

ARTICLE 46C. HISTORIC PRESERVATION DEMOLITION REVIEW

(New ATM 2017.)

46C.1 Purpose. This Article is adopted by the Town to assure the preservation and enhancement of the Town of Wellesley's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings that have distinctive architectural features or historical associations that contribute to the historic fabric of the Town.

46C.2 Definitions. For the purposes of this Article, the following words and phrases have the definitions set forth next to them:

"Application": An application to the Commission for a Demolition review determination of a Building in accordance with the provisions of this Article that shall include the following information supplied by the Owner: (i) the name of each Owner (including of the underlying property, if different from the Owner of the Building), (ii) the address of the Building, (iii) an indication whether the Owner is seeking a full or partial Demolition, (iv) the earliest date that the Owner believes the Building, or any part thereof, was constructed, and (v), if the Owner is seeking a partial Demolition, non-certified plans and drawings showing such proposed partial Demolition.

"Article": This Article 46C of the Town Bylaws.

"Building": Any combination of materials forming a shelter for persons, animals or property located in the Town of Wellesley that is larger than 100 square feet.

"Change of Control": As defined in Section 46C.4(f)(ii).

"Commission": The Wellesley Historical Commission.

"Commission Staff": The person(s) regularly providing staff services for the Commission who the Commission has designated to perform tasks for the purposes of this Article and who shall be located in Town Hall. All communication with the Commission shall, unless otherwise specified in writing by the Commission, be done through the Commission Staff.

"Delay Period": As defined in Section 46C.4(c)(ii).

"Demolition" or "Demolish(ed)": With respect to a Building regardless of whether another Building is constructed within the original footprint of such Building, the (i) pulling down, razing or destruction of the entire Building or (ii) the removal or envelopment of 50% or more of the existing exterior structure of the Building as determined in Section 46C.4(b), provided that, any non-structural changes to the siding or roofing of a Building shall not constitute a Demolition for purposes of this Article.

"Demolition Permit": Any permit issued by the Inspector of Buildings that is required by the State Building Code and which authorizes the Demolition of a Building (excluding interior Demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

"Effective Date": August 15, 2017 at 12:01 a.m., Eastern Standard Time.

"Eligibility Notice": As defined in Section 46C.4(b).

"Eligible Building": Any Building that requires a Demolition Permit in order to be Demolished that was built, in whole or in part, on or prior to December 31, 1949 and that is or was at any point during the three (3) years preceding an Application, a dwelling as defined and regulated under the State Building Code. Notwithstanding the foregoing, Buildings owned by the Town of Wellesley and dormitories and residence halls owned by educational institutions used to house students or staff are not considered Eligible Buildings for purposes of this Article.

The determination of what constitutes a Building's date of construction shall be made by the Commission Staff using any combination of records generally available to the public, including but not limited to, Board of Assessor's records (e.g., property record cards), Building Department records (e.g., building permits), applicable Registry of Deeds (e.g., deeds), and the Wellesley Townsman archives.

"Inspector of Buildings": The Town of Wellesley's Inspector of Buildings.

"Owner": With respect to a Building that is the subject of this Article, the owner(s) of record, determined to be the last grantee(s) of record on file with the applicable Registry of Deeds.

“Preferably Preserved”: A Building should be preferably preserved if it is an Eligible Building, the Demolition of which that is proposed in the Application would be detrimental to the historical or architectural heritage of the Town because such Building is (i) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town, the Commonwealth of Massachusetts or the United States of America, (ii) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of Buildings, or (iii) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the Buildings located in the adjacent federal or local historic district.

“Preservation Determination”: As defined in Section 46C.4(c)(ii).

“Public Hearing”: As defined in Section 46C.4(e)

“Submission Date”: As defined in Section 46C.4(a).

“Waiver Hearing”: As defined in Section 46C.4(d)(i).

46C.3 Applicability and interpretation.

