

ARTICLE ____ - AMEND ZONING BY-LAWS ARTICLE 600 SECTION 609 DEMOLITION OF HISTORICALLY SIGNIFICANT BUILDINGS

To see if the town will vote to amend Section 609 (Demolition of Historically Significant Buildings) of the Duxbury Protective Bylaw Article 600 Special Regulations by striking the existing section 609 heading and contents, and replacing it with the new section 609 entitled "Preservation of Historically Significant Buildings", or take any other action in relation thereto.

609 PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

609.1 Purpose

This Bylaw is enacted to protect and preserve historically significant buildings and structures that constitute or reflect distinctive features of the architectural, cultural, economic, political, or social history of the Town or the Commonwealth, and to limit the detrimental effect of the demolition of such structures on the Town. Through this bylaw, property owners are encouraged to seek alternatives to demolition that will preserve and restore such buildings. In addition, this bylaw serves to alert Duxbury residents to the proposed demolition of an historically significant building. This bylaw promotes public welfare by enhancing the historic and architectural fabric of the community and making the Town a more attractive and desirable place in which to live, learn and work. To achieve this, the Historical Commission is authorized to certify to the Building Commissioner that each Building Permit for substantial or total demolition of a building complies with this bylaw.

609.2 Definitions

Application for Historic Structure Demolition Certification ("Application"). A municipal form addressed to the Historical Commission that describes the building and the proposed demolition. This Application is in addition to the building permit application.

Historic Structure Demolition Certification. The document is a written statement by which the Commission communicates a determination on a Building Permit to the Building Commissioner.

Commission. The Duxbury Historical Commission.

Demolition. The act of pulling down, destroying, removing, or razing a building.

Substantial Demolition. Demolition of more than 25% of the square footage of a building, or one entire wall, or removal of the roof structure. Work-to replace existing doors, windows, exterior cladding, or roofing materials that does not include planned structural modification, shall not be considered when determining whether the demolition is substantial.

Total Demolition. The destruction of an entire building.

Demolition Delay Period. The twelve (12) month period during which the Building Commissioner shall not issue a Building Permit, commencing on the date of Final Determination.

Significant Building.

A building that in whole or in part was built seventy-five (75) years or more prior to the filing date of the Building Permit Application under the Building Code to the Building Department, and the Commission finds that the building meets at least one of the following criteria:

- a) the building is listed or eligible to be listed on the National Register of Historic Places, or on the State Register of Historic Places; or
- b) the building is associated with one or more historic persons or events, or with broad architectural, cultural, economic, political or social history of the Town or the Commonwealth; or
- c) the building is historically or architecturally significant in terms of period style, method of building construction or association with a significant architect or builder either by itself or as part of a group of buildings.

If the age of a building is unknown, or the provenance of the building is unclear, it shall be presumed that it is more than 75 years old for the purposes of this Bylaw.

609.3 Review Standards and Procedures

The Building Commissioner shall only issue a Building Permit that includes Substantial Demolition or Total Demolition of any Significant Building in compliance with this Bylaw.

609.3.1 Application Standards

An Application for Historic Structure Demolition Certification shall be complete when the following materials have been filed with the Application:

1. A completed Historic Structure Demolition Certification Application form
2. An accurate description of the proposed demolition in letter form
3. Scale drawings showing the extent of demolition
4. One set of black and white photographs showing each side of the existing structure, and eight duplicate sets
5. Assessor's record for the property
6. Deed research documenting the property including all records with the phrase "and structures thereon", and the last record with no indication of structures, to identify milestone dates establishing the provenance of the structure.

The Town authorizes the Commission to revise these application standards no more than once every five (5) years by promulgating rules and regulations after a duly noticed public hearing.

In support of evaluating an Application and making a determination, the Town authorizes the Commission to solicit, receive, and consider all relevant historical information about the property, and any personalities or businesses related thereto, from such sources as may be available.

