

Town of Winchester

CODE OF BY-LAWS



Chapter 14

DEMOLITION OF
HISTORIC BUILDINGS

INCLUDES ALL AMENDMENTS THROUGH MAY 2012

CHAPTER 14¹

DEMOLITION OF HISTORIC BUILDINGS

Section 1. PURPOSE

This by-law is adopted to preserve and protect significant buildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town; to encourage property owners of significant buildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and to promote the public welfare and to make the Town a more attractive and desirable place in which to live.

Section 2. DEFINITIONS

As used in this chapter:

2.1 “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 a significant building would be preferably-preserved, a garage, out-building, or carriage house located on the premises of a Significant Building shall be considered a separate “Building,” as indicated in the application for demolition submitted to the Building Department.²

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

2.3 “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.³

2.4 “Permit” shall mean a permit issued by the building commissioner for the Demolition of a Building pursuant to an application.

2.5 “Significant building” shall mean any building or portion thereof⁴

(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").

¹ Art 23 of the 1995 Spring Town Meeting added this new chapter.

² Art 18 of the Fall 2010 Town Meeting amended the definition of “Building.”

³ Art 18 of the Fall 2010 Town Meeting amended the definition of “Demolition.”

⁴ Art 8 of the 2001 Spring Town Meeting amended the definition of “significant building”.

Provided, however, that a Building subject to application for a Demolition permit that otherwise is determined by the Commission to be a Significant 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.⁵

Section 3. PROCEDURES

3.1 An application to the building commissioner for a demolition 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 demolition 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 and telephone number
- (c) Copy of the original building permit application, tax assessment records and/or other indicia evidencing the building's date of construction⁶

3.2 Upon receipt of an application for a demolition permit for a building, the building commissioner shall forward a copy thereof to the chairperson **and vice-chairperson** of the commission. No demolition permit shall be issued at that time.

3.3 The chairperson or vice-chairperson shall determine whether the subject of the application is a significant building based on available information. If inadequate information exists in the demolition application, the chairperson or vice-chairperson may deem the building referenced in the application to be a significant building, and therefore a hearing held in accordance with these bylaws.⁷ If the building is a significant building, the chairman 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 demolition permit may be issued at that time. After the expiration of ten (10) days from the date the chairperson received the copy of the application, if the building commissioner has not received notification that the building is a significant building, the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the demolition permit.

3.4 The commission shall hold a hearing on an application for demolition of a significant 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 seven (7) days before such hearing. At least seven (7) days

⁵ Art 18 of the Fall 2010 Town Meeting amended the definition of "Significant Building.

⁶ Art. 3, Spring Town Meeting, April 30, 2012

⁷ Art. 3, Spring Town Meeting, April 30, 2012

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.

3.5 If, after such hearing, the commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of Winchester, the commission shall notify the building commissioner within ten (10) days of such determination. Upon receipt of such determination, 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, the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the demolition permit.

3.6 If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building. The determination by the Commission that the significant building shall be preferably preserved may include the following criteria:

(a) Historical Importance. Consideration of whether the building:

1. Has character, interest or value as part of the development, heritage or cultural characteristics of the Town of Winchester, the Commonwealth of Massachusetts, or the nation,
2. Is the site of an historic event,
3. Is identified with a person or group of persons who has some influence on society, or
4. Exemplifies the cultural, political, economic, social, or historic heritage of the community;

(b) Architectural Importance. Consideration of whether the 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 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.⁸

3.7 Upon determination by the commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the commission within ten (10) days shall so advise the applicant and the building commissioner and no demolition permit may be issued until twelve (12) months⁹ after the date of the application for a demolition permit.

3.8 Within ten (10) days of the determination, the commission shall in writing invite the owner of record of a preferably-preserved significant building 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 Notwithstanding the provisions of section 3.5, the building commissioner may issue a demolition permit for a preferably-preserved 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, or

(b) The commission is satisfied that for at least twelve (12)¹⁰ months the owner has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.

3.10 Notwithstanding the provisions of section 3.5, the building commissioner may issue a demolition permit subject to conditions agreed to by the commission and the applicant for a preferably-preserved significant building at any time after receipt of written advice from the commission and the applicant to the effect that the commission is satisfied that demolition of the preferably-preserved significant building subject to the conditions specified is the outcome most likely to secure the intent of this by-law and that the applicant agrees to abide by the conditions specified.

⁸ Art. 3, Spring Town Meeting, April 30, 2012

⁹ Art. 6 Spring Town Meeting April 24, 2006

¹⁰ Art. 6 Spring Town Meeting April 24, 2006

3.11 An appeal from a determination by the historical commission that the subject of a demolition permit application is a preferably preserved significant building may be taken to the board of appeals.

Section 4. ENFORCEMENT AND REMEDIES

4.1 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 No building permit shall be issued with respect to any premises upon which a significant 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 significant building was located. The demolition of a significant building pursuant to a demolition permit issued on the basis of incorrect information shall be considered to be voluntary demolition in violation of this by-law.

4.3 Upon a determination by the commission that a building is a preferably-preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the building commissioner. Should the owner fail so to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition for the purposes of section 4.2.

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.

Section 6. OPPORTUNITY FOR REMOVAL¹¹

Property owners will have a single opportunity to be removed by written reply mailed or delivered to the commission (an “Opportunity for Removal”) from the protective status of this by-law as follows:

- i. The commission will notify each property owner listed on the Inventory by certified mail within six (6) months of the effectiveness of this amendment and such property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice;
- ii. To the extent any properties are added to the National Register or to the Inventory, the commission shall deliver notice thereof to each property owner affected thereby by certified mail within six (6) months of said property being added to the National Register or Inventory and such

¹¹Art 8 of the 2001 Spring Town Meeting added this new section.

property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice; and,

- iii. Such notification will describe the effect of this by-law and permit such property owner the opportunity to notify the commission that they wish to have their property removed from its status as a Significant Building.

A listing of all Significant Buildings shall be kept by the commission and shall be available to the public.
