

## CHAPTER XXVI

### DEMOLITION DELAY BY-LAW

#### 26-1. Intent and Purpose

26-1.1 The purpose of Topsfield's proposed Demolition Delay By-Law is to preserve, protect and document significant buildings and structures within the Town of Topsfield that are outside Local Historic Districts. Such buildings and structures reflect distinctive features of the architectural, cultural, economic, agricultural landscape or social history of the Town, and their preservation promotes the public welfare by making the Town a more attractive and desirable place to live and work.

26-1.2 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 through a six month delay in issuing a demolition permit. In addition, this delay will give the Topsfield Historical Commission ("the Commission") an opportunity to document historic or important architectural resources before they are lost from Topsfield's cultural landscape.

26-1.3 The By-Law is intended to encourage and assist owners and townspeople to seek out persons who might be willing to purchase, preserve, rehabilitate restore or relocate such structures rather than demolish them, thus limiting the detrimental effect of demolition on the historical architectural resources of the Town.

26-1.4 To achieve these purposes, the Commission is empowered to advise the Building Inspector with respect to the issuance of permits for demolition of significant structures, and, where appropriate and consistent with the intent and purpose of this By-Law, to allow demolition under conditions designed to minimize the loss of distinctive features of significant structures.

#### 26-2. Definitions:

26-2.1 "Building or Structure" - any combination of materials forming a shelter for persons, animals, or property.

26-2.2 "Demolition" – any act of pulling down, destroying, removing, razing, burning by arson, dismantling or moving a building or structure or any portion thereof, or commencing the work of moving or of total or substantial destruction of a structure or portion thereof, with the intent of completing the same;

26-2.3 "Significant Structure" – any building or structure, or portion thereof, which is not within a local historic district, and which meets one or more of the following criteria:

- a. listed in the National Register of Historic Places
- b. determined by the Massachusetts Historical Commission to be eligible for listing in said National Register;
- c. recorded on the inventoried list of historic properties in the Town of Topsfield , MA

26-2.4 "Commission" - the Topsfield Historical Commission.

26-2.5 "Preferably Preserved"-any Significant Structure that has been determined by the Commission, because of its importance to the historical and /or cultural resources of the Town, to be in the public interest to preserve.

26-2.6 "Business Day" - any day which is not a legal municipal holiday, Saturday or Sunday.

26-2.7 “Local Historic District”-a defined district, such as the existing Topsfield Common Historic District, that has been established under the Historic Districts Act, General Laws, Chapter 40C.

### 26-3. Regulated Buildings and Structures

26-3.1 The provisions of this By-Law shall apply only to any building or structure, which, in whole or in part, conforms to the definition under Section 26-2.3.

### 26-4. Procedure

26-4.1 No demolition of a Significant Structure, or any portion thereof, shall be permitted except in conformity with the provisions of this By-law. A permit for the demolition of a building or structure shall be issued only upon compliance with the provisions of the By-Law.

26-4.2 The Commission shall maintain and keep current a List of Significant Structures that meet the criteria specified in section 26-2.3, and shall provide said List to the Building Inspector.

26-4.3 Upon receipt of an application for a demolition permit, the Building Inspector shall refer to the List of Significant Structures. If the Building Inspector determines that the application pertains to a Significant Structure, the Building Inspector shall not issue a demolition permit, but shall instead forward a copy of the application to the Commission within five (5) business days of said determination, and shall notify the applicant in writing of this action.

26-4.4 Upon being notified of the Building Inspector’s determination, if the applicant wishes to proceed, he/she shall within 60 days file an Application for Significant Structure Review (“Application for Review”) with the Commission, on a form to be supplied by the Commission. The Application for Review shall include the following information and materials:

- a. A map showing the location of the building or structure to be demolished with reference to the lot lines and to neighboring building and structures;
- b. Photographs of all elevations;
- c. A written description of the building or structure, or part thereof, to be demolished, sufficient to identify the nature and extent of the proposed demolition;
- d. The reason the proposed demolition and data supporting said reason;
- e. Plans for the proposed restoration or buildings that will replace the demolished structure;
- f. A request for a site visit by the Commission or its designee, if so desired by the applicant.

