

TOWN OF BROOKLINE



Article 5.3

Demolition By-Law

ARTICLE 5.3

DEMOLITION DELAY BY-LAW

SECTION 5.3.1 INTENT AND 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 and/or Commonwealth; 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 promote the public welfare. To achieve these purposes, the Brookline Preservation Commission and the Building Commissioner are empowered with respect to the issuance of demolition permits as provided in this by-law.

SECTION 5.3.2 DEFINITIONS

The following terms when used in this by-law, shall have the meanings set forth below, unless the context otherwise requires:

- a. "Applicant"- any person or entity who files an Application for a Demolition Permit.
- b. "Application" - an Application to the Building Department for a demolition permit.
- c. "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.
- d. "Building Commissioner" - the person occupying the office of Building Commissioner or otherwise authorized to issue Demolition Permits.
- e. "Business Day" - a day which is not a legal municipal holiday, Saturday or Sunday.
- f. "Commission"- the Brookline Preservation Commission or its successor.
- g. "Commission Staff" - the persons(s) regularly providing staff services for the Commission whom the Commission has designated Commission Staff for the purposes of this by-law.

h. "Demolition" - (a) the act of pulling down, destroying, removing or razing a Building or a significant portion thereof, by substantially removing or substantially covering one side or removing 25% or covering 25% of the exterior walls of the building, or substantially removing or substantially altering the roof, or removing 25% of the structure; (ii) moving a Building from its site with no permitted new location for said Building; (iii) in the case of a Building within Section 5.3.5(b), substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) in the case of a building within Section 5.3.5(b), the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building, or (v) commencing any of the foregoing work. "Demolition" as used herein shall be deemed to include Demolition by Neglect.

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or function ability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

j. "Demolition Permit" - a building permit issued by the Building Commissioner allowing the total or partial demolition of a building pursuant to an Application.

k. "Initial Determination" - any determination contemplated in Section 5.3.5 of this by-law made by the Commission or its staff.

l. "Local Historic District" - Cottage Farm Local Historic District, Pill Hill Local Historic District, Graffam McKay Local Historic District, Chestnut Hill North Local Historic District, Harvard Avenue Local Historic District or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

m. "Mitigation" - actions taken to partially compensate for the demolition of a Significant Building, including without limitation: removal of the building to a new location; offering

the building for removal to a new location; monetary support for same; incorporation of part or all of the building into a new building; submitting any replacement building to design review by the Commission; and recordation and visual documentation of the existing building.

n. "Significant Building" - any existing building, including without limitation any interior space that has generally been open to the public and is integral to the historic character of the building, within the Town which the Commission determines, as provided in Section 5.3.5 and 5.3.8 of this by-law, to be in the public interest to be preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the Town or in the case of a building that has been demolished without a Demolition Permit any building which the Commission determines in a public hearing would have met said criteria.

SECTION 5.3.3 PROCEDURE

General - No permit for the demolition of a building shall be issued other than in conformity with the provisions of this by-law, notwithstanding the provision of other codes and by-laws applicable to demolition of buildings and permits issued therefore, except with respect to buildings in Local Historic Districts for which MGL 40c and section 5.6 the Town's by-laws shall take precedence, where applicable.

SECTION 5.3.4 APPLICATION

a. An Application to the Building Department for a Demolition Permit shall be made or co-signed by the owner of record at the time of Application and shall contain or be accompanied by the following information, without which it shall not be deemed complete:

- i. The address of the building to be demolished.
- ii. The owner's name, address and telephone number.
- iii. A description of the type of building.
- iv. The scope of the proposed demolition.

b. A separate Application shall be made for each building on the property.

c. The Applicant shall deliver a copy of said Application to the Commission, and the submission of said copy shall be a

precondition to completing an Application for a Demolition Permit to the Building Department.

d. An application for a Demolition Permit is valid only with respect to the owner(s) of record at the time it is delivered to the Preservation Commission Staff, unless otherwise provided for in this section. In the event of an arm's length transfer of ownership and control of a Significant Building, no Demolition Permit shall be issued until the new owner files a new application and complies with the procedures set forth in Section 5.3.3 through Section 5.3.12. An applicant for a Demolition Permit shall certify to the satisfaction of Preservation Commission Staff, immediately prior to its issuance, that there has been no change as the result of an arm's length transfer of ownership and control subsequent to the delivery of the application to the Preservation Commission Staff, and the Building Commissioner shall not issue a Demolition Permit without Preservation Commission Staff certification or evidence that the applicant intends to take advantage of the exemption listed below in this section. Notwithstanding the forgoing, if the Commission has, pursuant to its discretion in Section 5.3.10, voted to lift a stay based on a design submitted by a previous owner, the Building Commissioner, in conjunction with the Preservation Commission Staff, may approve and issue a Demolition Permit without having the new owner file a new Demolition Permit application for that design.

