

### 3.XX – PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

#### A. Purpose

This bylaw is enacted for the purpose of preserving and protecting historic buildings within Amherst’s streetscapes and neighborhoods that constitute or reflect distinctive features of the architectural, cultural, economic, political, or social history of the Town and encourage sustainability through the adaptive reuse of historic structures. Through this bylaw, owners of historic buildings are encouraged to seek out alternative options that will preserve, rehabilitate, or restore such buildings and residents of the Town are alerted to the impending Demolition of Significant Buildings. By preserving and protecting Significant Buildings, 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 allow or deny demolition through the issuance of a Demolition Authorization or a Preservation Order. The issuance of Demolition Permits is regulated as provided by this bylaw.

#### Definitions

The following terms used in the bylaw shall be understood by the subsequent indicated meanings:

Applicant	Any person or entity filing an application for a Demolition Permit
Application	A form to request a permit for Demolition
Building	Any combination of materials forming a shelter for persons, animals or property, including, but not limited to, structures such as outbuildings.
Building Commissioner	The person occupying the Office of Building Commissioner or anyone otherwise authorized to issue a Demolition Permit.
Business Day	Any day other than Saturday, Sunday, or other day on which the government of the Commonwealth of Massachusetts is authorized or required by law to be closed for business
Commission	The Amherst Historical Commission or its designee.
Demolition	<ul style="list-style-type: none"> <li>a) Initiating the work of total destruction of an entire building with the intent of completing the same, or;</li> <li>b) any act of pulling down, destroying, removing, or razing of 25% or more of the front, back or side elevations, with the gross square footage of each elevation including wall area, roof area and exposed foundation area calculated separately, or;</li> <li>c) The act of changing, modifying, or removing important architectural elements from a structure, which elements define the historic integrity of the design, including but not limited to walls, roof structure, doors, windows, stoops, porches, chimneys, fences, stone walls and similar elements, except for exemptions as found within (C)(2) of this Bylaw.</li> </ul>
<u>Demolition Authorization</u>	<u>An approval granted by the Historical Commission to an Applicant permitting the Demolition of a Significant Building as determined at a Public</u>

	<u>Hearing. The Building Commissioner may not issue a Demolition Permit for a Significant Building without a Demolition Authorization issued from the Historical Commission except in accordance with Section F.</u>
Demolition Delay	A 12-month delay on the granting of a Demolition Permit, imposed by the Commission upon Significant Buildings determined to be Preferably Preserved, during which time the Commission will work with the Building owner(s) on the preservation of the Building.
Demolition Permit	A Building Permit issued for Demolition by the Building Commissioner under the State Building Code for the Demolition of a Building.
Emergency Demolition	A determination made by the Building Commissioner that a Building is found to be dangerous and an imminent threat to public health, safety and welfare due in part, but not limited to, threat of collapse, fire hazard, weather damaged, or structural failure, and is therefore required to be demolished.
Public Hearing	A meeting of the Commission, open to the public and duly advertised, at which Commission members hear from Applicants and the public, review applications, and make decisions regarding whether a Significant Building should be Preferably Preserved or if a Demolition Delay should be lifted.
Preferably Preserved Building	A Significant Building determined by the Commission at a Public Hearing to be worthy of rehabilitation and preservation rather than Demolition, in accordance with Section F of this Bylaw, and therefore the Commission imposes a Demolition Delay on the Building.
<u>Preservation Order</u>	<u>A restriction issued by the Historical Commission to an Applicant delaying the Demolition of a Significant Building as determined at a Public Hearing for the duration of the Demolition Delay period.</u>
Significant Building	A Building found by the Commission designee and Town staff to contribute to the historical or architectural heritage or resources of the Town pursuant to Section E of this Bylaw.

B. Historical Commission Appointment and Powers

The Historical Commission shall consist of seven (7) members, appointed by the Town Manager, for terms of three (3) years each. The Commission is charged with implementing the procedures for the Preservation of Historically Significant Buildings Bylaw and is empowered to authorize or delay the issuance of Demolition Permits for Significant Buildings through the granting of a Demolition Authorization or Preservation Order.

