

## CHAPTER XXXI

### TOWN OF HAMILTON ADOPTION OF HISTORIC DISTRICT BY-LAW

1. There is hereby established a Historic District, hereinafter called "The District" under the provisions of General Laws, Chapter 40C, as amended, bounded and described as set forth in the copy of the by-law on file with the Town Clerk.

The metes and bounds are shown on a map entitled "Hamilton Historic District, Established 1972" filed with the Town Clerk and to be recorded with the Essex South District Registry of Deeds. Said map is designated as the map required for filing in accordance with the fourth paragraph of Section 3 of said Chapter 40C, as amended. The sources of said map are Assessors Maps #40 and #49 on file with the Board of Assessors of Hamilton.

2. There is hereby established a Historic District Commission, hereinafter called "The Commission", under the provisions of General Laws, Chapter 40C, as amended, consisting of seven members and three alternate members, appointed by the Board of Selectmen. Before making any appointment the Board of Selectmen shall in writing request the names of two nominees from the Hamilton Historical Society, two nominees from the Chapter of the American Institute of Architects covering Hamilton, and two nominees from the Board of Realtors covering Hamilton. One appointment shall be made from the two nominees named by each such organization. If any such organization shall fail to name two nominees within thirty days of such request, the Board of Selectmen may make the appointment without nomination from such organization. The remaining appointments may be made without nomination from any independent organization. At least one member so appointed shall be a resident of or owner of property within the Historic District. When the Commission is first established two members shall be appointed for a term of one year, two shall be appointed for a term of two years, and three shall be appointed for three years. Their successors shall be appointed in like manner for terms of three years. The filling of vacancies in the membership of the Commission, the designation of alternate members to serve as required, and the election of Officers shall be in accordance with the provisions of General Laws, Chapter 40C, as amended.

3. The authority of the Commission shall not extend to the review of any of the categories of buildings, structures, or external architectural features in the District set out in items one through seven of Section 8a of Chapter 40C, as amended.

4. The Commission shall have all the powers and perform all the duties conferred and imposed on Historic District Commissions by the General Laws of the Commonwealth.

5. In accordance with Section 14 of General Laws, Chapter 40C, as amended, the Commission shall have the powers and duties of a Historical Commission, as provided by General Laws, Chapter 40, Section 8D.

6. The Commission shall adopt rules and regulations for the conduct of its business not inconsistent with the provisions of General Laws, appropriation, employ clerical and technical assistants or consultants and may accept money gift and expend same for such purposes.

7. In case any section, paragraph, or part of this by-law be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph, or part shall continue in full force and effect.

## 8. Preservation of Historically Significant Buildings

### **Purpose and Intent**

This bylaw is adopted for the purpose of preserving and protecting significant historic buildings, as defined herein, within the Town of Hamilton and encouraging owners of such buildings to seek out alternatives so as to preserve, rehabilitate, or restore such buildings rather than to demolish them or alter them in a detrimental way. Such buildings constitute or reflect distinctive features of the architectural, cultural, economic, agricultural, political, or social history of the Town. Further, through the bylaw, residents of the Town are alerted to impending demolition or alteration of significant buildings. By preserving and protecting significant buildings, streetscapes, landscapes and neighborhoods, this bylaw promotes the public welfare by making the Town a more attractive and desirable community.

To achieve these purposes, the Hamilton Historic District Commission, exercising its powers and duties as the Historical Commission, shall advise the Building Inspector with respect to applications for demolition permits, as defined herein. The issuance of demolition permits is regulated as provided by this bylaw.

**Definitions** – As used throughout this bylaw, the terms defined below have the following meanings:

**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 having a roof, whether partial or full, and regardless of the presence or absence of walls or sides, and which is intended for shelter, housing, or enclosure of any person, process, equipment, animals, or goods, including a structure.

**BUILDING INSPECTOR** - The person occupying the office of Building Inspector or otherwise authorized to issue demolition permits.

COMMISSION – The Hamilton Historic District Commission, as defined by Chapter XXXI of the Town Bylaws, 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 with the intent of completing the same. The removal, whether in one project or more than one project over the course of a twenty-four (24) month period, of 50% or greater of a building involving the removal of historically significant character-defining exterior features as determined by the Commission shall constitute demolition. Normal repairs or maintenance in kind that is identical to the original structure does not constitute demolition.