SECTION 5.3.5 INITIAL DETERMINATION

Within ten Business Days of the receipt of the Application by the Commission, the Commission Staff in consultation with the Chair of the Commission, shall make an Initial Determination as to whether the building falls into one or more of the categories listed as (a) through (d) of this section, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director the owner of record as indicated on the Application and the Applicant if different from owner of record, of its initial determination. The categories shall be as follows:

- a. The building is located within any Local Historic District;
- b. The building is listed on or is within an area listed on the National or State Registers of Historic Places; is eligible for listing on the National or State Registers of historic places; or is a building for which a preliminary determination of

eligibility has been made by the Massachusetts Historical Commission;

c. The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town or Commonwealth; or

d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

SECTION 5.3.6 WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall not issue a Demolition Permit until the procedural requirements of Sections 5.3.3 through 5.3.12, inclusive, have been satisfied unless:

a. The Building Commissioner receives written notice from the Commission Staff that the building does not fall into one or more of the categories in Section 5.3.5;

b. The Building Commissioner fails to receive written notice from the Commission Staff of its Initial Determination required by Section 5.3.5 within the specified time period;

c. The Building Commissioner receives written notice from the Commission Staff that while the building falls into one or more of the categories in Section 5.3.5, the building clearly could not be deemed significant by the Commissioner;

d. The Building Commissioner receives written notice from the Commission Staff that the proposed work is not Demolition as defined by Section 5.3.2(h).

SECTION 5.3.7 PUBLIC HEARINGS

Within 30 Business Days of an Initial Determination that the building falls into one or more of the categories in Section 5.3.5, the Commission shall review the Application and Initial Determination, without reference to any proposed replacement use or design, at a public hearing with notice given as provided in Section 5.3.12 to determine whether the building is significant as defined in Section 5.3.2.

SECTION 5.3.8 FINAL DETERMINATION

If the Commission determines after a public hearing that a building is a Significant Building it shall notify the Building Commissioner, Town Clerk, Planning Director, the owner of record as indicated on the Application, and the Applicant if different from owner of record, of its final determination within 15 Business Days from the date of the public hearing.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11.

SECTION 5.3.10 ALTERNATIVES TO DEMOLITION AND MITIGATION

If the Commission makes a final determination that the building is Significant, the Commission chairman and staff shall invite the owner of record of the building, the Building Commissioner, and the Planning Director 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 reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building.

SECTION 5.3.11 EXCEPTIONS TO WITHHOLDING OF DEMOLITION PERMIT / EMERGENCY DEMOLITION

a. Notwithstanding the provisions of Section 5.3.9, the Building Commissioner may issue a Demolition Permit for a Significant Building at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, the issuance of said permit being subject to such stipulations, if any, as the Commission and the Applicant may have agreed upon as Mitigation for said demolition.

b. Nothing in this by-law shall restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. Prior to such

demolition the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report, a copy of which shall be forwarded promptly to the Commission.

SECTION 5.3.12 NOTICE

Notice of any public hearing required by this by-law shall be given by the Commission to the owner of record; the Applicant for the demolition permit (if different from the owner of record); the immediate abutters to the subject property, the owners of land directly opposite on any public or private street, and abutters to the abutters within three hundred feet of the property line of the subject property as they appear on the most recent applicable tax list; to each elected Town Meeting member for the precinct in which the subject property is located; the Building Commissioner; Town Clerk; Planning Director; and to such other persons as the Commission may determine. The Commission may among other forms of notice require that the Applicant maintain on the subject building a notice, in a form designated by the Commission visible from the nearest public way, of any hearing upon the subject matter of such Application.

SECTION 5.3.13 ENFORCEMENT

The Building Commissioner shall institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a violation or threatened violation thereof.

SECTION 5.3.14 ADMINISTRATION

The Commission may from time to time adopt such rules and regulations as are necessary to administer the terms of this bylaw. The amount of the fee for costs associated with the administration of this bylaw shall be established, and may be amended from time to time, by the Board of Selectmen.

SECTION 5.3.15 NON-COMPLIANCE

Anyone who demolishes a Significant Building except pursuant to court order without complying fully with the provisions of this by-law shall be subject to a fine not to exceed \$300. Each day from the date of the commencement of demolition to the final determination by a court of competent jurisdiction shall constitute a separate offense. In addition, no building permit

may be issued for such premises while such court action is pending, or within two years of a judicial determination that there has been a violation of this by-law. Notwithstanding the foregoing, a building permit may be issued at any time for new construction that would faithfully replicate the exterior of the demolished Significant Building. Such replication shall be subject to prior review and approval by the Commission, whose review shall consider use of materials, design, dimensions, massing, arrangement of architectural features, execution of decorative details, and other relevant factors. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control on or subsequent to the date that this by-law was adopted by Town Meeting.

SECTION 5.3.16 HISTORIC DISTRICTS

If any of the provisions of this by-law shall conflict with the Historic Districts Act, M.G.L. Ch. 40C, the state statute shall prevail.

SECTION 5.3.17 VALIDITY

The invalidity of any section or provision of this by-law shall not render invalid any other section or provision of this by-law.