



PROPOSED

Demolition Delay By-Law

for the Town of Newbury, Massachusetts

Together with background information and helpful resources
regarding the Proposed By-Law

Prepared by the Newbury Historical Commission ♦ July 17, 2014

PART 1

Background Information

*The purpose and summary of the Proposed By-Law;
How it was developed by the Historical Commission.*

◆ Purpose of the Proposed By-Law

The Town of Newbury has a rich 379-year history. The purpose of this Proposed By-Law is

To preserve and protect our significant historic structures and to limit the detrimental effect of demolition on the character of the town.

Our many historic buildings, homes, and landscapes are what make Newbury such an attractive place in which to live and work. We cannot afford to lose these architectural assets from our cultural landscape.

◆ Summary of the Proposed By-Law

With the passage of this By-Law, certain historic structures (or portions of an historic structure) slated for demolition would be subject to review by the Historical Commission if they met certain criteria. The Commission would then have 15 days to determine whether or not the historic structure is a “significant structure.”

If the structure were found to be “significant,” the Commission would hold one or more public hearings to help determine whether the structure should be deemed “preferably preserved.” A structure identified as “preferably preserved” would not be able to be demolished until the expiration of a nine-month demolition delay. It is possible that the Commission will find the historic structure to not be “significant” or not “preferably preserved.” In either case, a demolition permit may then be issued by the Building Commissioner.

If a structure is “preferably preserved,” the nine-month demolition delay provides an opportunity to develop preservation, rehabilitation, restoration, or relocation solutions.

We see this delay as a key deterrent for developers who might seek to raze an irreplaceable historic structure to develop a parcel of land. At the very least, the delay can serve as an important window of time for the Historical Commission to extensively document the structure through photographs and drawings before it is lost forever.

The Historical Commission does recognize the rights of homeowners to do with their property what they wish. We understand that this By-Law cannot *prevent* a property owner from demolishing an historic structure; this By-Law only provides a *delay* in demolition.

◆ How the Historical Commission Developed the Proposed By-Law

The First 10 Months: The Exploratory Phase

November 2011 – September 2012

At the first meeting of the reorganized Historical Commission in November 2011, we recognized that:

“There are few (if any) protective covenants on historic structures in town, nor a demolition delay bylaw, or other such protective measures as have been adopted by other local cities and towns.”

-Newbury Historical Commission organizational meeting minutes, 11/9/11

In December we decided that the creation of a Demolition Delay By-Law should be placed on an active “to do” list. Over the next several months, each member of the Commission spent time researching various other towns’ by-laws and looked at variations in language, timetables, and terminology.

As we began putting together ideas for what Newbury’s proposed by-law might look like, we identified the four variable factors of the by-law:

1. Age of structures subject to the by-law
2. Steps in the demolition delay procedure, including length of time between steps
3. Length of the actual demolition delay
4. Consequences for non-compliance of the by-law

We did not know at this point, however, who was to actually draft the proposed by-law. Would we inform another board or committee and they would figure out terminology?

The Middle 13 Months: The Development Phase

October 2012 – November 2013

In October 2012, members of the Historical Commission met with the Planning Board, which pledged its support and fully endorsed the idea of the Historical Commission drafting a proposed by-law. At our November meeting, we officially voted to develop a Proposed By-Law with the hopes of eventually bringing it to a future town meeting.

Armed with a sample by-law provided by the Massachusetts Historical Commission, we spent the next ten months working on each section of the by-law, carefully choosing language and guidelines that would be easily understood and protect the rights of homeowners while also being thorough and enforceable to prevent historic homes from simply disappearing at the will of a developer. Careful attention was paid to the by-laws of area towns, including Rowley, Topsfield, Georgetown, and Ipswich – all towns with significant numbers of historic structures.

In November 2013 we voted to present a Proposed Demolition Delay By-Law to the Building Commissioner, Board of Selectmen, Planning Board, Town Administrator, and Town Counsel for review, study, and comments.

The Past 5 Months: The Internal Review Phase

February – July 2014

Feedback was received from many of the constituents mentioned above and was carefully reviewed, weighed, tested, questioned, and incorporated when deemed necessary. Some language was again rewritten or adjusted for continuity's sake. Helpful feedback from Town Counsel and the Building Inspector aligned the provisions of the Proposed By-Law with state mandates.

A motion was made at the July 17 meeting of the Historical Commission to present the final version of the Proposed By-Law to the Town Administrator and Board of Selectmen, with a request that the adoption of this By-Law be taken up in the business of the Fall 2014 Town Meeting. The motion carried unanimously.