- a. **Applicability.** Commencing on the Effective Date, no Demolition Permit for an Eligible Building shall be issued by the Inspector of Buildings without first complying with the provisions of this Article. After complying with the provisions of this Article, any request to the Inspector of Buildings for a Demolition Permit shall, along with all other documents required by the Inspector of Buildings, be accompanied by the Eligibility Notice and/or the Preservation Determination. Unless otherwise noted, all days are calendar days. An Owner may be represented for all purposes under this Article by the Owner’s duly authorized agent or representative.
- b. **Damage and Reconstruction.** Subject to Section 46C.7, this Article does not apply to the reconstruction of a Building that was damaged or destroyed by fire, storm, or other disaster, provided that (a) such damage or destruction is not caused by the owner or their agents or representatives’ negligence or willful misconduct, including but not limited to, with respect to securing the Building, and (b) such reconstruction is commenced within two (2) years from the date of the damage or destruction and is conducted at a commercially reasonable pace. This exception shall be limited to reconstruction of only that portion of the Building damaged by such catastrophic event. Time incurred in resolving an appeal or other court action or insurance claim shall not be counted as part of the two-year limit. (Amended ATM 2018.)
- c. **Validity of Commission’s Determination.** A Preservation Determination shall remain valid, if Preferably Preserved, for two years after the expiration of the Delay Period, or if not Preferably Preserved, for two years after the Preservation Determination. While valid, the Inspector of Buildings may act upon a request for a Demolition Permit without regard to the provisions of this Article.

46C.4 Procedure.

- a. **Application.** An Owner seeking to Demolish a Building shall first file an Application with the Commission Staff. The Commission Staff will date stamp the Application (the “Submission Date”) and provide the Owner with a stamped acknowledgement copy of the first page of the Application.
- b. **Determination if an Eligible Building.**
 - i. **Determination.** Within five (5) business days after the Submission Date, the Commission Staff shall make a determination as to whether the Building is or is not an Eligible Building and shall send written notice of such determination to the Owner (the “Eligibility Notice”). The Eligibility Notice shall include instructions to the Owner on its permissible next steps.
 - ii. **Appeal.** The determination made in the Eligibility Notice may be appealed by the Owner to the Commission by filing a written notice of appeal with the Commission within twenty (20) days after the date of the Eligibility Notice. The Owner shall include all relevant reasons and documentation supporting its appeal. The Commission shall schedule a Public Hearing for a date not later than forty-five (45) days after the Commission’s receipt of the notice of

appeal. Within ten (10) days following the conclusion of such hearing, the Commission shall provide written notice of its determination to the Owner.

c. Determination if Preferably Preserved.

- i. Documentation Requirements. Upon the Owner's receipt of the Eligibility Notice that indicates that the Building is an Eligible Building and the exhaustion of the appeal process provided for in Section 46C.4(b)(ii) above, the Owner shall provide the Commission with the following additional information:
 1. in the case of a partial Demolition, plans showing the use or development of the site after such Demolition, if known, and a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development, if known; and
 2. in the case of any Demolition, photographs of all existing façade elevations of the Building.
- ii. Hearing and Determination. Within forty-five (45) days following the Commission's receipt of the documentation required pursuant to Section 46C.4(c)(i) above, the Commission shall hold a Public Hearing and make a determination as to whether or not the Building should be Preferably Preserved (the "Preservation Determination"). If the Commission determines that the Building should be Preferably Preserved, then no Demolition Permit with respect to such Building shall be issued until twelve (12) months after the date of the Preservation Determination (the "Delay Period"), provided that, the length of the Delay Period may be reduced pursuant to Section 46C.4(d) below. If the Owner does not provide to the Commission all documentation required by Section 46C.4(c)(i) above within ninety (90) days of (i) the Owner's receipt of the Eligibility Notice or (ii) if the Owner has elected to appeal pursuant to Section 46C.4(b)(ii) above, the conclusion of any appeal period, then the Application shall be automatically withdrawn.
- iii. Continuances. The Commission and the Owner may mutually agree to continue any hearing at which the Commission is to make the Preservation Determination. Any such continuances shall automatically extend the time for the Commission to make the Preservation Determination and all associated dates that fall thereafter.
- iv. Notice of Preservation Determination. Within ten (10) days of making the Preservation Determination, the Commission shall send written notice of such determination to the Owner.
- v. Appeal. The determination made in the Preservation Notice may be appealed by the Owner to any court of competent jurisdiction in the Commonwealth of Massachusetts.

d. Reduction in Length of Delay Period (Waiver Process).

