***Draft***

**11/05/15**

**TOWN OF WENHAM**

**MASSACHUSETTS**

**Demolition Delay By-law**

**Section 1. Intent and Purpose**

This by-law is adopted for the purpose of protecting the historic and aesthetic qualities of the Town of Wenham by preserving, rehabilitating or restoring, whenever possible, buildings or structures which constitute or reflect distinctive features of the architectural and historic resources of the Town, thereby promoting the public welfare and preserving the cultural heritage of the Town. The intent of the By-law is to provide an opportunity to develop preservation solutions for significant, Preferably Preserved Buildings or Structures as defined herein threatened with demolition. The By-law is intended to encourage owners and townspeople to seek out persons or parties who are willing to preserve, rehabilitate, or restore such buildings following purchase rather than demolish them, or to find other solutions that might limit or eliminate the detrimental effect of demolition on the historical and architectural resources and character of the Town. It is also intended to provide time to document historical resources before they are lost from Wenham’s cultural landscape. This By-law applies only to the exteriors of buildings and structures.

**Section 2. Definitions**

For the purposes of this By-law, the following words and phrases have the following meanings:

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

**2.2 Day:** calendar day.

**2.3 Demolition:** any act of pulling down, destroying, removing, burning by arson, dismantling, or razing a building or structure, or any substantial portion thereof, or commencing the work of total destruction or destruction of a substantial portion of a building or structure with the intent of completion of the same. Substantial portion is defined as twenty-five percent (25%) of the volume of the building or structure, or twenty-five percent (25%) of the roof structure. For avoidance of doubt, this section shall apply solely to any act affecting, changing, or altering the exterior of any such building or structure.

**2.4 Demolition Permit:** a written approval for demolition of a building or structure, issued by the Wenham Building Inspector in response to an application for such a permit**.**

**2.5 Historic District:** an historic district established by the Town pursuant to Chapter 40C of the Massachusetts General Laws (MGL) or special law.

**2.6 WBI:** the Wenham Building Inspector, or other person authorized by state law or local By-law to issue demolition permits in the Town.

**2.7 WHC:** The Wenham Historical Commission**.**

**2.8 Preferably Preserved Significant Building or Structure:** any historically or architecturally significant building or structure which is established, after a public hearing by the WHC, to be worthy of preservation in whole or in part, including Significant Buildings or Structures as defined herein.

**2.9 Premises:** the entire parcel of land upon which a Significant Building or Structure is or was located.

**2.10 Significant Building or Structure:** any building and/or structure, or portion thereof listed below by virtue of not being within the Wenham Historic District and meeting one or more of the following conditions.

a) The building or structure or substantial portion thereof was built or partially built before 1860.

b) The building or structure or substantial portion thereof is listed on the National or State Register of Historic Places, or is the subject of a pending application for listing on said National or State Register of Historic Places;

c) The building or structure or substantial portion thereof is listed in the Inventory of the Historic Assets of the Commonwealth, or designated by the WHC for inclusion in said inventory; or

d) The building or structure or substantial portion thereof is:

(1) determined by majority vote of the WHC to be importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town of Wenham, the Commonwealth of Massachusetts, or the United States of America; or;

(2) determined by majority vote of the WHC to be historically or architecturally important by reason of period, style, method of construction, or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

The buildings or structures meeting the above criteria are listed in the following table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Address** | **Name** | **Year**  **Built** | **National**  **Register** |
| 162 Cherry Street | Newman Fiske –Dodge House | 1648 | Yes |
| 129 Topsfield Road |  | 1648 |  |
| 9 Maple Street | Old Farm | 1659 | Yes |
| 114 Cedar Street | James Friend House | 1697 | Yes |
| 38 Larch Row | Larch Farm | 1699 | Yes |
| 201 Larch Row |  | 1730 |  |
| 31 Cherry Street |  | 1735 |  |
| 96 Dodges Row |  | 1736 |  |
| 26 Pleasant Street |  | 1750 |  |
| 56 Cherry Street |  | 1754 |  |
| 128 Topsfield Road |  | 1769 |  |
| 137 Cherry Street |  | 1780 |  |
| 14 Larch Row |  | 1780 |  |
| 18 Cedar Street |  | 1790 |  |
| 44 Cherry Street |  | 1790 |  |
| 349 Grapevine Road |  | 1800 |  |
| 350 Grapevine Road |  | 1800 |  |
| 5 Parsons Hill Road |  | 1800 |  |
| 24 Perkins Street |  | 1800 |  |
| 77 Topsfield Road |  | 1800 |  |
| 84 Maple Street |  | 1803 |  |
| 28 Perkins Street |  | 1810 |  |
| 31 Topsfield Road |  | 1810 |  |
| 8 Larch Row |  | 1820 |  |
| 204 Larch Row |  | 1820 |  |
| 14 Grapevine Road |  | 1825 |  |
| 11 Dodges Row |  | 1830 |  |
| 13 Lake Avenue |  | 1830 |  |
| 13 Larch Row |  | 1830 |  |
| 19 Arbor Street |  | 1840 |  |
| 6 Cedar Street |  | 1840 |  |
| 14 Cherry Street |  | 1840 |  |
| 18 Cherry Street |  | 1840 |  |
| 107 Maple Street |  | 1840 |  |
| 20 Arbor Street |  | 1850 |  |
| 21 Arbor Street |  | 1850 |  |
| 24 Arbor Street |  | 1850 |  |
| 6 Dodges Row |  | 1850 |  |
| 14 Doges Row |  | 1850 |  |
| 72 Dodges Row |  | 1850 |  |
| 88 Dodges Row |  | 1850 |  |
| 173 Larch Row |  | 1850 |  |
| 29 Pleasant Street |  | 1850 |  |
| 114 Topsfield Road |  | 1850 |  |
| 10 Dodges Row |  | 1855 |  |

