

Historic District and Historical Commission Agenda
732 Main Street, Harwich, MA
Wednesday, September 23, 2020, 6:00 PM

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- I. Call to order - Reading of the Certain Requirements for Public meetings
- II. Public Meeting
 - A. Continued review and possible vote: Demolition Delay proposed amendments to the Town Code Chapter 131, Historical Preservation, Article II - Historically Significant Buildings - Jeanne Steiner.
 - B. West Harwich District of Critical Planning Concern (DCPC) Zoning By-Law and possible vote.
 - C. Review of Community Preservation Commission (CPC) Articles for Annual Town Meeting
 - D. CPC application deadlines for FY21 - Bob Doane
- III. Adjourn

Subject to Change / Next HDHC Meeting – TBA

Authorized Posting Officer: Elaine Banta, Planning Assistant/Historic Support 508.430.7506

DRAFT: Proposed Demolition Delay By Law Language for Harwich

This is based on the Sample Demolition Delay ByLaw-Age Based from Massachusetts Historical Commission.

This language should be inserted under Article II. Historically Significant Buildings in the Harwich Chapter 131. Historic Preservation

Title of Bylaw

Demolition Delay ByLaw for The Preservation of Historically Significant Buildings

Intent and Purpose

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, 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 advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

DEFINITIONS:

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 forming a shelter for persons, animals, or property.

BUILDING OFFICIAL - The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION – The Harwich Historic Districting and Historic Commission.

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.

DEMOLITION BY NEGLECT – A process of ongoing damage to the fabric, viability and/or functionality of an unoccupied structure leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance and/or failure to secure the structure from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls or apertures.

DEMOLITION PERMIT - The building permit issued by the Building Official for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the **18 month** demolition delay period of this bylaw.

SIGNIFICANT BUILDING – Any building within the town (city) which is in whole or in part 100 years or more old 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 Massachusetts Register of Historic Places; or
- The Building has been found eligible for the National Register of Historic Places or the Massachusetts 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 or the Commonwealth; 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.

VOLUNTARY DEMOLISHMENT - 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 without the proper permit or by allowing the building to be subject to demolition by neglect.

PROCEDURE:

No demolition permit for a building which is in whole or in part 100 years or more old 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 100 years old for the purposes of this bylaw.

Notice of Intent to Demolish

Before any building constructed prior to 100 years before the present calendar year is demolished in whole or in part, a notice of intent to do so will be filed with the Commission.

The notice of intent will be in the form provided by the Commission and shall be deemed filed when the completed form with the required number of copies and filing fee established by the Commission has been deposited both in the office of the Town Clerk and in the office of the Building Official.

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

- The address of the building to be demolished.
- The owner's name, address and telephone number.
- A description of the building.
- The reason for requesting a demolition permit.
- A brief description of the proposed reuse, reconstruction or replacement.
- A photograph or photograph(s) of the building.
- ***A report by a licensed engineer addressing the condition of the building.***

Public Hearing

Within 45 days of said filing, the Commission shall hold a public hearing to determine the degree of historical significance, if any, of the subject building and, if deemed to be historically significant, explore alternatives to demolition.

Notice of the time, place and subject matter of hearings hereunder shall be given by publication in a newspaper of general circulation in the Town once each week for two successive weeks, the first notice to appear 14 days at least before the day of the hearing (including the day of publication and excluding the day of the hearing), and by mailing a notice of hearing to the owner or applicant, all abutters to the subject property the Planning Board of the Town, the Historic District and Historical Commission, the Hawich Historical Society, the Conservation Commission and the Selectmen and such other persons as the Commission may determine.

Determination of Nonsignificance

If after hearing the Commission determines the building in question is not historically significant, or if the Commission determines in a case where less than complete demolition is proposed that the proposed work will not destroy or substantially diminish the historical significance of the structure, it shall within seven days of said hearing so notify the owner or applicant and the Building Official and shall also file a record of its findings with the Town Clerk in a form suitable for recording at the Registry of Deeds. Thereafter, necessary permits to authorize work may be applied for. A finding of nonsignificance shall be conclusive on all parties.

Determination of Significance; Demolition Delay

If after hearing the Commission determines that the building in question is historically significant and the proposed work would destroy or substantially diminish its historic value, it is empowered to impose a demolition delay of up to **18 months** from the date of said determination and may schedule additional hearings during any such delay period to allow an opportunity to develop alternatives to demolition and the ability to reduce or rescind the delay period if such alternatives are considered not feasible.

