changes the footprint, it will be subject to the bylaw? Perhaps a very large addition that retained the original core structure would be subject even though very little “demolition” occurred, other than the original exterior wall.
2. Is the Application for a Permit (in Section 3.1) a separate filing from the ordinary permit applications submitted to the building department under the building code?
3. Does the Bylaw intend to require that any permit for “Demolition” on any property in the Town submit a “Permit” under the bylaw? Permit means a permit to demolish any building. The definition of “Applicant” refers to a Permit application for an “Eligible” Property (you meant Building), but it is up to a third party to determine if a building is Eligible (by being listed, in a listed area or built before 1941). Also, the procedure for filing an application in Section 3.1 requires submission of information to show when a building was built and a photo of the “Eligible Building” – is this required to demolish a more recently constructed building? The issue is who will be the gatekeeper for all demolition permits of any type. Section 3.2 states that the building commissioner will forward all applications to the chair and vice-chair of the HC and to the Town Planner, and the process determining if a building is Eligible in Section 3.3. I think that means all demolition applications are screened.
4. Section 3.3(a) allows a “consultant” to determine if a Building is Eligible. I recommend that this determination should be made by the Historic Commission or its designee, such as a Town employee designated by the Commission, in accordance with the Commission’s powers and duties. An outside consultant could be used to screen applications, however the reports of eligibility must have some level of review and acceptance by the Commission or its designee, and be made part of the public record.
5. Has the Commission considered an interim step in Section 3.3 to request additional information from an applicant before deeming a Building to be an Eligible Building and putting it to a

hearing? Representatives from the Town and Commission may have more resources to determine when a building was constructed.

6. As the determination of Historical Significance is made based on the detailed Criteria in Section 3.5, the Commission, acting as a body, may need to make the determination that the Criteria do not apply (including the preliminary determination of Section 3.3 (b), unless that determination can be delegated to a Town employee, such as the Town Planner. I understand the Commission wishes to streamline the process, however the process must always be predictable for all applicants. For discussion.
7. Are the time periods for review, notification, notice of hearing, and hearing, sufficient? The existing bylaw contains similar timeframes, however they seem tight, especially if there is a holiday in the process. Can some flexibility be worked in? (15 Business days after application is provided to the Commission to notify the building department if the bylaw applies, 20 Business days after application is provided to the Commission to hold a hearing, notice to be published and mailed 5 days (not business days) before the hearing. I did not see a time frame within which the building commissioner must provide the application to the Commission. These time periods can be made consistent and flexible. The MHC Model bylaw does not tie completion of actions to the date of application.
8. What is the required vote of the Commission to determine Historical Significance? Bylaw says majority vote – does that always mean at least 4 votes if 7 members are in office – does the Commission have alternates? Or is there a quorum of less than 7 to convene a meeting and the vote is a majority of those present? I checked G.L. c.40, Section 8D and did not see any guidance on voting. Does the Commission have bylaws that might address this? If not, the new bylaw should have more clarity.
9. Why does the bylaw limit the benefits of a determination, including a “preliminary determination” to a single owner? It is the building that is being evaluated? What if title to a building changes within a family, or for tax purposes? (I think the issues related to ownership and limitation of a determination to a single owner are significant for discussion.)
10. If a property is located within an Historic District, do the bylaw provisions act independently of any Historic District Commission reviews for alterations? This bylaw can provide that if there is any conflict with regulations of an Historic District, you will want the particular criteria for the District to prevail. See comments in the MHC guidance on pages 8 – 9 to be applied for any Historic District provisions.

Mary T. Feeney

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Bowditch & Dewey

Frequently Asked Questions

How does this proposal differ from Winchester's current By-Law?

Consistent with the Winchester Historical Commission's charge to preserve, protect, and develop the town's historical assets for future generations, these modifications to Chapter 14 of the Town's Code of By-Laws would enhance the town's ability to accurately identify and effectively protect truly historic properties, while expediting the permitting process for owners of buildings that do not warrant such protection. They also address some of the concerns raised by the Massachusetts Historical Commission (MHC) about elements of the current By-Law.

Specifically, these amendments would:

- Replace a list-based approach for identifying historically significant buildings with a process that employs the criteria for historical significance established by the U.S. Department of Interior's National Standards to aid the Commission in determining which properties the town should endeavor to preserve;
- Increase the transparency of the demolition permitting process by providing abutters and other appropriate stakeholders with notice of demolition permit applications and opportunities to provide the Commission with information that may have an impact on its deliberations;
- Create a mechanism for property owners to obtain a preliminary determination of historical significance without having to apply for a demolition permit, and a revenue stream to perform the survey work needed to make that determination;
- Codify the status of owners of historically significant properties who previously "opted out" of the By-Law's protections upon property transfer; and
- Give the By-Law a title that more accurately reflects its intent, and make its language more readable and clear. Since its initial adoption by 1995 Spring Town Meeting, Chapter 14 has been amended four times, incorporating numerous changes. As a result, the interpretation and application of the By-Law can be confusing.

Why change the By-Law now?

The existing By-Law has successfully encouraged many owners to restore and adaptively re-use historic properties rather than demolish them. However, using a list-based approach to identify historical assets without the resources to compile an accurate inventory has inevitably resulted in the loss of some irreplaceable historically significant properties.