◆ The Work Ahead

Over the next few months, we envision the following:

- A. The Board of Selectmen and Town Administrator study this final proposal
 - B. The Proposed By-Law is released to the local media
 - C. Hard copies of the Proposed By-Law be made available at Town Hall, Newbury Town Library, and a location to be determined on Plum Island
 - D. Electronic copies will be available on the Town of Newbury website (www.townofnewbury.org) Go to the left sidebar, select Boards and Commissions and then select Historical Commission. It will be displayed under links.
 - E. Two public hearings be held to allow residents the opportunity to ask questions and better understand the Proposed By-Law.
 - 1 One hearing to take place at Town Hall on a weeknight
 - 2 One hearing to take place at the Newbury Town Library on a Saturday
 - F. Adoption of the Proposed By-Law be placed on the Warrant for Fall 2014 Town Meeting

What began 33 months ago as a bullet point in a meeting has been cultivated into a comprehensive plan and is now presented for your serious consideration. Please reach out to us at HistoricalComm@TownOfNewbury.org with concerns, questions, or feedback.

Respectfully,
The Newbury Historical Commission

Channing Howard, *Chair* Nancy L. Thurlow, *Vice Chair* Christopher Drelich, *Clerk/Treasurer* Janice Forrest, Lon Hachmeister, Eva Jackman, Susan Nagle

PART 2

Helpful Resources

In an effort to aid the citizens of Newbury in understanding exactly what the Proposed By-Law entails, we have developed a double-sided handout which could be included in packets of the Proposed By-Law and also made

Newbury's Proposed Demolition Delay By-Law



Frequently Asked Questions

1. Does this even affect me?

This Proposed By-Law only affects you if you plan to *demolish* a structure or portion of a structure built in or before 1820, or a structure which has been recognized locally or nationally as historically significant.

2. Why is this By-Law being proposed? Do other communities have this By-Law?

Virtually all of our surrounding cities and towns already have Demolition Delay By-Laws in place. We see this By-Law as a way to deter developers and others from mindlessly razing irreplaceable historic structures that are a part of Newbury's 379-year history and add greatly to the town's appeal as a wonderful place to visit, live, work, and play.

HOW THEY COMPARE	NEWBURY (proposed)	NEWBURYPORT	ROWLEY	IPSWICH	TOPSFIELD
Buildings affected	Built 1820 or earlier	1938 or earlier	1938 or earlier	1938 or earlier	List on file
Length of delay	9 months	12 months	9 months	12 months	6 months
Non-compliance	No permit 3 yrs + fine	No permit 2 years	No permit 3 years	No permit 2 years	No permit 2 years

3. Is this what they tried to do in Newburyport recently?

No, that was the establishment of a Local Historic District. Indidentally, Newburyport already *has* a Demolition Delay By-Law in place to help protect its most historic structures.

4. Can I still paint my house whatever color I'd like? Or put on storm windows?

Yes! This Proposed Demolition Delay By-Law only affects you if you plan to *demolish* a structure. The proposed By-Law *does not* affect cosmetic changes to your home at all. Paint it any color; change the shutters; replace windows.

5. What can a demolition delay really do?

The delay is designed to deter developers and others from tearing down an irreplaceable historic structure. It also encourages homeowners to seek out preservation, rehabilitation, or relocation opportunities. The delay can also serve as an important window of time for the Historical Commission to extensively document the structure through photographs and drawings before it is lost forever.

6. What happens after the nine-month delay period has passed?

If no rehabilitative efforts were identified, the Building Commissioner may issue a demolition permit. Remember, this By-Law doesn't *prevent* demolition. Once all permitting is in place, you as the owner may demolish the structure.

