

May 5th, 2022 Annual Town Meeting

Article 32 DRAFT

CHAPTER XXXI - Demolition Delay By-Law

**re-number chapter from 25a to 31 because there are 2 Ch 24's*

Section 1. Purpose.

The purpose of this by-law is to protect and preserve buildings and structures within Mendon which reflect or constitute distinctive features of the architectural, cultural, economic, political or social history of the Town. The intent of the by-law is not to permanently prevent demolition but rather to provide an opportunity to develop preservation solutions for properties threatened with demolition.

To achieve these purposes, the issuance of demolition permits for buildings and structures is regulated as provided below.

Section 2. Definitions.

Building or Structure	Any combination of building materials giving support or forming a permanent shelter for persons, animals, or property.
Commission	The Mendon Historical Commission.
Demolition	The act of substantially or completely pulling down, destroying, removing, or razing a building or structure, or commencing the work of complete or substantial destruction with the intent of completing the same.
Historic Resource Inventory ("Inventory")	A listing prepared by the Mendon Historical Commission containing all buildings or structures determined to be Historically Significant.
Historically Significant Building or Structure	<p>The Historical Commission shall determine whether a building or structure is historically significant at an open meeting of the Commission. The Historical Commission shall consider the following criteria when deciding if a building is historically significant and warrants further preservation:</p> <ol style="list-style-type: none">1. Any building or structure, or portion thereof, within the Town which is in whole or in part seventy-five (75) or more years old or is of unknown age;2. The building or structure is associated with events or activities that have made a significant contribution to the history of Mendon, the Commonwealth of Massachusetts, or the United States;3. The building or structure is associated with the life or lives of persons significant in the history of Mendon, the Commonwealth of Massachusetts, or the United States;4. The building or structure embodies, either by itself or in context with a group of buildings or structures, distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic notable architectural values or qualities.

**Corrected numbering here from 4.1, 4.2, 4.3, 4.4 to 1,2,3,4*

Demolition by Neglect	A process of ongoing damage to the fabric, viability and/or functionality of an unoccupied 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.
Demolition Delay Review	The process outlined in this Chapter involving the Historic Commission’s review of the proposed demolition of a building or structure.
Demolition Delay Approval	The written report as outlined in Section 4.3, notifying the Building Department if the building or structure shall or shall not be preferably preserved.
Demolition Permit	The permit issued by the Building Department as required under the state building codes.
Preferably Preserved	The determination by the Historic Commission that a building or structure meets the “Historically Significant” standard and warrants additional preservation efforts.
Regulated Building or Structure	Any building or structure as defined by Section 3 of this by-law.

Section 3. Regulated Building or Structure

The provisions of this by-law shall apply only to the following buildings or structures (and the architectural elements thereof) which shall be known for the purposes of this by-law as “Regulated Buildings or Structures”.

1. A building or structure listed on the National Register of Historic Places, the State Register of Historic Places, or the subject of a pending application for listings on either of said Registers;
2. A building or structure listed in any federal, state, or local historic district;
3. A building or structure included in the Historical Resource Inventory issued by the Historical Commission as described in section 3.1 below.

Section 3.1 Historic Resource Inventory

The Historic Commission shall maintain a Historic Resource Inventory. This document shall include all historically significant buildings or structures within the Town. Upon the acceptance of this by-law an initial Historic Resource Inventory shall be created consisting of all buildings, structures in Mendon built in whole or in part prior to 1950.

The Commission shall maintain a public listing of the current Historical Resource Inventory on its website and provide an electronic or hard copy to any interested party upon request.

Any subsequent modifications of this inventory shall be in accordance with the following procedures:

3.1.1 – Procedure for modifying the Historic Resource Inventory

1. Any proposal to add or remove a specific building, structure, property, or district in the Historical Resource Inventory, or to modify any existing listing shall be considered at a public hearing.
2. The Commission shall provide public notice of any such hearing by publishing the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within fourteen (14) days of said hearing, mail a copy of said notice to the applicant, the property owner (if the applicant is a non-owner), and to any abutter within a 300ft radius to the property.
3. When making their determination, the Commission shall reference the four criteria listed above as defining a historically significant building or structure
4. If the Commission finds a building or structure is Historically Significant, it shall be included in the Historic Resource Inventory, if not the building or structure shall not be included in the Inventory.
5. Notice of the Commission’s determination shall be mailed to the property owner within 14 days of the conclusion of the hearing and a copy shall be filed with the Building Commissioner

6. The Commission shall review the Historical Resource Inventory on an annual basis. The expense of this general hearing shall be borne by the Commission.
7. Any interested party may petition the Historic Commission to hold a hearing to request the inclusion, modification, or removal of a specific building or structure listed in the Historic Resource Inventory.
 - a. Any petition for removal from the Inventory must come from the property owner or their agent.
 - b. The expense of publishing the hearing notice and the mailing of notices shall be borne by the applicant.
 - c. The Commission shall not be required to re-consider a specific building or structure more than once every two years.

