

Received 8/4/15
From Bob Tucker, Ell King
for discussion at

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PBmty

DEMOLITION REVIEW ORDINANCE

A demolition review ordinance (often called a demolition delay ordinance) can help prevent the loss of historically and architecturally significant buildings. While such an ordinance does not prevent demolition, it provides a valuable time-out to explore alternatives, and many communities with the ordinance report a high success rate in saving important buildings. The ordinance can apply to an entire community or just to designated areas. Some municipalities impose a longer delay for resources listed on the National or State registers.

Generally, the ordinance is adopted as an amendment to the building code and administered by the heritage commission or a subcommittee of the commission. The delay period can be for any specified period of time, but generally runs from thirty to ninety days, or a sufficient time period to evaluate the significance of the building, meet with the owner to discuss concerns and options, hold a public hearing, document the structure and perhaps salvage distinctive architectural features. The criteria for triggering the ordinance typically requires that the building (or structure) be at least fifty years old; be visible from a public right-of-way; and be at least 250 square feet. However, if a qualifying building has been determined by the building inspector to be a public hazard, it is exempt from the ordinance. In crafting a demolition review ordinance, it is advisable to structure it so it can run in tandem with the timeframe imposed by other permits that might be required.

The demolition review process can begin in one of several ways; (1) when an application for a demolition permit has been submitted; (2) when an application for site plan review has been submitted and the intent to demolish a building is either shown on the plan or clearly expressed in the written portion of the application; or (3) when the owner sends a letter of intent to the building or code inspector. The building inspector then notifies the heritage commission/review subcommittee which determines whether the property is significant and warrants the delay to explore alternatives.

Communities have a great deal of flexibility in creating a demolition review ordinance and can draft it to reflect local concerns and conditions. At a minimum, the ordinance should include the following provisions:

- Overview/purpose statement
- Definitions of commonly used terms

- Criteria for buildings affected by ordinance
- Procedures detailing the review process
- Responsibilities of the review committee
- Responsibilities of the owner
- When the review period begins and when it is completed



Clinton Street farmhouse, photo courtesy: Elizabeth Dufec Hengen

Advantages:

- Allows the municipality to consider the impact of proposed demolition at an early stage in the project, thus facilitating communication and cooperation and avoiding the conflicts that often arise when last-minute compromises are sought.
- Provides an early alert and often enables the heritage commission to be involved in the site plan review process
- Provides leverage when it seems that no alternative to demolition can be met: the review board can agree to shorten the review period in exchange for design review and approval of new construction. This can be useful when time considerations are critical for the developer.

Disadvantages:

- Delaying demolition does not ensure that demolition will be avoided.

FOR MORE INFORMATION:

Letunic, Maria Esq., *Demolition Delay Protection: A Guide for Local Historical Commissions*. Massachusetts Historical Commission, 1989.

Demolition Review Ordinances in New Hampshire: Concord (Chapter 26 Article 26-9):

http://library12.municode.com/gateway.dll/NH/new%20hampshire/1?f=templates&fn=default.htm&npsusername=10210&nppassword=MCC&npac_credentialspresent=true&vid=default

Keene (Chapter 18 Article IV):

http://library12.municode.com/gateway.dll/NH/new%20hampshire/485?f=templates&fn=default.htm&npsusername=13267&nppassword=MCC&npac_credentialspresent=true&vid=default

The church that owned this late 19th century farmhouse applied for a demolition permit. After going through the demolition review process, the church elected instead to renovate it for housing. "It was the best decision we ever made," stated the minister.

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718.7 Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

719. Historic Building/Structure Demolition/Substantial Modification Delay Ordinance

719.1 Purpose and Authority

719.1.1 The purpose of this article is to:

1. Establish a process for preserving and protecting significant buildings or other structures within the Town of Windham (the "Town") which constitute or reflect distinctive features of the cultural, political, architectural or social history of the Town;
2. To encourage owners of such buildings or other structures to seek out persons or groups of people who might be willing to purchase, preserve, rehabilitate or restore such buildings or other structures rather than demolishing or substantially renovating them; or, barring that,
3. To create a record, including a photo/video history of such buildings or other structures; and
4. To provide a reasonable time period for public notice, public hearing and discussion by interested groups and individuals of means by which to preserve such buildings or other structures.