C. Procedure for Obtaining a Demolition Permit

No Demolition Permit for a Building 50 years or older 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 over 50 years old for the purposes of this Bylaw.

An Applicant proposing to demolish a Building 50 years or older or of unknown age shall first file a complete Application with Commission staff containing the following information:

- The address of the building where Demolition is proposed
- The owner's name and signature, address, email and telephone number

- A description of the building
- The reason for a Demolition Permit
- A brief description of the proposed reuse, reconstruction, or replacement
- A photograph or photograph(s) of the building
- Timeline for Demolition
- Additional information may be requested to support the application in accordance with the Historical Commission Rules and Regulations

The Historical Commission designee and Town staff shall then, within fifteen (15) Business Days, determine if the Application concerns a Significant Building as defined in Section E of this Bylaw. If there is disagreement, the Application will be determined to concern a Significant Building.

The Historical Commission will hold a Public Hearing for Buildings determined to be Significant, within thirty Business Days of a full application being received by the Commission staff.

(1) Public Hearing Procedure

For the purposes of a Public Hearing:

- a. Notice to the applicant, abutters and parties in interest shall be sent by Town staff ten Business Days prior to the Public Hearing
- b. Posting and publication within local news media shall take place ten Business Days prior to the Public Hearing.
- c. The Commission may hold a site visit prior to the Public Hearing.
- d. The Historical Commission shall hold the Public Hearing on the designated date and time and shall review the Application in accordance with the standards for determining whether this Significant Building should be Preferably Preserved, found in Section E of this bylaw, or to determine Significance, if there is a disagreement between the Historical Commission designee and staff.
- e. During the Public Hearing, the Historical Commission shall consider alternatives to Demolition such as: the incorporation of the building into the future development of the site, the adaptive re-use of the building, the use of financial incentives for the rehabilitation of the building, the removal of the building to another site, and, with the owner's consent, the search for a new owner willing to purchase the building and preserve, restore, or rehabilitate it.
- f. If, during the Public Hearing, the Commission determines that the Significant Building shall not be Preferably Preserved, then the Commission shall grant a Demolition Authorization to the Applicant and notify the Building Commissioner in writing of its findings.
- g. If, during the Public Hearing, the Commission determines that the Significant Building shall be Preferably Preserved, then the Commission shall issue a

Preservation Order to the Applicant and transmit written notice with findings, of its determination to the Building Commissioner of said determination, and no Demolition Permit shall be issued for the duration of the Demolition Delay, unless otherwise agreed to by the Commission in Section C(1)h

- h. After a Demolition Delay has been imposed, an Applicant may apply to the Commission for a reduction of the delay period. Within thirty (30) Business Days following the Commission's receipt of such request, the Commission shall schedule a Public Hearing and make a determination as to whether or not to reduce the delay period through the issuance of a Demolition Authorization. At this Public Hearing, the Commission shall consider whether the Applicant has:
  - i. Filed with the Building Commissioner plans for intended future use and development of the site and has been found to comply with all laws pertaining to the issuance of a building permit, including without limitation, any necessary zoning findings, variances or special permits required for said use and development.
  - ii. Made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the Building who is willing to preserve, rehabilitate or restore the Building.
  - iii. Agreed to accept a Demolition Permit on specified conditions approved by the Commission, such as those described in C(1)e. If the specified conditions involve approved plans and elevations, the Applicant shall provide the Commission a complete set of plans and elevations.

(2) Exemptions

The Building Commissioner may issue a Demolition Permit without Historical Commission review if proposed changes are limited to any of the following:

- a. Removal and replacement of exterior architectural features, including roofing and siding materials, that replicate significant historic design detail with exact or similar material.
- b. The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within two years thereafter and carried forward with due diligence.

D. Standards for Designation as a Significant Building

The Historical Commission designee and staff shall determine that a Building be designated as a Significant Building if it is 50 years or older and meets one or more of the following criteria:

- (1) It is individually listed on, or is a contributing structure within an area listed on, the National Register of Historic Places or Massachusetts State Register of Historic Places or is the subject of a pending application for such listing; or

**Commented [BB1]:** Example language from Stockbridge, MA

*"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 substantially all of the 12-month 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."*

- (2) The Building has value in association with a specific location, or one or more historic persons or events, or with the broad architectural, social, political, economic or cultural heritage of the Town of Amherst or the Commonwealth; or
- (3) The Building, alone, in the context of a group of buildings or as part of a viewshed, has historical or architectural value, as to period, style, craftsmanship, method of building construction or in association with a recognized architect or builder.