DEMOLITION/ALTERATION PERMIT - The building permit issued by the Building Inspector as required by the State Building Code for demolition, substantial demolition, alteration, renovation or removal of a building, excluding a building permit issued solely for the demolition of the interior of a building.

HISTORIC DISTRICT - a defined district, such as the existing Hamilton Historic District, that has been established under the Historic Districts Act, General Laws, Chapter 40C.

PREFERABLY PRESERVED - Any significant building or structure that the Commission determines, following a public hearing, should be preserved or rehabilitated rather than demolished. A preferably preserved building or structure is subject to the 12-month demolition delay period of this bylaw.

SIGNIFICANT BUILDING – Any building or portion thereof within the Town constructed prior to 1940 and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The building is listed on, or is within an area listed on, the National Register of Historic Places; or
- The building has been found, by the Massachusetts Historical Commission, to be eligible for the National Register of Historic Places; or
- 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 the Town, the Commonwealth or the nation; 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.

If a building is of an unknown age, it shall be presumed to be constructed prior to 1940.

## **Procedure**

No Demolition/Alteration Permit for a significant building shall be issued until the provisions of this bylaw have been satisfied.

An application for a Demolition/Alteration Permit for a building regulated by this bylaw is to be submitted to the Building Inspector, who shall within seven (7) calendar days of receipt transmit a copy thereof to the Commission. No Demolition/Alteration Permit shall be issued during this time.

An applicant who requires a Special Permit from the Planning Board or from the Board of Appeals in order to perform any activity subject to the requirements of this bylaw may, at the time of filing an application for said Special Permit, file with the Building Inspector a Notice of Intention to apply for a Demolition/Alteration Permit. Such Notice shall be filed in the same manner, and contain the same documentation, as an application for a Demolition/Alteration Permit for a building that was, in whole or part, built prior to 1940. The purpose of the Notice is to allow, if necessary, the applicable boards to hear and decide historic preservation and Special Permit matters contemporaneously. Once filed, such Notice shall be treated for the purpose of Historic Preservation review by the Commission and the special permit granting authority as an application filed pursuant to this section. In the event that the required Special Permit issues to the applicant, the Building Inspector may treat such Notice as an application for a Demolition/Alteration Permit.

An applicant may withdraw an application without prejudice at any time prior to a decision by the Commission.

The Building Inspector shall, within seven (7) calendar days of receipt of such application, forward a copy thereof to the Commission.

Within ten (10) 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) below, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director, the Applicant, and the owner of record if different from the Applicant, of the initial determination. The categories are as follows:

- a. The building is located in the Historic District;
- b. The building is listed on or is within an area listed on the National or State Register of Historic places; is eligible for listing on either Register; 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, Commonwealth, or nation; 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.

If the building does not fall into any of these categories, the Chair and Commission Staff may determine that the building in question is not preferably preserved and not subject to the public hearing process. Within five (5) business days of the filing of the initial determination with the Town Clerk, any person aggrieved by the determination may file with Commission Staff and the Town Clerk an appeal of the Chair and Commission Staff's determination and the application will require review by the full Commission. The Building Inspector may not issue the demolition permit until the expiration of the five (5) business day appeal period.

Within twenty one (21) calendar days of receipt of the application from the Building Inspector, the Commission shall hold a meeting to determine if a public hearing will be required to determine whether the significant building is preferably preserved. If it is determined that no public hearing is required, the Building Inspector is authorized to issue the demolition permit. If it is determined that a public hearing is required, the Commission will hold a public hearing as specified in this bylaw.

Within forty five (45) calendar days of the determination that a public hearing is required, the Commission shall hold a public hearing to determine if it is in the public interest for a significant building to be preserved or rehabilitated rather than demolished, and, based on such determination, whether the significant building is a preferably preserved building.

No less than fourteen (14) calendar days prior to the hearing date, the Commission shall transmit written notice of the meeting time and place to the applicant, owner of record (if different from the applicant), the owners of all properties within 300 (three hundred) feet of the subject property, the Building Inspector, the Hamilton Historical Society, and any others the Commission deems necessary to notice. The Commission shall give notice of the public hearing by publishing once at least fourteen (14) calendar days before the hearing a notice in a newspaper of general circulation in the town of the time, place, and purpose of the hearing. The applicant shall be responsible for the payment of the cost of publication.

In cases where it is known that additional approvals will be required for the proposed redevelopment of the premises, including zoning variances, special permits, and/or subdivision approvals, notice of the Commission's public hearing shall be provided to the authority responsible for granting said approvals.