719.1.2 This Ordinance shall be adopted as an Innovative Land Use Control under the provisions of RSA 674:21

719.2 Definitions

Except as otherwise provided herein, the following definitions shall apply:

Building or other structure: any combination of materials forming a shelter for persons, animals or property.

Community Development Department: Includes any staff members working for or on behalf of the Department, including but not limited to the Building Inspector, Code Enforcement Officer, Community Planner, and Community Development Director.

Cultural Resource List: A list prepared by the Heritage Commission dated January 2010, as may be updated, pursuant to RSA 674:44-b(I)(a) of the Archeological Sites and Structures of the Town of Windham.

Demolition: The act of pulling down, destroying, removing or razing any buildings or other structure or commencing the work of total or substantial destruction with the intent of completing the same.

Demolition Permit: A written application for the demolition of a building or structure and/or the approval of such, applied for and obtained through the Community Development Department in accordance with the NH State Building Code

HC: The duly established Heritage Commission of the Town of Windham.

HDC: The duly established Historic District Commission of the Town of Windham.

Historic Building/Structure Sign: A Sign purchased by the HC and stored at the Community Development Department, which is to be posted on properties that are subject to the permitting provisions of Sections 719.4 and 719.6 of this Ordinance.

Historic Resource Lists: A list prepared by the Heritage Commission dated May 2010, as may be updated, pursuant to RSA 674:44-b(I)(a) of the 18th, 19th and 20th Century Buildings of the Town of Windham.

Review Committee: A standing committee of the Windham Heritage Commission comprised of three (3) members of the Commission and two (2) alternates appointed by the chair of the commission.

Substantially Renovate: To do work, to renovate, rehabilitate or modify a building or other structure such that its exterior appearance or architectural features are substantially replaced and would require a building permit or Planning Board approval.

719.3 Criteria

This Ordinance applies to:

1. Any building, which is or was a habitable residential or commercial structure OR
2. A detached outbuilding, barn, garage or ancillary structure AND
3. Was constructed prior to 1940 OR
4. Appears on the Historic Resource List dated May 2010, as may be updated

In addition to the criteria listed above, the Procedure outlined in Section 719.6, applies to any site that appears on the Cultural Resource List dated January 2010, as may be updated.

719.4 Procedure – Building Permits

Except as provided in Section 719.7, when an application for a demolition permit or a building permit involving substantial renovations is submitted for a property meeting the criteria outlined in Section 719.3, the following procedure is to be followed:

719.4.1 Within 10 business days of receipt of an application, the Community Development Department will provide, by certified mail, a copy of this Ordinance to the applicant and notification that a “Historic Building/Structure” Sign must be posted on the property.

719.4.2 Within 10 business day of receipt of an application, the Community Development Department will provide a copy of the application to the HC, as well as email and phone notice to the HC Chair that such application has been applied for.

719.4.3 Within 10 business days of the HC being made aware of the application, the HC must (1) determine if a public hearing is to be held and specify the date, time and location, or (2) if this Section of the Ordinance is to be waived. HC will provide notification of such decision to the Community Development Department in writing and to the applicant by certified mail.

719.4.4 If a public hearing is to be conducted by the Review Committee on the submitted application, it must take place within 30 calendar days of notification as listed in Section 719.4.3.

719.4.5 Within 5 business days of the Community Development Department and applicant’s receipt of the HC’s decision to hold a public hearing, as outlined in Section 719.4.3, the applicant must

erect the “Historic Building/Structure” Sign on the subject property; the sign shall remain on the site in a location visible to the transient public until a permit is issued by the Community Development Department or the application is withdrawn by the applicant.

719.4.6 Notice of the public hearing will be posted by the HC as outlined in NH RSA 675:7

719.4.7 The applicant, or a representative of the applicant, proposing the demolition or substantial renovations, shall be invited to attend the public hearing to hear the concerns and/or alternatives that are proposed by the members of the public.