~~Section 3. Application:~~

~~The Building Inspector shall forward a copy of each demolition permit application for a building or structure or part thereof to the Commission within five (5) business days of the filing of such application. Within twenty (20) business days from its receipt of a demolition permit application, the Commission shall determine whether the building or structure is historically significant. The applicant for the demolition permit shall be entitled to make a presentation to the Commission if he or she so chooses for the purposes of the Commission's review of whether or not a building or structure is historically significant. If the Commission determines that the building or structure is not historically significant the Commission shall so notify the Building Inspector in writing and the Building Inspector may issue a demolition permit. If the Commission determines that the building or structure is historically significant, the Commission shall notify the Building Inspector in writing that a demolition plan review must be made prior to the issuance of any demolition permit. If the Commission fails to notify the Building Inspector of its determination within twenty (20) business days of its receipt of the application, then the building or structure shall be deemed not historically significant and the Building Inspector may issue a demolition permit.~~

~~Section 4. Demolition Plan Review:~~

~~No more than twenty (20) business days after the Commission's determination that a building or structure is historically significant, the applicant for the demolition permit shall submit to the Commission five (5) copies of a demolition plan which shall include the following information:~~

- ~~(i) A map showing the location of the building or structure to be demolished on its property and with reference to neighboring properties;~~
- ~~(ii) Photographs of all street façade elevations;~~
- ~~(iii) A description of the building or structure, or part thereof, to be demolished;~~
- ~~(iv) The reason for the proposed demolition and data supporting said reason. Data sufficient to establish any economic justification for demolition may be included;~~
- ~~(v) A brief description of the proposed reuse of the property on which the building or structure to be demolished is located;~~

Section 4 – Demolition Delay Review Process

Section 4.1 – Application

All applications for a Demolition Delay Permit shall be submitted on a form prepared by the Commission, signed by the property owner or his/her authorized agent or representative and shall include the following:

- i. A map showing the location of the building or structure to be demolished on the property and with reference to neighboring properties;
- ii. Photographs of all sides of the exterior of the building or structure;
- iii. A description of the building or structure, or part thereof to be demolished;
- iv. The reason for the proposed demolition, Data supporting this reason and any data sufficient to establish any economic justification for demolition;
- v. A proposed timeline for the demolition and re-use of the property

Section 4.2 – Demolition Delay Review Application Process

Any person wishing to demolish a Regulated Building or Structure shall apply to the Commission for Demolition Delay Review. Applications shall be submitted electronically in the Town's online permitting system. In the case of a paper application, it shall be submitted to the Building Department, and they shall timestamp receipt thereof and forward said application to the Historical Commission within five (5) days of receipt thereof.

Prior to issuing a building permit for demolition, the Building Department shall forward a copy of any such building permit application to the Commission **within five (5) days** of receipt thereof.

The Commission shall inform the Building Department whether the building permit application **involves a building or structure subject to the provisions of this by-law. If the Commission does not notify the Building Department within five (5) days that a demolition Delay Hearing is required for the proposed work, the Building Department may issue a building permit.**

Section 4.2 – Demolition Delay Hearing

At the next scheduled meeting of the Commission after receipt of a complete demolition permit application, but no later than sixty (60) days therefrom, unless the applicant grants the Commission additional time to conduct such hearing in writing, the Commission shall schedule a public hearing on the application. The Commission shall give public notice of the hearing by publishing the time, place and purpose of the hearing in a local newspaper at least ten (10) days before said hearing and also, within five (5) days of said hearing, mail a copy of said notice to the applicant, the property owner (if the applicant is a non-owner), **to owners of all adjoining property within a 300ft radius**, The expense of publishing the hearing notice and the mailing to all such persons shall be borne by the applicant.

At the conclusion of the hearing, the majority of the members present shall vote to determine if the building or structure shall be preferably preserved, and whether a demolition delay will be imposed.

Section 4.3 – Disposition of Demolition Delay Hearing

Within five (5) days from the conclusion of a hearing, the Commission shall file a written Demolition Delay Report setting forth the Commission's determination with the Building Commissioner.