**2.11 Structure:** the combination of materials or part thereof other than a building, including but not limited to a bridge, dam, tower, silo, monument, stone wall, fence, path or roadway.

**2.12 One-Year Delay:** the one-year period, dated from the date of the filing of the original demolition permit application.

**Section 3. Procedure**

**3.1** No owner, tenant or occupant of any premises shall undertake any demolition of a building or structure, or a substantial portion of a building or structure identified in Section 2 of this by-law without first submitting an application for a demolition permit in accordance with this by-law. A permit for the demolition of a building or structure shall be issued only upon compliance with the provisions of this By-law.

**3.2** The WBI shall forward a copy of each demolition permit application for a building or structure identified in Section 2 of this By-law to the WHC within seven (7) days after the receipt of such application. Every application for a demolition permit, for a building and/or structure or a substantial portion subject to the provisions of this By-law, as provided in Section 2 of this by-law shall be made or be co-signed by the owner of record, and by the holder of a bona-fide purchase and sale agreement (the “Purchaser”) or by the applicant (if different), at the time of the application and be filed with the WBI. Separate applications shall be filed for each building or structure on the property for which a demolition permit is being sought, and each application shall contain or be accompanied by the following information, without which the application shall not be considered complete, requiring a resubmission of the application(s):

a) the address of the building or structure to be demolished, along with the map and lot number for the premises as listed with the Board of Assessors;

b) the owner’s name, current address and telephone number, as well as the applicant’s name, current address and telephone number if different from the owner;

c) a brief description of the type of building or structure and of the proposed demolition;

d) the date of construction of the building and/or structure as established by the Board of Assessors, deed, or other documentation;

e) photographs of all elevations of the building or structure, as well as photographs showing any other buildings on the premises; and

f) a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures.

**3.3** Within thirty (30) days after its receipt of such application, the WHC shall determine whether or not it is a significant building or structure. The applicant shall be informed of the date of a meeting at least fourteen (14) days prior to the meeting, and the WHC shall require the applicant or the applicant’s designated representative to make a presentation and/or respond to questions on the proposal at the meeting. Failure to do so shall require the resubmission of the application.

**3.4** If the WHC determines that the building or structure is not significant, it shall so notify the WBI and the applicant in writing and the WBI may issue a demolition permit, but the WHC may require that specified visual or other reasonable documentation be completed by the applicant or owner of the building or structure prior to the issuance of the demolition permit. If the WHC determines that the building or structure is significant, it shall notify the WBI and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. A non-transferable decision by the WHC shall remain valid for a period of two (2) years from the date of the decision or until the sale of the property to a party other than the Purchaser or the applicant, whichever comes first. If the WHC fails to notify the WBI and the applicant of its determination within forty-five (45) days after its receipt of the application, then the building or structure shall be deemed not significant and the WBI may issue a demolition permit subject to same conditions as a non-transferable decision.

**3.5** If the applicant decides to proceed, then within sixty (60) days after the applicant is notified that the WHC has determined that a building or structure is significant, the applicant for the permit shall submit to the WHC a copy or an electronic copy of a demolition plan, which shall include all the information provided to the WBI with the original application for the demolition permit.

**3.6** Within thirty (30) days of receipt of the materials required under Section 3.5, the WHC shall hold a public hearing with respect to the application for a demolition permit, and shall give public notice in a local newspaper of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, by electronic posting on the Town of Wenham website, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the WHC to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, or the Planning Board, or any person filing written request for notice of hearings, and to such other persons as the WHC shall deem appropriate to receive notice. Within thirty (30) days after the closing of the public hearing, the WHC shall file a written report with the WBI on the demolition plan which shall include the following:

a) a description of the age, architectural style, historical association and importance of the building or structure proposed for demolition; and

b) a determination as to whether or not the building or structure should be preferably preserved and the reasons therefore.