Alternatives to Demolition

If as a result of the Commission's review, acceptable alternatives to demolition are developed, the Commission is empowered to enter into an agreement with the owner of the building in question which reflects the alternatives which have been

agreed to and where appropriate, establishes a time period for implementation of alternatives. A copy of agreement shall be filed with the Town Clerk and Building Official. Thereafter, no work in connection with the building shall be done except in accordance with the terms of agreement unless and until a new notice of intent is filed and processed.

Right to Demolish

If at the end of a Commission-mandated delay no alternatives have been agreed to by the applicant, the Commission shall, within seven(7) days so notify the Town Clerk and the Building Official and the applicant shall be entitled to apply for all necessary permits to allow the work as described in the notice of intent.

Demolition Inspection

Once a permit for demolition is issued, either initially following Commission approval or at the end of a Commission-mandated delay, the Building Inspector will conduct a review of the demolition work to ensure it is within the scope of the permit. Following that inspection, any necessary building permits will be issued.

Violations and penalties

Any person legal or natural who demolishes in whole or in part any building constructed prior to 100 years before the present calendar year without first complying with the terms and provision of this bylaw shall be subject to a fine of \$500. Each day any work continues in violation shall constitute a separate offense. In addition to said penalty, the enforcing official shall be entitled to pursue appropriate action seeking injunctive relief to enjoin and restrain violation. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this ByLaw for a period of two (2) years after the date of completion of such demolition.

Enforcing Authority

The Building Official shall be authorized to enforce the provisions of this ByLaw.

Emergency Demolition

The provisions of this bylaw shall not apply to the Building Official if pursuant to other applicable provision of the law Building Official orders the demolition of an unsafe building to abate a threat to the public safety, nor shall it apply to persons acting pursuant to such order.

Whenever the Building Official issues an emergency demolition permit under this Section, he/she shall prepare a written report with attached photographic evidence describing the condition of said building or structure and the basis of the decision to issue an emergency demolition permit and provide a copy thereof to the Commission within 30 days of said determination. Additionally, whenever the Building Official condemns a building or declares it unsafe to enter he shall notify the Commission within ten business days of that action.

Demolition by Neglect

A significant building shall be maintained in a weathertight condition so as to prevent water intrusion into any portion of the building and to prevent demolition by neglect, including but not limited to maintenance of the roofing, siding, windows, doors and other architectural features. Maintenance shall also include the replacement or repair of any structural element or exterior architectural feature that, if left unattended, would result in further damage or degradation to any building element.

The following significant buildings are included:

- A building or portion, thereof, in commercial use or an income producing residential use building.
- Any unoccupied single family or multiple family residential structure.

This section does not apply to an owner occupied single family or multiple family residential structure.

If the Commission has reason to believe, through a visual inspection or other means, that a significant building may be undergoing demolition by neglect, then the Commission shall notify the Building Inspector and the owner. The Commission may request an inspection of the structure by the Building Inspector.

If the Commission determines that the significant structure is undergoing demolition by neglect, the Commission shall attempt to negotiate a voluntary agreement with the owner for necessary and timely repairs.

If, for any reason, an agreement cannot be reached, the Commission may take whatever necessary action as permitted under this Bylaw, including seeking a court order that specific repairs must be undertaken to secure the building against the elements, vandals or vermin, to halt further deterioration and/or to stabilize it structurally.

The Commission may grant a waiver from the requirements of this section upon showing of impossibility or financial hardship or the occurrence of events beyond the owner's control, or such other circumstances as the Commission may determine.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

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 pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

Severability

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

Historic District Act

If any provision of this Bylaw conflicts with Massachusetts General Laws, Chapter 40C, the Historic District Act, that Act shall prevail.

Article ___: To see if the Town will vote to amend the Code of the Town of Harwich – Zoning, by adding a new Article XXIV – West Harwich Special District as follows:

XXIV - West Harwich Special District

§325-144 Statutory Authority and Purpose

A. Statutory Authority

On December 4, 2019, the Barnstable County Assembly of Delegates adopted Barnstable Ordinance 19-18 and designated the district shown on a map labeled “West Harwich DCPC District Boundaries” prepared by the Cape Cod Commission (“DCPC Map”) as a District of Critical Planning Concern (“DCPC”), pursuant to Cape Cod Commission Act Section 11(d). The Town created the following implementing regulations to regulate the DCPC which shall be known as the West Harwich Special District.

B. Purpose

The purpose of the West Harwich Special District (“WHSD”), as designated in Barnstable Ordinance 19-18, is to preserve the significant historic and architectural resources in the area, to guide development to be consistent with the area’s unique character, to address safety and transportation impacts within the commercial zone on Route 28, and to promote small-scale businesses consistent with the area’s character.

§325-145 Intent

It is the intent of this bylaw to encourage and incentivize the retention, preservation, creative reuse, change of use, or expansion of use of existing historic structures to the extent possible.

