

Title

Demolition Delay Bylaw for Preservation of Historically Significant Buildings

This bylaw will take effect March 1, 2020.

Intent and Purpose

This bylaw is enacted for the purpose of preserving and protecting significant buildings, streetscapes and neighborhoods within Lenox which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition is regulated as provided by this bylaw.

Definitions

APPLICANT – Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION – An application for the demolition of a building.

BUILDING – Any combination of materials forming a shelter for persons, animals or property.

BUILDING COMMISSIONER – The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION – The Lenox Historical Commission or its designee.

DEMOLITION – Any act of pulling down, destroying removing, dismantling or razing a building or commencing the work of total or substantial destruction. Substantial destruction is further defined as destruction of the street facing façade. Interior demolition and routine maintenance are excluded as is demolition within the Historic District, which is covered by separate bylaw.

DEMOLITION PERMIT – The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

PREFERABLY PRESERVED – Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the twelve-month demolition delay period of this bylaw.

SIGNIFICANT BUILDING – Any building within Lenox which is in whole or in part seventy-five years old or older which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural political, economic or social history of Lenox or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.
- The Building is a component of a neighborhood of buildings of similar age and or style.

Procedure

No demolition permit for a building which is in whole or in part seventy-five-or-more years old shall be issued without following the provisions of this bylaw. If a building is of unknown age, it shall be assumed that the building is seventy-five years or more old for the purposes of this bylaw.

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application including:

1. The owner's name, address, email, and telephone number
2. Description of the demolition

Upon receipt of this information, the building inspector shall alert the Historical Commission. If the Commission determines the demolition is significant, additional information as follows will be requested:

1. The address and City Assessor's Map, block and lot designation of the structure to be demolished;
2. The date of structure establishment as determined by the Assessor's information, deed or other documentation verifying year of construction;
3. The reason for requesting a demolition permit;
4. A brief description of the proposed reuse, reconstruction or replacement and
5. A photograph or photograph(s) of the structure.

The Building Commissioner shall, within seven days, forward a copy of the application to the Commission. The Commission shall, within fifteen days after receipt of a satisfactorily completed application, make a written determination of whether the building is significant.

Upon determination by the Commission that the building is not significant, the Commission shall so advise the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing.

No demolition permit may be issued at this time. If the Commission does not notify, the Building Commissioner may proceed to issue the demolition permit.

If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be properly posted according to local and state law by the municipality and shall be for a period of not less than seven days prior to the date of said hearing.

The applicant, the owners of all adjoining property, the Building Commissioner and the Board of Selectmen shall be sent a copy of the notice.

The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon determination by the Commission that a building is preferably preserved, no building permit for new construction or alterations to the subject building shall be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit or, if for a parking lot, a certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building if the Commission notifies the Building Inspector:

- a. The owner has made continuing bona fide and reasonable efforts to locate a purchaser willing and reasonably able to preserve, rehabilitate or

restore the subject structure and that such efforts have been unsuccessful. For the purposes of this subsection, the term "continuing, bona fide and reasonable efforts to locate a purchaser" shall mean retaining a licensed broker to market the property in the usual manner over a substantial period, obtaining an appraisal from a reputable appraiser and providing evidence of good faith negotiations with potential buyers of the property. These efforts to sell the property shall be deemed unsuccessful only upon a finding that either there were no offers to purchase the property, that no offer from a willing and reasonably able buyer was for at least the reasonable appraised value of the property, or that no agreement to sell the property pursuant to an offer of at least the reasonable appraised value of the property could be reached despite good faith efforts to do so; and

- b. There is no reasonable likelihood that any person or group is willing to purchase, preserve, rehabilitate or restore such structure.

Demolition approval by the Commission is valid for two years.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of the bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission.

Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his/her decision which shall be forwarded to the Commission.

Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.

Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without a demolition permit being first obtained, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful recreation referred to above or unless otherwise agreed to by the Commission.

Historic District Act

Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts general Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this bylaw do so conflict, that act shall prevail. Buildings included with the boundaries of a local historic district established under M.G.L. Chapter 40C shall not be subject to this bylaw so long as the proposed demolition is regulated by the local historic district bylaw.

Severability

In case 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.