

## Article 11: Amend Article 5.3.9 of the Town's General By-Law to extend Demolition Delay

**Recommendation:** Favorable Action by a vote of 4-0-0

<p><b>Executive Summary:</b></p>	<p>Amend the Demolition Delay By-Law (Article 5.3 of the Town's General By-Law) to increase the length of a demolition delay to 24 months for buildings found by the Preservation Commission to be significant. Currently the demolition delay lasts for 12 months, or in the case of buildings on the National Historic Register the delay is 18 months. During this time, the Building Commissioner may not grant a demolition permit, and it is hoped that the developer would work with Town Staff and others to explore development options that would save the structure. This proposed by-law amendment is a time limited change, with the maximum delay period being 24 months immediately after the effective date of this by-law change. Subsequently over the next 12 months after the effective date, the demolition delay will be reduced in length from 24 months, until the delay time period is equal to the current delay length, in which case, the delay period reverts to the current By-Law provisions. By way of example, on the effective date a property found to be significant would have a demolition delay of 24 months. An applicant seeking a demolition two months after the effective date that was found to be significant would have a 22 month demolition delay, etc. until the delay under the current by-law is equal to or longer than that under the temporary 24 month delay amendment. The final recommendation was for Favorable Action on an amended version of Warrant Article 11.</p>
<p><b>Voting Yes will...</b></p>	<p>For a limited period of time, add 6 to 12 months to demolition delays imposed after the effective date of this By-Law change.</p>
<p><b>Voting No will...</b></p>	<p>Leave the Demolition Delay By-Law as it is currently, with demolition delays of 12 or 18 months</p>
<p><b>Financial impact</b></p>	<p>No financial impacts, other than a potential additional cost to developers associated with a longer waiting period before demolition.</p>

<b>Legal implications</b>	Associate Town Counsel believes 24 months to be the longest demolition delay in the Commonwealth, which is already used by the Town of Milton. He believes the increased length of stay would be legally defensible.
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## **Introduction**

There is a strong concern in the community that we are experiencing an unprecedented acceleration in the number of historically significant residential buildings being demolished and that the replacement structures are often out of scale with their surroundings, with a larger footprint and many times being sold at a price point that is 3-4 times more expensive than the demolished housing. This Warrant Article is meant to give all parties additional time to seek better outcomes, in terms of negotiating the retention of some or all of the original structure, devising more permanent zoning solutions to incentivize the retention of historic structures, etc. While this Article proposes a modest increase in the length of the delay prior to demolition, passage could allow for data gathering as a “pilot” to determine if such a change will have a positive impact on slowing the rate of demolitions or improved development outcomes.

## **Evaluation Methodology/Research**

- Petitioners cited preliminary data showing a marked increase in the yearly number of demolitions, with 29 demolitions in 2021 being the highest ever seen in Brookline. It was noted that this data was preliminary and we don’t know how many of these structures were significant, or whether these were full or partial demolitions.
- Associate Town Counsel opined that he felt confident this temporary increase to 24 months would be legally defensible.
- Associate Town Counsel sought some language changes to better clarify when the By-Law change would take effect.
- Petitioners are working to produce more detailed data on demolitions.
- Associate Town Counsel cautioned against expanding the purpose of the delay beyond what it is legally intended to do, namely preserve significant buildings.
- Town Counsel’s office intends to look into what Milton does during its 24 month stay of demolition to verify that our new by-law would be aligned with a peer community.
- It was noted by Town staff that an applicant has a total of three years from application for a building permit to complete the process. In some cases this could leave only a year to go through the building permit process. Also,

some property owners de-commission a building's utilities, etc. leaving a structure vulnerable to demolition by neglect. However, many owners start the building review and permitting process concurrently during the demolition delay period.

- The Building Commissioner noted that once a demolition permit is issued it is only valid for 6 months.

## **Discussion**

A Land Use, Zoning and Sustainability Subcommittee hearing was held on WA 11 on Monday, September 19, 2022. The recording of the hearing may be accessed here:

[https://brooklinema.zoomgov.com/rec/share/4am2v\\_C7HcZ\\_OYbR7jEzPP3nmGDYX4PXcps\\_oZBqo3hG86pJDygcdO5I8jnZ4K.4qc6HpQYWM228L\\_w?startTime=1663624929000](https://brooklinema.zoomgov.com/rec/share/4am2v_C7HcZ_OYbR7jEzPP3nmGDYX4PXcps_oZBqo3hG86pJDygcdO5I8jnZ4K.4qc6HpQYWM228L_w?startTime=1663624929000) passcode: R1RdE&j.

Present at the hearing were: Petitioners: Nancy Heller, Dennis DeWitt and Sean-Lynn Jones. Town Staff: Dan Bennett, Building Commissioner, Jonathan Simpson, Associate Town Counsel, Polly Selkoe, Assistant Director for Regulatory Planning, Tina McCarthy, Preservation Planner, Virginia Bullock, Senior Housing Planner, and Joe Callanan, Town Counsel. 20 members of the public were also present.

Nancy Heller presented for the petitioners, citing general dismay over the number of demolitions, which appear to be accelerating, (preliminary data show there were 29 demolitions in 2021, the highest for any year known) and the negative consequences of redevelopment which include, the negative environmental impacts from demolition, (embodied carbon) loss of trees, loss of more moderately priced housing, resulting replacement structures that are many times more expensive and are often out-of-scale and disruptive to the streetscape, and the waste and loss of valuable historic buildings and historic building materials. It was noted that it is important that the Town utilize the extra time granted to work on more permanent solutions.

There was discussion about the definition of demolition and what types of demolition cases would this by-law change apply to. Public comment asked that the petitioners clarify that this by-law change applies only in the case of buildings found to be significant by the Preservation Commission. We also heard from a member of the public who was opposed to Article 11 because they felt it would delay the construction of affordable and market rate housing.

Article 11 as filed:

To see if the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined**):

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, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the date of approval by the Attorney General (the “24 Month Approval Date”), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or that date that otherwise provided above, whichever shall be the later.**

Article 11 as Amended by the Petitioners and Sub-Committee

To see if the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined**, language to be removed from the as-filed version appears in ~~striketrough~~) Changes between the as filed and amended version are in red.

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, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the ~~date of approval by the Attorney General~~ effective date of this section 5.3.9 as amended in 2022 (the “24 Month Approval Date”), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24**

months subsequent to said 24 Month Approval Date or ~~that such~~ date that is otherwise provided ~~above,~~ **within this section 5.3.9**, whichever shall be the later.

Or act on anything relative thereto.

### **Recommendation**

On a motion for favorable action on Warrant Article 11, as amended, the vote was 4-0-0:

Ridruejo	Y
Johnson	Y
Pollak	Y
Pehlke	Y