§325-146 Applicability

A. District Boundaries

The boundaries of the West Harwich Special District (“WHSD”) are shown on a map entitled “West Harwich Special District” Map dated July 27, 2020, prepared by the Cape Cod Commission which is hereby made a part of this bylaw.

B. Relationship to Other Regulations

The provision in this Section (XXIV - West Harwich Special District) apply to all development within the WHSD. Other sections of the Town of Harwich Zoning Bylaw also apply within this special district, except that where this Section conflicts with or differs from other sections of the Harwich Zoning Bylaw, this Section shall control.

C. Relationship to General Bylaws

All Chapters contained within the General Bylaws of the Town of Harwich, including but not limited to Article II Historically Significant Buildings, shall also apply to all development within the WHSD, as applicable.

§325-147 Definitions

Historic Structures: Those structures located within the boundaries of the WHSD and which are identified in the Town of Harwich Historic Properties Inventory List. Additionally, the following properties, identified by the street address and the Assessors

Map and Parcel, are also determined to be Historic Structures for the purposes of this bylaw:

- 5 Route 28 – Map 10 Parcel N1-A
- 21 Route 28 – Map 10 Parcel N5
- 45 Route 28 – Map 10 Parcel S4
- 55 Route 28 – Map 10 Parcel U1-A
- 126 Route 28 – Map 11 Parcel B5
- 76 Route 28 Map 10 Parcel F7-2
- 66 Route 28 – Map 10 Parcel F5
- 22 Route 28 – Map 10 Parcel C6

Principle Building Façade: The front plane of the building wall closest to the road frontage, not including stoops, porches, or other appurtenances, and measuring at least 25 feet in length.

§325-148 Permitted Uses

The following uses are permitted within the WHSD; however, for some uses either a Staff Plan Review, pursuant to §325-152.A or a Site Plan Review Special Permit may also be required, pursuant to §325-55:

- A. Single-Family Dwelling
- B. Two-Family Dwelling
- C. Uses Accessory to a Single- or Two-Family Dwelling
- D. Bed and Breakfast
- E. Home Occupation
- F. Single family dwelling and accessory apartment
- G. Church or other religious use
- H. Non-profit Library, Museum or Historical Use
- I. Hotel
- J. Motel
- K. Hotel, Motel – Incidental Use
- L. Professional Offices, including Dental Offices and Blue Economy
- M. Municipal Uses

Additionally, the following uses are permitted in historic structures:

- N. Multifamily
- O. Retail sales
- P. Restaurant
- Q. Mixed-Use commercial/residential developments

§325-149 Special Permit Uses

For new construction or reuse or change of use of structure or building not identified as an historic structure, the following uses are conditionally allowed within the WHSD through the Planning Board as the special permit granting authority, provided the use does not conflict with the purpose of the district, and for some uses a Site Plan Approval pursuant to §325-55 and the provisions of §325-153 shall be required:

- A. Multifamily
- B. Retail sales, greater than 1,000 square feet of gross floor area and/or exterior space.
- C. Restaurant
- D. Mixed-Use commercial/residential developments

§325-150 Prohibited Uses

Any use not specifically allowed as of right or by Special Permit within this district are prohibited. Within this district, use variances shall be prohibited.

§325-151 Continuation of Pre-Existing Non-Conforming Uses

Any lawfully existing use of a structure or land that does not conform to the provisions of this bylaw may continue.

§325-152 Change, Alteration, Expansion of Pre-Existing Non-Conforming Uses and/or Structures

Notwithstanding the provisions of M.G.L Chapter 40A, and §325-54 of the Harwich Zoning Bylaw, lawfully established structures and uses in existence as of December 4, 2019 that do not conform to the WHSD District Wide Development Standards may be changed, altered or expanded in conformance with §325-154 Review Standards and Procedures.

- A. A pre-existing, non-conforming structure or use may change or expand up to 250 square feet of gross building footprint or exterior of building or site area through Staff Plan Review in accordance with the provisions of §325-154 provided it does not involve demolition of significant parts of an historic structure. Said application shall be made to the Planning Department and a written decision shall be rendered within 30-days of receipt. Said decision shall be consistent with the provisions of §325-154 and may be appealed to the Planning Board with written notice within 10-days. Said decision shall be lapse two (2) years from the date of issuance unless construction or operation under the approval has commenced.
- B. A pre-existing, non-conforming structure or use may change or expand up to 1000 square feet of building footprint or exterior of building or site area or undergo a change of use in accordance with §325-55.F Waivers, provided the following criteria are determined to be met:
 1. There shall be no more than one curb cut on to Route 28 and where practical, a driveway connection (shared driveway) shall be provided to an adjacent property;
 2. A landscaped area of at least 10 feet in depth shall be provided and maintained on the subject property along its road frontage. Any property with existing parking in front of the building will reduce the size of said parking area by at least 20% and will provide screening of said parking through landscape plantings and/or a low fence or wall. No expansion of parking in the front yard area is permitted;
 3. The specific change or expansion shall comply with all dimensional standards in the WHSD enumerated in Section 325-154.A; and,
 4. There shall be no demolition of an historic structure.

