

Chapter 103. Demolition Delay

[HISTORY: Adopted by the Special Town Meeting of the Town of Fairhaven 11-12-2019 STM by Art. 18. Amendments noted where applicable.]

§ 103-1. Referral to Historic Commission.

Any building proposed for demolition or significant alteration, in whole or in part, built before 1921 or those built after this date which have otherwise been determined by the Historic Commission to be potentially historically or architecturally significant based on established criteria shall be referred to the Historic Commission for a public hearing to determine if they are "preferably preserved." Any building which the Historic Commission determines to be preferably preserved shall not be demolished within 12 months of such determination in order for the Historic Commission and the Town to seek alternatives to demolition in order to protect the historic character of the community.

§ 103-2. Intent and purpose.

This chapter is enacted for the purpose of preserving and protecting historic and architecturally significant buildings within the Town of Fairhaven that 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.

A. This chapter provides:

- (1) An opportunity to develop preservation solutions for significant buildings threatened with demolition;
- (2) An opportunity to inform residents of the Town of impending demolitions of significant buildings;
- (3) A reasonable time for public notice and discussion by interested parties to preserve such buildings;
- (4) An opportunity to create an historical record, including photographs, of significant buildings prior to demolition.

B. Owners of significant buildings will be encouraged to:

- (1) Seek out alternative options that will preserve, rehabilitate or restore such buildings; or
- (2) Seek out persons who might be willing to purchase such buildings in order to preserve, rehabilitate, or restore such buildings rather than demolish them.

C. To achieve these purposes, the Fairhaven Historical Commission is authorized to advise the Town of Fairhaven Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this chapter. The Historical Commission shall review all buildings that are proposed for demolition or significant alteration that are potentially historically or architecturally significant. If, after a public hearing, the Historical Commission determines that the building(s) is/are "preferably preserved," then a twelve-month demolition delay shall begin in order to seek alternative options. The Historical Commission, in conjunction with the Planning Board, may develop incentives in order to encourage preservation of Fairhaven's historic structures and small town charm.

§ 103-3. Procedure for obtaining demolition permits.

A. No demolition permits for a building which, in whole or in part, was built before 1921 or has otherwise been determined by the Historical Commission to be potentially historically or architecturally significant shall be

issued without following the provisions of this chapter. An applicant proposing to demolish a building subject to this chapter shall file with the Building Commissioner an application containing the following information:

- (1) The address of the building to be demolished.
 - (2) The owner's name, address and telephone number.
 - (3) A description of the building with photograph(s).
 - (4) The reason for requesting a demolition permit.
 - (5) A brief description of the proposed reuse, reconstruction or replacement.
- B. The Building Commissioner shall within 10 business days forward a copy of the application to the Historical Commission and the Planning Director. The Historical Commission shall, within 15 business days after receipt of the application, make a written determination of whether the building is potentially historically or architecturally significant or not.
- C. Upon a determination by the Historical Commission that the building is not potentially historically or architecturally significant, the Historical Commission shall so notify the Building Department and the applicant of the decision, in writing, within 15 business days after receipt of the application. The Building Commissioner may then issue the demolition permit.
- D. Upon determination by the Historical Commission that the building is potentially historically or architecturally significant, the Commission shall so notify the Building Commissioner and the applicant, in writing, within 15 business days after receipt of the application. No demolition permit may be issued at this time. If the Historical Commission does not notify the Building Department, in writing, on the close of business on the 15th business day after receipt of the application, the Building Inspector may proceed to issue the demolition permit.
- E. If the Historical Commission finds that the building is potentially historically or architecturally significant, it shall hold a public hearing within 20 business days of the written notification to the Building Department in order to determine if the structure is "preferably preserved." Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in Town Hall for a period of not less than seven days prior to the date of said hearing, and the Building Commissioner and the applicant shall be notified, in writing, of the meeting time and place.
- F. The Commission shall decide at the public hearing or within 10 business days after the public hearing whether the building should be "preferably preserved." If agreed to, in writing, by the applicant, the determination of the Commission may be postponed.
- G. If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant of the decision, in writing, within 10 business days after the public hearing. The Building Commissioner may then issue the demolition permit.
- H. If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant, in writing, within 10 business days after the public hearing. No demolition permit may then be issued for a period of up to 12 months from the date of that determination unless a shorter period is agreed to by a majority vote of the Commission.
- I. If the Historical Commission does not so notify the Building Commission, in writing, on the close of business on the 10th business day following the public hearing, the Building Commissioner may issue the demolition permit.
- J. No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit or, if applicable, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy, including, without limitation, any necessary zoning variances or special permits, must be granted, and all appeals from the granting of such approvals must be concluded prior to the issuance of a demolition permit under this section.
- K. The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the twelve-month review period if the Historical Commission notifies the Building Commissioner, in writing, that the Historical Commission finds during the 12 months and after a further public hearing that the intent and purpose of this chapter is served even with the issuance of the demolition permit or the building permit. Following the twelve-month review period, the Building Commissioner may issue the demolition permit.