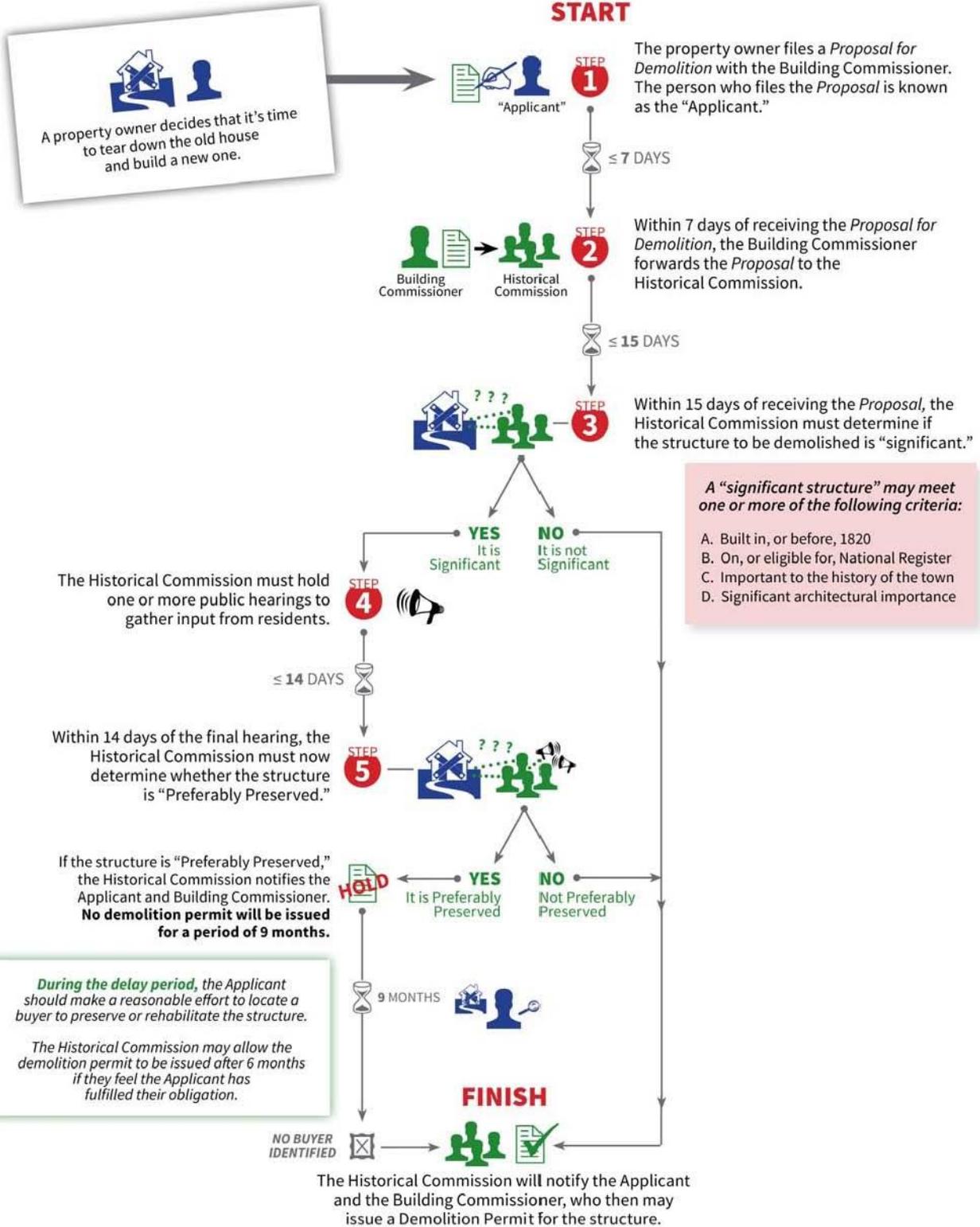
7. Where can I find a copy of the Proposed By-Law? What if I have questions?

Hard copies of the Proposed By-Law are available at the Newbury Town Hall and Newbury Town Library. Electronic copies can be found at www.Newbury1635.org and www.TownOfNewbury.org. If you have questions, please e-mail HistoricalComm@TownOfNewbury.org or write to Newbury Historical Commission, 25 High Road, Newbury MA 01951. We are happy to answer any and all questions!

available as a separate handout.

Front of Handout:

A Walk Through the Process



PART 3

Full Text of the Proposed By-Law

Title of By-Law

THE PRESERVATION OF HISTORICALLY SIGNIFICANT STRUCTURES

1. Definitions

1.1 “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 structure is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

1.2 “APPLICATION” - An application for a permit to commence the demolition of a structure.

1.3 “BUILDING COMMISSIONER” or “BUILDING INSPECTOR” - The person occupying the office of Building Commissioner or Building Inspector or otherwise authorized to issue demolition permits.

1.4 “COMMISSION” - The Newbury Historical Commission or its designee.

1.5 “DAY” – A twenty-four hour period of time which begins at the next occurrence of 12:00 midnight. (e.g. A “seven day” period of time would commence at 12:00 a.m. on Monday, June 1 and end at 11:59 p.m. on Sunday, June 7).

1.6 “DEMOLITION” - Any act of pulling down, destroying, removing, razing, or dismantling a structure or any portion thereof, or act of total or substantial destruction of a structure or any portion thereof.