Said decision shall lapse two (2) years from the date of issuance unless construction or operation under the approval has commenced.

- C. A pre-existing non-conforming structure or use that proposes to change or expand more than 1,000 square feet of building footprint or exterior of building or site area requires Site Plan Approval pursuant to §325-55. The specific change or expansion shall comply with all dimensional standards in the WHSD pursuant to §325-154.A and B.

§325-153 New Construction

For new construction Site Plan Approval pursuant to §325-55 and all dimensional requirements of §325-154.A and B shall be required.

§325-154 Review Standards

A. Dimensional requirements.

1. Lots shall have frontage along Route 28. Adjacent parcels may be included provided that they are under the same ownership and are also located within the WHSD.
2. Setback requirements.
 - a. Front setback requirements for the principle building façade shall be a minimum of 20 feet and maximum of 40 feet.
 - b. Side lot line setback shall be a minimum of 20 feet.
 - c. Rear lot line setback shall be a minimum of 20 feet.
 - d. Parking shall be permitted at the side, measured a minimum of 10 feet back from the principle building facade on the property, or rear of the property.
 - e. Maximum site coverage shall not exceed 80%.
3. The maximum permitted height for new constructions shall not exceed 30 feet or 2 1/2 stories.
4. Minimum lot size shall be 20,000 square feet.
5. For properties containing and maintaining/reusing historic structures, the Planning Board or its designee may waive or modify these dimensional requirements if it is found that such waiver or modification will not substantially derogate from the purpose and intent of this bylaw and that such waiver or modification may be granted without substantial detriment to the neighborhood or overall public good.
6. The maximum length allowable for the principle building façade is 50 feet and adjacent street-facing building facades shall be stepped back a minimum of 10 feet from the principal building facade.
7. A maximum building footprint of 2,000 square feet for front street-facing buildings is allowable; and a maximum footprint of 3,000 square feet for buildings sited behind a front street-facing building is allowable.

B. Parking, Driveway, Vehicular and Pedestrian Access Standards

1. Parking

- a. Parking areas shall be visually buffered from all streets and adjoining residential uses by placing them behind frontage buildings and/or through the use of berms or natural features and/or plantings, using materials that shall be maintained for visual buffering a minimum of 50% and 75% of their effectiveness year-round, for streets and residential uses respectively. Parking shall also comply with the requirements of Article IX – Off Street Parking and Loading Requirements.

- b. Shared Parking – The number of parking spaces required may be reduced for shared parking at the discretion of the Planning Board through Site Plan Review §325-55, provided such reduction does not shift a demand for parking onto public streets or any areas not equipped to handle such activity.
 - c. All other parking standards shall comply with Article IX Off-Street Parking and Loading Requirements; however, in no case shall a driveway width be greater than 24 feet.
2. A driveway shall be limited to one per street frontage; however shared driveways are encouraged to limit the number of curb cuts onto Route 28. Driveways must be situated to provide for the optimal sight distance along Route 28. All driveway access shall provide for adequate service and emergency access. All driveway shall comply with §325-154.B.1.b. and c. above.
 3. Commercial and residential pedestrian access shall include a combination of walkways and landscaping. Such pedestrian access shall be provided from the streets providing frontage and/or access for the project as well as the drives and parking areas within the project. Pedestrian access routes shall be laid out to minimize conflict with vehicular routes, and where they intersect, the pedestrian route shall be clearly marked on the vehicular surface and when appropriate, with signage. Pedestrian access routes shall be lighted to provide adequate visibility for use in the dark, and in conformance with Article XXI Outdoor Lighting.

and further

Amend §325-2 Word Usage and Definition, “Overlay District”, add a new item G, as follows:
 “G - West Harwich Special District, see Article XXIV”

And further,

Amend §325-3 Division of Town into Districts, by adding “West Harwich Special District”

and further,

Amend §325-4 Maps, by adding Subparagraph F as follows:

- F. The West Harwich Special District established hereunder as shown on a map titled, “West Harwich Special District” dated July 27, 2020, prepared by the Cape Cod Commission, a copy of which can be found as an attachment to this chapter in the town’s online Code and a copy of which is on file in the office of the Town Clerk.