§ 103-4. Definitions.

DEMOLITION OR SIGNIFICANT ALTERATION, IN WHOLE OR IN PART

Any act of pulling down, destroying, removing, dismantling or razing a building or any substantial portion thereof or commencing the work of total or substantial destruction with the intent of completing the same, or removal of the building from its site with the intent to relocate it to another site. A substantial portion or substantial destruction of a building is defined as either half the volume of the building or half its value, as determined by the Building Commissioner. A building shall be considered to be demolished if more than 25% of the front, back or side elevations are removed or covered so as to substantially obliterate the original design. Each elevation shall be calculated separately.

PREFERABLY PRESERVED

Any historically or architecturally significant building that the Commission determines, following a public hearing, is in the public interest to be preserved or rehabilitated rather than demolished. A preferably preserved building is subject to a demolition review period as stated in this chapter of up to 12 months.

POTENTIALLY SIGNIFICANT BUILDING

Any building within the Town of Fairhaven, in whole or in part, that was built before 1921, or has otherwise been determined by the Historical Commission to be potentially historically significant based on any of the following criteria:

- A. The building or area is listed on the National or State Register of Historic Places; or
- B. The building or area is eligible to be listed on the National or State Register of Historic Places; or
- C. 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 of Fairhaven or the Commonwealth of Massachusetts; or
- D. 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.

§ 103-5. Emergency demolition.

- A. If, after an inspection, the Building Commissioner or the Board of Health finds that a building subject to this chapter is found to pose an immediate threat to public health and safety or the health and safety of the occupants due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building after making every reasonable effort to notify the Historical Commission and the Planning Department (preferably within 48 hours) of making this determination. The Building Commissioner or the Board of Health shall first prepare a report explaining the condition of the building and the basis for the decision that shall be forwarded to the Historical Commission and the Planning Department.
- B. The Building Commissioner shall require the property owner of the building to be demolished to provide photograph(s) and other documentation about the property as outlined in this chapter. The Building Commissioner shall make every reasonable effort to provide the Historical Commission reasonable time to document such property or building prior to demolition provided such activity poses no threat to public health or safety or appropriate precautions are taken to protect public health and safety.

§ 103-6. Enforcement and remedies.

- A. The Historical 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 chapter or to prevent a threatened violation thereof.
- B. A building is considered to be demolished if it is destroyed due to the owner's failure to maintain a weathertight and secure structure or if it is destroyed willfully or by neglect during the demolition review period. Any owner of a building subject to this chapter who demolishes a building willfully or by neglect and without first obtaining a demolition permit in accordance with the provisions of this chapter shall be subject to a fine of not more than

\$300. Each day the violation exists shall constitute a separate offense until the demolished building is recreated as directed by the Historical Commission, or unless otherwise agreed to by the Historical Commission.

- C. If a building subject to this chapter is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of five years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless otherwise agreed to by the Commission.
- D. Nothing in this chapter shall be deemed to exempt applicants from any requirements of the state Building Code or other local bylaws and other rules and regulations. In case any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.