26-4.5 Upon receipt of an Application for Review, the Commission shall, within thirty (30) days of such receipt, conduct a public hearing at the applicant’s expense to determine whether the Significant Structure is preferably preserved; the Commission shall give public notice of said hearing by publishing notice of the time, place and purpose of the hearing in a newspaper of general circulation in the Town twice, the first notice to be published fourteen (14) days before the hearing and the second notice no more than seven (7) days before the hearing, and by mailing a copy of said notice to the applicant, to the owner of the premises on which the Significant Structure is located (if other than the applicant) to the owners of all property within three hundred feet of the premises on which the Significant Structure is located as appearing on the most recent tax list, and to such other persons as the Commission shall deem entitled to notice.

26-4.6 If, after a public hearing, the Commission determines that demolition of the Significant Structure would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the applicant, the owner, if other than the applicant, and the Building Inspector, in writing, within ten (10) business days of such determination. Upon receipt of such notice, or upon the expiration of ten (10) business days from the date of the close of the Commission’s public hearing, without having received any notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, by-laws, rules and regulations, issue a demolition permit for the subject structure.

26-4.7 If, after the public hearing, the Commission determines that demolition of the Significant Structure would be detrimental to the historical or architectural heritage or resources of the Town, such structure shall be considered to be a preferably preserved structure, and the Commission shall so advise the applicant, the owner if other than the applicant, and the Building Inspector, in writing, within (10) business days, and no demolition permit shall be issued until six months after the date of such determination by the Commission.

26-4.8 During the six month delay period following the Commission's determination that a structure is to be considered preferably preserved, the Commission shall notify the Massachusetts Historical Commission, the Board of Selectmen, the Planning Board, and any other interested party in an effort to obtain assistance in obtaining preservation funding or in finding an adaptive use of the structure which will result in its preservation.

#### 26-5. Responsibilities of the Owner

26-6.2 Once a Significant Structure is determined to be a preferably preserved structure, the owner shall be responsible for properly securing the building or structure, if vacant, to the satisfaction of the Building Inspector. Should the owner fail to so secure the building or structure, a subsequent destruction of the structure at any time during the six month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a demolition in violation of this By-Law.

#### 26-6. Emergency Demolitions

26-6.1 Notwithstanding any other provisions of the By-Law, the Building Inspector 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 Inspector shall inspect the building or structure and 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 Inspector shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.

26-6.2 No provision of this By-Law is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

#### 26-7. Historic Districts Act

26-7.1 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 or structure in an historic district.

#### 26- 8. Enforcement and Remedies

26-8.1 The Building Inspector is specifically authorized to institute any actions, in law or in equity, as deemed necessary to obtain compliance with the requirement of this By-Law to prevent a threatened violation thereof.

26-8.2 During the six month delay period following the Commission's determination that a structure be considered preferably preserved, the Commission can advised the Building Inspector, in writing, to issue a demolition permit without waiting for the period to expire, if the Commission decides to the effect that:

- a. Commission is satisfied that there is not reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore said structure, or

- b. Commission is satisfied that for at least six months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject structure, and that such efforts have been unsuccessful;
- c. Commission has determined that the proposed moving or demolition may be conducted in a specific manner so as not to be detrimental to the historical or architectural heritage or resources of the Town.
- d. Documentation of Significant Structures has met the requirements of the Commission.

26-8.3 Except as provided below, whenever a significant building or structure or any portion thereof has been voluntarily demolished in violation of this By-Law, for a period of two years after the date of completion of such demolition, no building permit shall be issued with respect to any premises upon which such demolition has occurred. As used herein, "premises" includes the parcel of land upon which the demolished significant structure was located.

26-8.4 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 period of two years, but no sooner than six months from the date of completion of any demolition in violation of this By-Law, 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 Inspector pursuant to this By-Law

#### 26- 9. Severability

26-9.1 If any section, paragraph or part of this By-Law for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.

(Art. 40, 5/7/02; Art. 32, 5/6/03; Art. 46, 5/4/04 Effective Date 7/21/04)

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Editor's Note: The Historical Commission's Inventory List of Significant Structures is available through the Historical Commission.