If, following the public hearing, the Commission determines that:

1. The building is historically or architecturally significant; and

2. The demolition of this historically or architecturally significant building would be detrimental to the historical or architectural resources of the Town,

the Commission shall declare the building a preferably preserved significant building.

If, following the public hearing, the Commission determines that the building proposed for demolition is not historically or architecturally significant, or that the proposed demolition of the building would not be detrimental to the purposes protected by this bylaw, the Commission shall notify the Building Inspector. The Building Inspector may then issue the Demolition/Alteration Permit.

The Commission shall file written notice of its decision with the Town Clerk within thirty (30) calendar days of its vote. A copy of the decision shall also be mailed to the applicant and provided to the Building Inspector.

Failure to open the hearing or file its decision with the Town Clerk within these prescribed time periods shall be deemed to constitute constructive approval by the Commission, and in such case, the Building Inspector shall, subject to the requirements of the State Building Code and any other applicable laws, by-laws, rules and regulations, issue the Demolition/Alteration Permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably preserved building, no permit for new construction or alterations of the premises shall be issued for a period of twelve (12) months from the date of the receipt of the application of the Demolition/Alteration Permit to the Building Inspector unless otherwise agreed to by the Commission. The time period for delay shall be extended until the final resolution of any appeal of the Commission's decision to delay filed by the applicant, if the appeal is not resolved by the end of the twelve month period.

If twelve (12) months (if no appeal by the applicant) or the extended time period as set forth in the preceding paragraph have passed since the Demolition/Alteration Permit application was submitted to the Building Inspector, a Demolition/Alteration Permit shall be promptly issued by the Building Inspector.

Notwithstanding the above, the Building Inspector may issue a Demolition/Alteration Permit for a preferably preserved building after receipt of written notice from the Commission that:

1. The building has been fully documented to the satisfaction of the Commission,
2. All salvageable and valuable artifacts and materials have been or will be removed and preserved to the satisfaction of the Commission, and
3. Any of the following applies:

- a) The Commission is satisfied that there is no reasonable likelihood that the applicant, owner, or some other reasonable person or group is willing to purchase, preserve, rehabilitate, restore, or relocate said building; or
- b) The Commission is satisfied that for at least 12 (twelve) months, including periods of time prior to the date of submission of an application for demolition permit, the owner has made continuing, bona fide, and reasonable efforts to locate a purchaser to preserve, rehabilitate, restore, or relocate said building or structure, and that such efforts have been unsuccessful; or
- c) The Commission is satisfied that the proposed demolition may be conducted in a manner that is not detrimental to the historical or architectural resources of the town.

The Building Inspector may issue a demolition permit or a building permit for a preferably preserved building within the 12 (twelve) months if the Commission notifies the Building Inspector in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit.

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 Inspector and have been found to comply with all laws pertaining to the issuance of a building permit. All approvals necessary for the issuance of such building permit 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 bylaw.

A decision by the Commission expires two (2) years from the date of the decision. If demolition has not occurred prior to the expiration of the Commission's decision, a new application for a demolition permit must be filed with the Building Inspector, and reviewed by the Commission in accordance with the provisions of this section, prior to any subsequent demolition.

### **Application Contents**

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Inspector an application containing the following information:

1. The address of the building to be demolished.
2. Map showing location of the building or portion thereof to be demolished, with reference to the lot lines and to neighboring buildings and structures.
3. Written description of the building or portion thereof to be demolished sufficient to identify the nature and extent of the proposed demolition.
4. Photographs of all elevations.

5. The owner's name, address and telephone number, and e-mail address.
6. Construction date of building and source for information.
7. The reason for requesting a Demolition/Alteration Permit.
8. A brief description of the proposed reuse, reconstruction or replacement.
9. Authorization for a site visit by the Commission.

### **Administration**

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw, but may not increase the length of the delay period stated herein.

In computing any period of time prescribed in this bylaw, the day of the act, event, or default after which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next business day.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw, including the retention of consultants deemed necessary to assist the Commission in its review of an application.

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

The Commission may proactively develop a list of significant buildings that will be subject to this by-law. Buildings proposed for the significant building list shall be added following a public hearing, with notice to the record owners of any building proposed to be included on the list.