1.7 “DEMOLITION PERMIT” - A building permit issued by the Building Commissioner for the demolition of a structure, excluding a building permit issued solely with regard to the interior of a structure.

1.8 “PREFERABLY PRESERVED” - Any Significant Structure that has been determined by the Commission to be in the public interest to preserve. A Preferably Preserved structure is subject to the nine-month demolition delay period of this By-Law.

1.9 “SIGNIFICANT” or “SIGNIFICANT STRUCTURE” - Any structure, or portion thereof, which meets one or more of the following criteria:

1.9a It is identified in the Assessor’s Records as having been constructed in, or prior to, 1820;

1.9b It is listed on, or is within an area listed on, the National Register of Historic Places;

1.9c It has been found eligible for the National Register of Historic Places;

1.9d It is identified by the Commission as having an association with one or more historic persons or events, or the broad architectural, cultural, political, economic, agricultural, or social history of the town or the Commonwealth;

1.9e It is identified by the Commission as historically or architecturally important (in terms of period, style, method of construction, or association with a recognized architect or builder) either by itself or in the context of a group of structures.

1.10 *“STRUCTURE” or “BUILDING”* - Any combination of materials forming a shelter for persons, animals, or personal property.

2. Intent and Purpose

2.1 This By-Law is enacted for the purpose of preserving and protecting significant structures within the Town of Newbury which constitute or reflect distinctive features of the architectural, cultural, economic, political, agricultural, or social history of the town, and to limit the detrimental effect of demolition on the character of the town. By preserving and protecting significant structures, streetscapes and neighborhoods, this By-Law promotes the public welfare by making the town a more attractive and desirable place in which to live and work.

2.2 The intent of the By-Law is not to permanently prevent demolition, but rather to provide an opportunity to develop preservation, rehabilitation, restoration, or relocation solutions for structures threatened with demolition through a nine-month delay in issuing a demolition permit. In addition, this delay will give the Historical Commission an opportunity to document historic or important architectural resources before they are lost from Newbury’s cultural landscape.

2.3 The By-Law is intended to encourage 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.

2.4 To achieve these purposes, the Historical Commission is authorized to advise the Building Commissioner 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.

3. Regulated Structures

3.1 The provisions of this By-Law shall apply only to any structure which, in whole or in part, conforms to the definition set forth in Section 1.9.

4. Procedure

4.1 An Applicant proposing to demolish any structure shall file with the Building Commissioner an application containing the following information:

4.1a The address of the structure to be demolished.

4.1b The owner's name, address and telephone number.

4.1c A description of the structure.

4.1d The reason for requesting a demolition permit.

4.1e A brief description of the proposed reuse, reconstruction or replacement.

4.1f A photograph or photographs of the structure.

4.2 The Building Commissioner shall within seven days forward a copy of the application to the Historical Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the structure is *Significant*.

4.3 Upon determination by the Commission that the structure is not *Significant*, the Commission shall so notify the Building Commissioner and Applicant in writing. The Building Commissioner may then issue the demolition permit.

4.4 Upon determination by the Commission that the structure is *Significant*, the Commission shall so notify the Building Commissioner and the Applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

4.5 No demolition permit for a structure, or any portion thereof, found to be *Significant* shall be issued without following the provisions of this By-Law.

4.6 Upon finding that the structure is *Significant*, the Commission shall hold at least one public hearing within thirty days of the written notification to the Building Commissioner. The Commission shall give public notice of said hearing(s) by:

4.6a Publishing notice of the time, place, and purpose of the hearing(s) in The Newburyport Daily News (or other newspaper of general circulation in the town) twice: the first notice to be published fourteen days prior to the (first) hearing, and the second notice no more than seven days prior to the (first) hearing;

4.6b Publishing notice of the time, place, and purpose of the hearing(s) on the town's website and the website of the Newbury Historical Commission (if applicable) at least fourteen days prior to the (first) hearing;

4.6c Posting notice of the time, place, and purpose of the hearing(s) in a conspicuous place in Town Hall at least fourteen days prior to the (first) hearing;

4.6d Sending the applicant, via Certified U.S. Mail, notification of the time, place, and purpose of the hearing(s); said notification to be postmarked not less than fourteen days prior to the (first) hearing;

4.6e Sending notification in writing of the time, place, and purpose of the hearing(s) to the Town Administrator, Chairman of the Board of Selectmen, Town Planner, Building Commissioner, and other individuals, boards, or committees of the town as determined by the Historical Commission, at least fourteen days prior to the (first) hearing.