If the building or structure or part thereof is not determined to be preferably preserved or if the Commission fails to file its report with the Building Commissioner within the time period set forth above, then the Building Commissioner may issue a demolition permit.

If the Commission determines that the building or structure shall be preferably preserved, it may impose a demolition delay of up to nine **(9) months** from the conclusion of the hearing. Written notice of the Commission's determination and any period of delay imposed shall be mailed promptly to the applicant and property owner (if applicable), and a copy thereof shall be furnished to the Building Commissioner who shall not issue a demolition permit during the period specified therein. However, such permit may be issued prior to the end of such period if the Commission notifies the Building Commissioner that the applicant and property owner (if applicable)

- (i) has/have made a bona fide, reasonable, and unsuccessful effort to locate a purchaser for the building or structure who has agreed to preserve, rehabilitate, restore or relocate the same, or
- (ii) has/have agreed to alternatives to demolition or has agreed to accept a demolition permit on specified conditions approved by the Commission.

Section 4.4 – Photographic Survey

The Commission reserves the right to request that a photographic survey of the exterior of the building or structure (and interior with the consent of the property owner) be conducted during the demolition delay period. This survey shall be undertaken at the expense of the Commission. The survey will be used to document the historical nature of the property.

Section 4.5 - Fees

The Historical Commission may establish a reasonable filing fee for Demolition Delay Review Applications. In no case shall the fee be more than 150% of the actual costs for publishing the hearing notice and the mailing of notices as outlined above.

Section 4.5 - Expiration of Demolition Delay Approvals

Demolition Delay Approvals shall expire two (2) years from the date of conclusion of the demolition delay hearing. If a Demolition Permit has not been issued in that time the process will restart with a new hearing required.

Section 6. Responsibilities of the Owner and the Commission

Once a building or structure has been determined to be a preferably preserved building or structure, the owner shall be responsible for properly securing the building or structure, if vacant, to the satisfaction of the Building Commissioner. **All windows and doors shall remain intact, and the building or structure shall be secured to prevent entry of persons, animals, or water.** Should the owner fail to secure the building or structure, a subsequent destruction of the building or structure, or part

thereof, at any time during the demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a violation of this by-law.

During the demolition delay period, the applicant shall make a good faith effort to find an alternative use for the building that will result in its preservation. Alternatives to demolition include, but are 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; restore or rehabilitate the building; or moving or relocating the building.

Section 7. Demolition by Neglect

If there is reason to believe, through visual inspection or other means, that a Regulated Building or Structure is undergoing potential demolition by neglect, it should be reported to the Historical Commission who will, in turn, make a report to the Building Commission and/or Board of Health to investigate and make a determination.

Section 8. Emergency Demolition

Notwithstanding the above provisions, the Building Commissioner may issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to deteriorating conditions. Prior to doing so, the Building Commissioner and a member of the Commission shall inspect the building. The Building Commissioner shall document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Commissioner shall ~~make every effort to~~ inform the ~~Chairperson of the Historic~~ Commission of their intention to allow demolition before they issue a permit for emergency demolition.

No provision of this by-law is intended to conflict with or abridge any obligations or rights conferred by any law, including, but not limited to, Massachusetts General Laws, Chapter 143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

Section 9. Non-Compliance and Enforcement

Any owner of a building or structure or part thereof demolished without first obtaining a demolition permit in accordance with the provisions of this by-law shall be subject to a fine of ~~up to~~ \$300 per day. Each day the violation exists shall constitute a separate offense until the faithful restoration of the demolished building is completed to the satisfaction of the Commission ~~or a period of two (2) years has elapsed, whichever is sooner~~. Such fines may be imposed in accordance with the non-criminal disposition procedures set forth in M.G.L. c. 40, § 21D.

No building permit shall be issued with respect to any premises upon which a historically 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, ~~whichever date is later; unless said permit is directly related to the restoration of the demolished building.~~

Notwithstanding the foregoing, whenever the Commission shall, on its own initiative, or on application of the landowner, determine that earlier reconstruction, restoration or other remediation of any demolition in violation of this by-law better serves the intent and purpose of this by-law, it may, prior to the expiration of said two (2) year period, authorize issuance of a building permit, upon such conditions as the Commission deems necessary or appropriate to effectuate the purposes of this by-law, and may so notify the Building Commissioner.

As used herein, "premises" refers to the parcel of land upon which the demolished historically significant building or structure was located.

Section 10. Severability

If any section, paragraph, or part of this by-law is for any reason declared invalid or unconstitutional, every other section, paragraph and part shall continue in full force and effect.