719.4.8 The Review Committee and the applicant or the applicant’s representative may agree to hold a meeting within 10 business days of the public hearing to discuss alternatives to demolition/substantial renovation if the Review Committee determines that the proposal is potentially detrimental to the community.

719.5 Demolition/Substantial Renovations

719.5.1 If no alternatives to demolition/substantial renovations have been identified and agreed to by the applicant, after the public hearing provided for in Section 719.4.7 and/or the meeting provided for in Section 719.4.8, the Community Development Department may proceed to issue the permit.

719.5.2 Prior to demolition/substantial renovations, the applicant is encouraged to provide the HC the opportunity to photographically document the building or structure. The HC shall also encourage the applicant to salvage significant architectural features.

719.6 Procedure – Planning Board Applications

When an application for a Site Plan or Subdivision involving demolition or substantial renovations is submitted for a property meeting the criteria outlined in Section 719.3, or the site is included on the Cultural Resource List, the following procedure it to be followed:

719.6.1 The application will be provided to the HC as part of the Technical Review Committee Process (TRC) for review and comment.

719.6.2 As part of the Community Development Department staff review of the application for TRC, a copy of this Ordinance will be provided to the applicant.

719.6.3 Ten calendar days prior to when the application has been scheduled for a Planning Board public hearing, notification will be provided to the HC requesting comments for the Planning Board to consider.

719.6.4 Ten days prior to the scheduled Planning Board public hearing on the application, the applicant must erect the “Historic Building/Structure” Sign, which is to be provided by Community Development Department staff, on the subject property in a location visible to the transient public. The sign shall remain on the site until a notice of decision is issued by the Community Development Department on behalf of the Planning Board or the application is withdrawn by the applicant.



719.7 Exceptions

719.7.1 Nothing in this Ordinance shall be construed to prevent immediate demolition where public safety is at stake and the building has been determined by the Building Inspector and/or Fire Inspector to be a public hazard and demolition is the only viable recourse.

719.7.2 The provisions of this Ordinance do not apply if an applicant previously received a permit under Section 719.5.1 or Planning Board approval under Section 719.6 and the applicant is seeking to renew or extend said permit or approval or to re-apply after the expiration of said permit or approval, provided the application is for the identical work previously permitted or approved.

719.7.3 The provisions of Section 719.4 do not apply if a permit is being requested for a building or structure that was part of an application under 719.6.

720. Kennels

720.1 Purpose:

This Ordinance is intended to provide regulations for protecting public health, safety, and welfare as well as the welfare of dogs and other animals. In addition, it is for the purpose of prohibiting nuisance, animal neglect, and containing the spread of diseases.

720.2 Title and Applicability:

This ordinance shall be known and referred to as the Town of Windham Kennel Ordinance. It governs both Commercial Kennels as well as those subject to regulation as Home Occupations. This ordinance does not apply to facilities operated by veterinarians licensed by the State of New Hampshire which engage in the practice of veterinary medicine under RSA 332-B.

720.3 Definitions:

Kennel: A facility (use or structure) intended and used to keep or care, breed, groom, handle, train, sell, or board on a short or long term basis, dogs or other household pets belonging to customers, patrons, or others, or lost or strayed animals, for compensation or as a humanitarian gesture.

Commercial Kennel: A facility (use or structure) intended and used to keep or care, breed, groom, handle, train, sell, or board on a short or long term basis, five (5) or more dogs or other household pets belonging to customers, patrons, or others, or lost or strayed animals, for compensation or as a humanitarian gesture.

NOTE: For the purposes of this Ordinance, a breeder with more than one adult unspayed female will be considered either a commercial kennel or require a Customary Home Occupation/Conditional Use Permit.

720.4 Location:

Commercial kennels are permitted only in the Business Commercial A or Limited Industrial Districts.

720.5 Approvals:

720.5.1 Commercial Kennels shall be required to obtain Site Plan approval from, the Planning Board in accordance with the Site Plan regulations.