**3.7** If, following the demolition plan review, (1) the WHC does not determine that the building or structure should be preferably preserved, or (2) where less than a complete demolition is being proposed, the WHC determines that the work to be done will not materially diminish the historical or architectural significance of the building or structure, or (3) if the WHC fails to file a report with the WBI within the time limit set out in Section 3.6, then the WBI may issue a demolition permit subject to the conditions set forth in Section 3.4.

**3.8** If, following the demolition plan review, the WHC determines that the building or structure should be preferably preserved, then the WBI shall not issue a demolition permit for a period of one (1) year from the date of the filing of the original demolition permit application unless the WHC informs the WBI prior to the expiration of such one (1) year period that it is satisfied that the applicant for the demolition permit has made a continuing bona-fide, reasonable and unsuccessful effort to find a way to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specified conditions approved by the WHC. During the one (1) year period, the WHC shall invite the applicant to participate in an investigation of alternatives to demolition. On or before the expiration of the one (1) year period, the applicant or a designated representative must appear before the WHC and document that the applicant has made a continuing, bona-fide and reasonable effort to locate a purchaser to preserve, rehabilitate and restore the building or structure, and that such efforts have been unsuccessful. If the WHC concurs that such an effort has been made and no means can be found, then the WHC shall so inform the WBI in writing within forty-five (45) days, and the WBI may issue a demolition permit for a period of one (1) year from that date, following which time a new application must be submitted. In all such cases, the WHC may require that specified visual or other reasonable documentation be made of the building or structure prior to the issuance of the demolition permit.

**Section 4. Emergency Demolition**

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the WBI. As soon as practicable after the receipt of such a request, the WBI shall arrange to have the property inspected by a board consisting of the WBI, the Chairs of the WHC and the Board of Health, and the Chief of the Fire Department, or their respective designees. After the inspection of the building or structure and consultation of this board, the WBI shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect the public health and safety. If the WBI finds that the condition of the building or structure poses a serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition thereof, he or she may issue an emergency demolition permit to the owner of the building or structure. Whenever the WBI issues an emergency demolition permit under the provisions of this Section 4,he or she shall prepare a written report describing the condition of the building or structure and the basis of the decision to issue an emergency demolition permit with the WHC. Nothing in this Section 4 shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by MGL Chapter 143, §§ 6-10. In the event that a Board of Survey is convened under the provisions of said MGL, Chapter 143 § 8 with regard to any building or structure identified in Section 2 of this By-law, the WBI shall request the Chair of the WHC or his or her designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the WHC.

**Section 5. Non-compliance**

Anyone who begins demolition of a building or structure identified in Section 2 of this By-law without first obtaining, and complying fully with the provisions of, a demolition permit, shall be subject to a fine of three hundred-dollars ($300) for each day, in which such person was not in compliance with the provisions of a demolition permit, and shall be subject to a cease and desist order by the WBI. This fine shall be handled in the manner set forth under By-law Article XIX Non Criminal Disposition of Violation. Upon a determination by the WHC that a building or structure is a preferably preserved significant building or structure, the owner shall be responsible for properly securing the building or structure, if vacant, to the satisfaction of the WBI. Should the owner fail to properly secure the building or structure, the loss of such building or structure through fire or other cause shall be considered demolition. In addition, unless a demolition permit was obtained for such demolition, and unless such permit was fully complied with, the WBI shall not for a period of three (3) years after the date of demolition issue a building permit for erection of a building and/or structure, paving of driveways or for parking pertaining to any premises on which a building or structure identified in Section 2 of this By-law has been demolished.

**Section 6. Building Permits**

No permit for the erection of a new structure on the site of an existing significant building or structure may be issued prior to the issuance of a demolition permit for such existing building or structure.

**Section 7. Intersection with Wenham By-law**

The granting of permission to demolish by the WHC under this By-law shall not be construed as approval by the Town of Wenham for the construction or reconstruction of any building or structure on the property. Once demolition has been approved by the WHC under this By-law, the recipient of that demolition approval must obtain all other approvals required under Wenham By-laws for any such construction or reconstruction before a building permit shall be issued.

**Section 8. Appeals to Court**

Any person aggrieved by a determination of the Historical Commission under this By-law may seek judicial review of such determination pursuant to the provision of MGL, Chapter 249, § 4.

**Section 9. Severability**

In case any Section, paragraph or part of this By-law is declared invalid or unconstitutional by any court of competent jurisdiction, every other Section, paragraph and part of this By-law shall continue in full force and effect.

**Section 10. Addition of other significant buildings and/or other structures to this By-law’s list**

Further significant buildings and other structures may be added to the list covered by the by-law when the WHC determines that a building or structure is a significant building as defined in Section2.10. Such additions will be pursuant to a Town Meeting vote modifying the significant listed buildings or other structures based on a report from the WHC, following the public hearings required for all warrant articles