609.3.2 Application Procedures

Upon receipt of a Building Permit application that includes Total Demolition or Substantial Demolition of a potentially significant building, the Building Commissioner shall require that an Application for Historic Structure Demolition Certification be completed. The Building Commissioner shall determine whether the Application is complete per the requirements in this bylaw. If the Application is not complete, the Building Commissioner shall specifically identify any deficiency to the applicant.

After the Building Commissioner determines that the Application is complete, the Building Commissioner shall date-stamp the Application as having been received. The Building Commissioner shall forward the date-stamped copies of the completed Application to the Historical Commission and to the Planning Director.

609.3.2.1 Performance Standards

- a) The Historical Commission shall make an initial determination within 30 days of Application receipt.
- b) The Historical Commission shall communicate in writing the initial determination to the Building Commissioner within 5 days of the initial determination.
- c) If required, a public hearing will be held within 30 days of the initial determination.
- d) After a public hearing, a final determination will be made within 30 days.
- e) After a final determination that imposes a demolition delay, mitigation discussions can occur at any time during the Demolition Delay Period.
- f) After mitigation discussions, upon receiving a written petition requesting reduction of a demolition delay, the Commission shall hold a public hearing within 30 days of the request.

609.3.3 Initial Determination

Prior to making an initial determination, or at any time during the the Commission may, with the consent of the Applicant, conduct a site inspection of the building at the discretion of either the Commission Chair or his/her designee.

609.3.3.1 Exit Criteria

The Commission shall review the Application and determine whether the demolition is substantial, whether the building is significant, and whether the Application contradicts the goal of historic preservation.

609.3.3.2 Early Conclusion

If the Commission determines that the demolition is not substantial; or, that the building is not significant; or, that the Application is preservationist in nature, then the Commission shall issue a Certification stating that no delay is to be imposed, and why. The Commission will forward the Certification to the Building Commissioner, who may then issue the Building Permit.

609.3.3.3 Determination of Potential Significance

If the Commission determines that none of the above mentioned Initial Determination exit criteria have been met, the Commission shall immediately set a date for a public hearing.

On or before the next business day, the Commission shall notify the Building Commissioner in writing of the hearing date. The Building Commissioner shall notify in writing the Applicant. Nothing in this bylaw shall prevent the Historical Commission or the Building Commissioner from communicating the hearing date verbally with the applicant.

609.3.4 Public Hearing

The public hearing serves to ensure that the public has the opportunity to be heard concerning the determination of historic significance, the extent of demolition, and the degree of preservation.

The Town shall arrange for publication of a notice of the public hearing in a newspaper of local circulation during each of the two weeks preceding the date of the public hearing, noting the time, date, location and subject of the hearing. The Town shall also mail, certified return receipt, a copy of said notice to the Applicant. The Town shall also mail a copy of the notice by regular mail to the owners of all properties within three hundred (300') feet of the subject property as it appears on the most recent real estate tax list of the Board of Assessors.

The Applicant is responsible for payment of application fees to cover publication, clerical and mailing expenses at the time of the application.

In the event of Early Conclusion where a public hearing is not held, the Building Commissioner will return the check to the applicant, or destroy it, at the applicant's direction.

609.3.5 Final Determination

After the public hearing is closed, the Commission shall make its final determination whether the issuance of a Building Permit should be delayed. If agreed to in writing by the Applicant, the making of the final determination may be continued to a later date. The Commission Chair or a designee shall notify the Building Commissioner on the next business day after the Commission makes its final determination by issuance of a Historic Structure Demolition Certification described below. The Building Commissioner shall in turn notify the Applicant of the Final Determination.

If the Commission determines that the Building Permit should not be delayed, the Commission shall issue in writing a Historic Structure Demolition Certification stating the reasons why demolition may proceed, and authorizing the Building Commissioner to issue a Building Permit.

If the Commission determines that a delay should be imposed, the Commission shall issue in writing a Historic Structure Demolition Certification stating the reasons, and establishing the date when the Demolition Delay Period ends. The Building Commissioner shall refrain from issuing a Building Permit for the duration of the Demolition Delay Period, unless reduced by the Commission.