The loss of an individual property can significantly impact Winchester's quality of life, property values, and neighborhoods. In recent years, demolitions have increased as developers began targeting the town due to our relatively lax protection of historical properties. The Commission has heard widespread concern about the loss of historic buildings and the fact that developers are replacing them with houses that are out of scale and/or disharmonious with the surrounding neighborhood. Besides making our neighborhoods less desirable by diminishing their historic character, replacing a modest house with one

or more larger ones strains the town's infrastructure (public safety, sanitation, transportation, and education) and reduces the affordability and variety of our housing stock.

If my house was built on or before 1940, does that mean I can't demolish it?

No. These revisions only impact houses that meet rigorous criteria for historical significance established by the U.S. Department of the Interior's National Park Service. The demolition of historically significant properties may only be delayed – not prevented. Nothing can save an important historical asset if the owner has waited out the 12-month delay and is determined to demolish it.

It's my property. Why can't I do whatever I want to with it?

You can, but a landmark 1978 Supreme Court decision began:

*"Over the past 50 years, all 50 states and over 500 hundred municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance. These nationwide legislative efforts have been precipitated by two concerns. The first is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all. Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today."*¹

As members of a community, we have a responsibility to one another to: provide students with quality educations, promote public safety, maintain our infrastructure, and protect and preserve aspects of the town that define and shape it. As a community of property owners we must be individually and collectively committed to preserving the value and heritage that our properties lend one another and the town as a whole.

What makes a property important enough for the town to delay its demolition?

An Eligible Building may be designated Historically Significant if: 1) there is evidence that it played an important role in American history, architecture, archeology, engineering and culture; and 2) it possesses integrity of location, design, setting, materials, workmanship, feeling, and association.²

What is the principal change under this proposal?

Owners of properties built during or before 1940 would not be able to demolish them without prior evaluation of their historical significance. Within the timeframes required by the By-Law's procedures, the Commission would conduct the necessary research about the property to determine whether it should be deemed historically significant. Using the National standards as its strict guide, the

¹Penn Central Transportation Company v. City of New York. 438 U.S. 104, 98 S. Ct 2646 (1978), 107-108.

² 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>)

Commission will make its determination in an open public hearing where both the applicants and affected abutters are heard.

If a property is deemed historically significant, the Commission may delay issuance of a demolition permit for **up to** 12 months. As is currently the case, during that period the owner will be encouraged to work with the Commission to develop a plan with fewer adverse consequences for the town (e.g., preservation and renovation, sale to a buyer willing to undertake preservation and renovation, or replacement with a structure in character with its surroundings). As always, if an owner develops a plan that the Commission considers satisfactory, it may remove the delay at any time.

Will being subject to the By-Law reduce the value of my property?

No. A recent, comprehensive literature review concluded that the economic evidence “points to a neutral or value-enhancing effect from historic designation.”³ In fact, The National Association of Realtors’ website includes a “how to” section on getting your house and/or neighborhood designated as historical. They note that, “Even if your home’s price doesn’t rise, it’s less likely to fall... because historic designations help ensure that the aspects that make the area attractive to home buyers will be protected over time by explicit design limits on such things as demolitions...”^{4,5}

Why did you select 1940?

The Massachusetts Historical Commission and the U.S. Department of Interior’s National Standards all note that the baseline for defining historical significance starts at 50 years. When the Commission reviewed the Town of Winchester’s history of development and its architectural contributions at the State and National level, a less demanding date seemed more appropriate for the Town of Winchester.

Furthermore, the beginning of World War II marks an historic break in terms of architectural design, building practices and residential development planning. Many of the homes that predate World War II exemplify rare architecture details and craftsmanship that are unique to Winchester. In addition, before the war, residential development was characterized by smaller scale, denser development patterns and more conservative design. In Winchester, neighborhoods constructed prior to the war exhibit a cohesive and harmonious character that can no longer be reproduced through new construction. Although this is also generally true of post-World War II residential development, the scale and aesthetic of later periods, with some important exceptions, has generally not acquired historical significance through a longer presence in the built landscape and the development of the cultural patina that older neighborhoods possess.

What if my house is in a dangerous condition and restoration is not feasible?

The revised By-Law permits the Commission to determine that it is in the best interest of community safety to allow demolition of a historically significant building. It also contains penalties for so-called

³Retrieved from <https://www.arkansaspreservation.com/LiteratureRetrieve.aspx?ID=129493>

⁴ Retrieved from <https://www.houselogic.com>

⁵ Retrieved from <https://www.tempe.gov/home/showdocument?id=5367>

“demolition by neglect” (where the property is allowed to deteriorate over time and become uninhabitable) and for intentional demolition in violation of the By-Law.

If I chose not to protect my historically significant property in the past, will that change because of these amendments?

No. The one-time "opt-out" created by 2001 By-Law amendments still stands, because the designation runs with the land. However, at any time you can choose to protect your home going forward by submitting a written request to that effect to the Historical Commission (c/o Town Hall, 71 Mt. Vernon St.)

Isn't my home automatically protected if it is listed on the National Register of Historical Places?

No. Unfortunately, inclusion on the National Register is only a formal recognition of the historical merits of your property. Many of the benefits of inclusion on the National Register are tax incentives for *income-producing* historical properties (including those which generate rental income) and grants for non-profit organizations.⁶

If my application for a permit to demolish my historically significant property is delayed for 12 months but I do not demolish it, will the next owner have to go through the permit process all over again if they wish to demolish it?

Yes. Under the terms of this By-Law, rights conveyed to an owner when the Building Department issues a demolition permit run with the owner, not with the land. There is no requirement that an owner conducts the demolition within a timeframe certain, but a new owner would have to reapply.

⁶ Retrieved from <https://www.nps.gov/nr/regulations.htm%20>