### **Responsibilities of the Owner**

The owner of a significant building for which a Demolition/Alteration Permit is being sought shall:

1. Provide such information as is reasonably requested by the Commission in connection with its consideration of whether the significant building is a preferably preserved building.
2. Allow exterior access to the property on which the significant building is located, as reasonably requested by the Commission; and
3. Secure the significant building.

An applicant who has applied for a Demolition/Alteration Permit for a preferably preserved building shall:

1. Participate in the investigation of preservation options for the preferably preserved building; and
2. Reasonably cooperate with the Commission and any interested parties seeking alternatives to the demolition of the preferably preserved building.

Once a significant building is determined to be a preferably preserved building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector.

Should the owner fail to secure the building, a subsequent destruction of the building at any time during the demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a demolition in violation of this bylaw.

### **Emergency or Hardship Demolition**

If after an inspection the Building Inspector 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 Inspector may issue an emergency demolition permit to the owner.

The Building Inspector shall then prepare a report explaining the condition of the building and the basis for his decision, which shall be forwarded to the Commission, within five (5) calendar days.

If the owner of the building suffers from financial hardship such that sale of the building to a buyer who wishes to demolish the building is the only option to provide the owner with financial support to preserve or protect the owner's health, safety or well-being, the Chair and the Commission staff may file with the Town Clerk and the Building Inspector a determination of financial hardship. Within five (5) business days of the filing of the determination of financial hardship with the Town Clerk, any person aggrieved by the determination may file with Commission Staff and the Town Clerk an appeal of the Chair and Commission Staff's determination and the application will require review by the full Commission. The Building Inspector may not issue the demolition permit until the expiration of the five (5) business day appeal period. In reviewing a request for a determination of financial hardship, the Chair and Commission staff may consider the sale price, the identity of the buyer, and the buyer's relationship with the owner, if any, to ensure that the purchase is not an effort to evade the provisions of this bylaw.

Nothing in this bylaw is intended to conflict with or abridge any obligations or rights conferred by G.L. c. 143, §§ 6-10 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

Nothing in this bylaw shall be deemed to conflict with or abridge the authority of the Board of Health pursuant to G.L. c. 111, § 127B or the Board of Selectmen pursuant to G.L. c. 139, §§ 1 –

3A. The Board of Health or the Board of Selectmen is encouraged to consult with the Commission prior to taking action against a building constructed prior to 1940.

Nothing in this by-law shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws, Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission of a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship prior to demolition of any building in the historic district.

### **Enforcement and Remedies**

Permits and determinations under this bylaw shall run with the land.

The Commission and Building Inspector are each specifically authorized to institute any and all actions and proceedings as either of them 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 significant building that is demolished without first obtaining a Demolition/Alteration Permit in accordance with the provisions of this bylaw shall be subject to a penalty of \$100 (one hundred dollars). Each day the violation exists until a faithful restoration of the demolished building or other remediation plan has been approved by the Commission shall constitute a separate offense. The Building Inspector may enforce this section by noncriminal disposition as provided by MGL c. 40, § 21D.

If a significant building is voluntarily demolished without first obtaining a Demolition/Alteration Permit, no building permit authorizing construction on the lot on which the building was located or on any adjoining lot under common ownership therewith shall be issued for a period of two (2) years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership or control, unless the building permit is for the faithful restoration of the significant building or unless otherwise agreed to by the Commission.

### **Appeals**

A person aggrieved by reason of their inability to obtain a Demolition/Alteration Permit may appeal to the Board of Selectmen. The appeal shall be filed with the Town Clerk within twenty-one (21) calendar days after the date that the Commission's decision is filed with the Town Clerk. The Petitioner shall transmit a copy of the Commission's decision, with the date of filing certified by the Town Clerk, to the Board of Selectmen. The Board of Selectmen shall hold a public hearing within thirty (30) calendar days of the receipt of the petition and shall render a decision within sixty (60) calendar days from the date of filing. Failure by the Board of Selectmen to take final action upon a petition within the sixty (60) day period shall be deemed to be a grant of the appeal.

A person aggrieved by a decision of the Board of Selectmen may appeal to a court of competent jurisdiction within twenty-one (21) calendar days after the Board's decision has been filed with the Town Clerk. Notice of such action with a copy of the complaint shall be filed with the Town Clerk within the same twenty-one (21) days.

### **Historic Districts 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 expansion of the local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

### **Severability**

If any provision of this bylaw shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible, and the balance of the bylaw shall be deemed to be amended to the minimum extent necessary so as to secure the purposes of this bylaw.