- i. Earlier Issuance. After a Delay Period has been imposed, an Owner may apply to the Commission for a reduction of the Delay Period. Within forty-five (45) 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 or modify the Delay Period (the "Waiver Hearing"). At the Waiver Hearing, the Commission may consider whether the Owner has:
 1. 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; or
 2. agreed to accept a Demolition Permit on specified conditions approved by the Commission. If the specified conditions involve approved plans and elevations, then no Demolition Permit shall be issued by the Inspector of Buildings unless the Owner provides to the Inspector of Buildings a complete set of plans and elevation drawings which have been signed and stamped by the Commission, provided, however, that if such plans and elevations are subsequently modified, no copy signed and stamped by the Commission shall be required if such modifications do not substantially alter the plans and elevations previously approved by the Commission.

- ii. **Notice.** The Waiver Hearing shall remain open until closed by the Commission, provided that, if the Waiver Hearing is still open on the date that the Delay Period expires, the Waiver Hearing shall be automatically closed on that date without any further action of the Commission or Owner. Within fifteen (15) days after the Commission has closed the Waiver Hearing, the Commission shall provide to the Owner written notice of its determination or a summary of the Owner and the Commission's agreed-upon plans with respect to the Delay Period and the Building.
- e. **Hearing Notice Requirements.** Public notice of all Commission hearings conducted in accordance with this Article (each, a "Public Hearing") shall provide the date, place and time of the Public Hearing and the address of the Building. With respect to each such notice, the Commission shall, at least fourteen (14) days prior to the date of the Public Hearing, (i) advertise once in a newspaper of general local circulation, (ii) post it with the Town Clerk and (iii) send it by regular United States Postal Service mail to the Owner and to the owners of all abutting properties of the Building. The Commission may also send such notice to other property owners deemed by the Commission to be materially affected by the Application.
- f. **Transferability.**
 - i. **Requirement to Submit New Application.** Once a Building is deemed Preferably Preserved, if, prior to the expiration of the Delay Period, ownership (whether of record, legal, beneficial or otherwise) in the Building or underlying property is transferred, directly or indirectly, in whole or in part, by the Owner to any other person, irrespective of whether the Owner retains any ownership interest therein or rights thereto, the transferee must submit a new Application pursuant to the procedures of this Article. During the period that such new Application is under review by the Commission, the existing Delay Period shall remain in effect. If the Commission determines that the Building is Preferably Preserved, a new Delay Period shall be implemented for the full twelve (12) months, commencing on the date that the Commission makes such new Preservation Determination; the previously-existing Delay Period shall thereafter immediately terminate.
 - ii. **Owner.** For purposes of Section 46C.4(f)(i) above, a transfer shall (1) not include transfers done for purposes of estate planning by the Owner, and (2) in addition to the types of transfers noted in Section 46C.4(f)(i) above, be deemed to occur upon a Change of Control of the Owner. "Change of Control" means, regardless of the form thereof, consummation of (1) the dissolution or liquidation of the Owner, (2) the sale of all or substantially all of the assets of the Owner on a consolidated basis, (3) a merger, reorganization or consolidation in which the outstanding equity interests of the Owner are converted into or exchanged for securities of the successor entity and the holders of the Owner's outstanding voting power immediately prior to such transaction do not own a majority of the outstanding voting power of the successor entity immediately upon completion of such transaction, (4) the sale or other transfer of all or a majority of the outstanding equity or beneficial interests (or such other amount necessary to control the Owner) of the Owner or (5) any other transaction in which the holders of the Owner's outstanding voting power immediately prior to such transaction do not hold at least a majority of the outstanding voting power (or such other amount necessary to control the Owner) of the Owner or the successor entity immediately upon completion of the transaction.

46C.5. Emergency Demolition.

If the Inspector of Buildings determines that a Building poses an imminent threat to public health and safety and that immediate Demolition of the Building is warranted, the Inspector of Buildings may issue a Demolition Permit without requiring compliance with the provisions of this Article. Whenever the Inspector of Buildings issues a Demolition Permit under the provisions of this Section 46C.5, it shall prepare and file with the Commission a written report describing the Demolition of the Building and the basis of its decision to issue such Demolition Permit.

46C.6 Non-Compliance.

Anyone who effects, or begins to effect, a Demolition of an Eligible Building without first complying fully with the provisions of this Article shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day in violation of this Article.