E. Designation of a Building as Preferably Preserved

The Historical Commission, in the public interest of the Town's robust historic character and rich cultural identities, prefers to preserve Significant Buildings whenever possible. In doing so, the Commission serves to promote the environmental, economic, educational, and social advantages of a community with historic identities and to avert the possible negative impacts of a Significant Building's loss or replacement with a structure of fewer noteworthy characteristics.

To this end, the Historical Commission will weigh the factors which led to the Building's designation as Significant, including additional review of the criteria in Section D 1-3 and the owner(s) plans for reuse, reconstruction, or restoration, and make a determination regarding its preservation. A designation of "Preferably Preserved" will be applied to those Significant Buildings that the Commission finds would represent a loss to the Amherst community if Demolition Authorization were granted.

A Preservation Order will be issued for any Building designated as Preferably Preserved delaying the issuance of a Demolition Permit = for a period of 12 months while Commission members work with the owner(s) on methods for possible preservation as referenced in Section C(1)e.

F. 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 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 the decision which shall be forwarded to the Commission.

G. Permit Expiration

(1) Expiration for No Action

- a. If the Building is not determined to be Significant in accordance with Section C or if the Historical Commission issues a Demolition Authorization, Demolition must commence within 365 days of the date of the decision.

- b. If the Historical Commission determines a Building shall be Preferably Preserved, Demolition must then commence within one (1) year from the expiration of the Demolition Delay.
- c. If Demolition does not commence within the timeframe allowed above, any future Demolition shall be subject again to full review in accordance with the provisions of this Bylaw.
- d. An applicant may request a 6-month extension in writing to the Commission.

#### H. Enforcement, Penalties, and Remedies

The following enforcement and remedies shall apply under this bylaw:

- (1) The Commission is authorized to adopt rules and regulations to carry out its duties and functions under this Bylaw.
- (2) The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity they shall deem necessary and appropriate to obtain compliance with the requirements of this Bylaw, or to prevent a violation thereof.
  - a. Any owner of a Building subject to this Bylaw who knowingly acts to demolish said Building, or damage a portion of a Building in a way which increases its likelihood of total failure, without first obtaining a Demolition Authorization in accordance with the provisions of this Bylaw, or who likewise, by some causative action, contributes to the deterioration of said Building, shall be in violation of this Bylaw and subject to enforcement by a non-criminal complaint pursuant to the provisions of M.G.L. Chapter 40, Section 21D, as amended.
  - b. Notwithstanding the provisions of Section 11.45, the fine for any such violation shall be three hundred dollars (\$300.00) for each offense. Each day the violation exists shall constitute a separate offense until the demolished building is rebuilt or re-created as directed by the Historical Commission, or unless otherwise agreed to by the Commission.
  - c. Notwithstanding the above, this section does not create an affirmative obligation to maintain a property.
- (3) No building permit shall be issued with respect to any premises upon which a Building has had Demolition occur in violation of this Bylaw for a period of two (2) years from the date of the completion of such Demolition unless first authorized by the Historic Commission at a Public Hearing.

**Commented [BB2]:** Add relevant Section of General Bylaw

#### I. Appeals

A **PERSON AGGRIEVED** by a determination of the Commission may, within twenty (20) days of the issuance of a Preservation Order or Demolition Authorization, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the regional planning agency. The finding of the person or persons making such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court as provided in Chapter 40C, Section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the arbitrator has been filed with the office of the Town Clerk.

J. Severability

If any section, paragraph, or part of this bylaw be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect to the extent that the overall purposes of this article can still be met.

**Commented [BB3]:** Define as applicant, abutter within 300'

(what about charitable corporation in which one its purposes is the preservation of historic places, structures, BUILDINGS or districts)?