609.3.6 Mitigation of Historic Structure Demolition Delay

During the Demolition Delay Period, the Commission shall invite the Applicant, Building Commissioner, Planning Director, and a member of the Design Review Board to participate in an investigation of alternatives to demolition including, but not limited to:

- a. incorporation of the building or structure into the project plan;
- b. utilization of financial incentives to rehabilitate the building or structure;
- c. seeking new owners willing to purchase and preserve, restore or rehabilitate the building or structure, or
- d. moving the building or structure.

As a result of the investigation of alternatives, Applicant may submit to the Commission documentation of specific actions taken toward the identified alternatives to demolition.

609.3.7 Request for Reduction

If the Applicant seeks a reduction in the Demolition Delay Period, the Applicant shall submit a written petition to the Commission requesting a public hearing. The Town shall provide public hearing notice as stated in Section 609.3.4.

The Applicant is responsible for payment of application fees to cover publication, clerical and mailing expenses along with the petition.

609.3.8 Reduction Order

The Building Commissioner may issue a Building Permit prior to the expiration of the Demolition Delay Period after receiving written notice from the Commission that it is satisfied that:

- a) The Applicant provided sufficient documentation that despite the Applicant's continuing and bona fide efforts to preserve, rehabilitate, restore or relocate the Significant Building, such efforts have been unsuccessful or are not feasible; or
- b) The Applicant provides sufficient documentation showing that continuing, bona fide efforts to locate a new owner to purchase and preserve, rehabilitate, restore or relocate the Significant Building have been unsuccessful. These efforts might include, but are not limited to, listing the Significant Building with a realtor or realtors, advertising in local, South Shore, metropolitan Boston and New England general circulation newspapers; and requesting proposals for restoration, relocation; or

- c) The Applicant has proposed, and the Commission has accepted, specific conditions related to the demolition.

609.4 Enforcement

No building permit shall be issued with respect to the parcel upon which a Significant Building has been intentionally and willfully demolished in violation of this bylaw for a period of two (2) years from the date of such violation.

609.5 Exceptions to Withholding Demolition Permit in Case of Emergency

In an emergency, nothing in this Bylaw shall prohibit the Building Commissioner from exercising the authority of G. L. c. 143, but the Building Commissioner shall make every reasonable effort to inform the Commission of his actions in such an emergency.

609.6 Transfer of Ownership

A Historic Structure Demolition Certification may be transferred to a new owner of the property on which the Significant Building is located with the approval of the Commission.

609.7 Local Historic District

Nothing in this bylaw shall be deemed to conflict with the provisions of the Historic Districts Act, of the Commonwealth of Massachusetts M.G.L. Chapter 40C.

Submitted by Historical Commission

Explanation and Summary of Changes

There are two parts to the proposed changes to Duxbury Protective Bylaw 609, Demolition of Historically Significant Buildings: Administrative, and Policy.

The proposed *administrative* changes:

- a. Fully define terms used in the bylaw (609.2 Definitions)
- b. Clearly separate the Historical Commission compliance procedure from the building department's permitting process by identifying the Commission's action as an Historic Certification (609.2 Definitions)
- c. Better define the specific time intervals within which the Commission must act (609.3.2.1 Performance Standards)
- d. Formalize the site inspection practice (609.3.3 Initial Determination)
- e. Eliminate the mandatory 10-day waiting period between the close of the public hearing and the final determination
- f. Authorize the Commission to revise the application requirements no more than once every five years (609.3.1 Application Standards)

The proposed *policy* changes:

- a. Impose a new sanction in case of non-compliance that would restrict development on a subject parcel for 2 years in the case of violation of the bylaw (see 609.4 Enforcement);
- b. Increase the delay period from 6 months to 12 months (see 609.3.2 Definitions – Demolition Delay Period);
- c. Require a separate public hearing to reduce a demolition delay prior to expiration (see 609.3.7).
- d. Allow means of transferring a Historic Structure Demolition Certificate from one owner to another (609.6 Transfer of Ownership)