In addition, unless a Demolition Permit issued in accordance with this Article is obtained and unless the Demolition Permit is fully complied with, including full compliance with plans and elevation drawings signed and stamped by the Commission, the Inspector of Buildings may elect, and the Commission may request the Inspector of Buildings to, (1) issue a stop work order halting all work on the Building unless and until the Commission notifies the Inspector of Buildings in writing that the Owner has appeared before the Commission to address such non-compliance, and the Commission has accepted the Owner's plans to remediate such non-compliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any non-compliance has been remediated; and/or (3) refuse to issue any permit required by the State Building Code pertaining to any property on which an Eligible Building has been Demolished, or such Demolition was commenced, for a period of two (2) years from the date of such Demolition, provided that this provision shall not prevent the Inspector of Buildings from issuing any permit required to insure the safety of persons and property. The Inspector of Buildings shall give prompt written notice to the Commission of any action taken or refused to be taken pursuant to this Section 46C.6.

Notwithstanding the first two paragraphs of this Section 46C.6, upon a determination by the Commission that reuse of the property in accordance with building plans prepared by the Owner and submitted to the Commission (and all other relevant Town boards and departments) will substantially benefit the Town, the neighborhood in which the Building is situated, and will provide compensation for the loss of the historic elements of the Building either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the Building or the surrounding neighborhood, the Commission may waive the fine, in whole or in part, and/or the Inspector of Buildings' ban on issuance of any permits as provided for in this Section 46C.6, in order to allow for the construction or reconstruction of a Building or architectural elements as approved by the Commission. An Owner receiving such a waiver of the fine and/or ban shall execute a binding agreement with the Commission enforceable against all of the Owner's heirs, assigns and successors in interest to insure that any reuse of site undertaken during the two-year ban shall be implemented in accordance with the plans, terms and conditions approved by the Commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the Commission's approval granted under this Section 46C.6 shall also permit reinstitution of the fine for non-compliance with this Article.

46C.7 Securing Buildings.

- a. Rebuttable Presumption. If a Building has been determined by the Commission Staff or Commission, respectively, to be (1) an Eligible Building and is subsequently destroyed (in whole or in part) by fire or other cause before a Preservation Determination is made, or (2) Preferably Preserved and is subsequently destroyed (in whole or in part) by fire or other cause before the expiration of the Delay Period, then in each such case a rebuttable presumption shall arise that the Owner voluntarily Demolished the Building without complying with the provisions of this Article.
- b. Non-Issuance of Permits. If the rebuttable presumption has arisen, the Inspector of Buildings shall not issue any permit required under the State Building Code pertaining to the Building, with respect to Section 46C.7(a)(1) above, for a period of two (2) years from the date of such destruction, and with respect to Section 46C.7(a)(2) above, until the end of the Delay Period.
- c. Exceptions. Notwithstanding anything to the contrary in this Section 46C.7, the Inspector of Buildings may issue any permit required under the State Building Code pertaining to the Building (a) as may be necessary to secure public safety or health or (b) if the Owner has provided satisfactory evidence to the Inspector of Buildings that (i) such Owner took reasonable steps to secure the Building against fire or other loss, (ii) the cause of the destruction was not due to the Owner's negligence or willful misconduct, or (iii) the Wellesley Fire Department or Massachusetts State Fire Marshall makes a determination that the cause of the destruction cannot be determined.

46C.8 Buildings Located in Other Districts.

The provisions of this Article shall not apply to any Building located in a (i) local historic district established pursuant to G.L. c. 40C and subject to regulation by the local historic district commission under the provision of

Section 14D HISTORIC DISTRICTS of the Zoning Bylaw or (ii) Neighborhood Conservation District established pursuant to Article 46A of the Town Bylaws.

46C.9 Severability. In case any section, paragraph, or part of this Article is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this Article shall continue in full force and effect.

46C.10 Enforcement. The Commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this Article.

46C.11 Fees. Any Owner whose Application is subject to this Article shall pay such fees as shall be determined by the Commission.

46C.12 Rules and Regulations. The Commission may promulgate or amend Rules and Regulations ("Rules") which pertain to this Article, and shall file a copy of the Rules in the office of the Town Clerk. The adoption or amendment of Rules shall be after a Public Hearing to receive comments on the proposed or amended Rules. (ATM 2017.)