4.7 Within fourteen days after the (final) public hearing, the Commission shall decide whether the structure should be *Preferably Preserved*. If agreed to in writing by the Applicant, the determination of the Commission may be postponed.

4.8 If the Commission determines that the structure is not *Preferably Preserved*, the Commission shall so notify the Building Commissioner and Applicant in writing. The Building Commissioner may then issue the demolition permit.

4.9 If the Commission determines that the structure is *Preferably Preserved*, the Commission shall notify the Building Commissioner and Applicant in writing. No demolition permit may then be issued for a period of nine months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the (final) public hearing, the Building Commissioner may issue the demolition permit.

4.10 Upon a determination by the Commission that any structure which is the subject of an application is a *Preferably Preserved* structure, no building permit for new construction on the lot or alterations to the structure shall be issued for a period of nine months from the date of the determination unless otherwise agreed to by the Commission.

4.11 The Building Commissioner may issue a demolition permit or a building permit for a *Preferably Preserved* structure within the nine months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this By-Law is served even with the issuance of the demolition permit or the building permit.

4.12 Following the nine-month delay period, the Building Commissioner may issue the demolition permit.

5. Responsibilities of the Owner

5.1 Once a *Significant Structure* is determined to be *Preferably Preserved*, the owner shall be responsible for properly securing the structure (if vacant) to the satisfaction of the Building Commissioner, and for taking common preventative measures (e.g. turning water off if the structure will remain unheated) to prevent damage to said structure. Subsequent destruction of the structure at any time during the nine-month demolition delay period, which could have been avoided by common preventative or basic security measures, shall be considered a demolition in violation of this By-Law.

6. Emergency Demolition

6.1 If after an inspection, the Building Commissioner finds that a structure subject to this By-Law poses an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the structure, then the Building Commissioner may issue an emergency demolition permit to the owner of the structure. The Building Commissioner shall then prepare a report explaining the condition of the structure and the basis for his decision which shall be forwarded to the Commission.

6.2 Before allowing emergency demolition of a structure subject to this By-Law, the Building Commissioner shall make every effort to inform the Historical Commission of his/her intention to allow demolition before he/she issues a permit for emergency demolition.

6.3 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.

7. Enforcement and Remedies

7.1 The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this By-Law or to prevent a threatened violation thereof.

7.2 During the nine-month delay period following the Commission's determination that a structure be considered *Preferably Preserved*, any negotiations entered upon by the owner or some other person or group regarding the purchase, preservation, rehabilitation, restoration, or relocation of said structure shall be allowed to proceed if said negotiations are still in progress on the day that the nine-month delay period expires.

7.3 Should negotiations to purchase, preserve, rehabilitate, restore, or relocate a structure subject to this By-Law fail during proceedings and the nine-month delay period has expired, the Building Commissioner may then issue a demolition permit.

7.4 During the nine-month delay period following the Commission's determination that a structure be considered *Preferably Preserved*, the Commission can advise the Building Commissioner, in writing, to issue a demolition permit without waiting for the period to expire, if the Commission decides to the effect that:

7.4a there is not reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate, restore, or relocate said structure.

7.4b for at least six months the owner has made continuing, bona fide, and reasonable efforts to locate a purchaser to preserve, rehabilitate, restore, or relocate the subject structure, and that such efforts have been unsuccessful.

7.4c the proposed 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.

7.5 Any owner of a structure subject to this By-Law who demolishes the structure without first obtaining a demolition permit in accordance with the provisions of this By-Law shall be subject to a fine of three hundred dollars (\$300) per day until a faithful restoration or recreation of the demolished building is completed, unless otherwise agreed to by the Commission.

7.6 If a structure subject to this By-Law is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of three years from the date of demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control, with the following exceptions, unless otherwise agreed to by the Commission:

7.6a A permit allowing regular maintenance of other existing structure(s) on the lot(s);

7.6b A permit for the faithful restoration or recreation of the demolished structure referred to in 7.5.

7.7 Notwithstanding the foregoing, whenever the Commission shall, on its own initiative, or on application of the landowner, determine that sooner 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 three 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 Commissioner pursuant to this By-Law.

8. Administration

8.1 The Commission may adopt such rules and regulations as are necessary to administer the terms of this By-Law.

8.2 The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this By-Law.

8.3 The Commission may proactively develop a list of significant structures that will be subject to this By-Law. Structures proposed for the significant structure list shall be added following a public hearing and notification of the owner of the structure.

9. Severability

9.1 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.

END OF PROPOSED BY-LAW