

2/23/09 (15)

Christine Joyce

From: Brad Maxwell [bradfordpmaxwell@yahoo.com]
Sent: Tuesday, February 17, 2009 9:52 PM
To: Manager Department; Steve Ledoux
Cc: Lauren Rosenzweig; Peter Grover
Subject: Town Manager and Town Counsel Review of Proposed Bylaws for Town Meeting

Dear Mr. Ledoux,

I am attaching two bylaws that the Historical Commission is proposing for Town Meeting this spring: the first is an amended version of Chapter N (our demolition delay bylaw for the protection of historical structures), and the second is a new bylaw that would essentially function just like Chapter N but for the protection of archaeological remains (this one incorporates the recent archaeological surveys done for the Town). These updated drafts reflect changes that we made after receiving comments last week from the Board of Selectmen and at a public hearing that the Commission held, and we have scheduled another public hearing for March to present the "final" version of the bylaws to the public for one last review/comment opportunity. It is our hope that these bylaws, with the new changes, will be sufficiently protective of our cultural and historical resources in Town, but also be considerate and balanced toward developers' and private property owners' rights and interests.

We would certainly like to hear any input you may have on the bylaws, and as suggested by the Board of Selectmen, we would like to hear any thoughts or feedback that Town Counsel may have as well. If possible, can you please forward this to Town Counsel for review? (If preferable, I would be happy to route the drafts to Town Counsel directly, but did not have contact info.)

Many thanks in advance.

Regards,
Brad Maxwell
Acton Historical Commission

CHAPTER N

PROCEDURE FOR THE DEMOLITION OF HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT BUILDINGS

N1. Intent and Purpose

This bylaw is adopted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the town; to encourage owners of such buildings to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them. To achieve these purposes the Acton Historical Commission (hereinafter the Commission) is empowered to advise the Building Commissioner with respect to the issuance of permits for demolition of significant buildings. The issuance of demolition permits for significant buildings is regulated as provided by this bylaw.

N2. Definitions

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

2.2 "Demolition" - any act of pulling down, destroying, removing, or razing a building or any portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same.

2.3 "Significant Building" - any building or portion thereof not within an Historic District but which:

a. is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application for listing on said National Register; or

b. is included in the Cultural Resources Inventory prepared by the Commission including those buildings listed for which complete surveys may be pending; or

c. has been determined by vote of the Commission to be historically or architecturally significant in terms of period, style, method of building construction, or association with a famous architect or builder provided that the owner of such a building and the Building Commissioner have been notified, in hand or by certified mail, within ten (10) days of such vote.

2.4 "Commission" - the Acton Historical Commission.

N3. Procedure

3.1 Within ten (10) days of receipt of an application for a demolition permit for a significant building the Building Commissioner shall forward a copy thereof to the

Commission. The Building Commissioner shall also notify the Commission (by e-mail or similarly expedient means) when such a permit has been sent to the Commission for consideration. No demolition permit shall be issued at that time.

3.2 Within sixty-five (65) days upon receipt of the application from the Building Commissioner the Commission shall conduct a public hearing and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the applicant.

3.3 If, after such hearing, the Commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the Building Commissioner within twenty one (21) days of such determination. Upon receipt of such notification, or after the expiration of twenty one (21) days from the date of the conduct of the hearing if he has not received notification from the Commission, the Building Commissioner may, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations, issue the demolition permit.

3.4 If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building.

3.5 Upon determination by the Commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the Commission shall so advise the applicant and the Building Commissioner, within twenty one (21) days of said hearing, and no demolition permit may be issued until at least eighteen (18) months after the date of such determination by the Commission.

3.6 Notwithstanding the preceding sentence, the Building Commissioner may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advice from the Commission to the effect that either:

(i) the Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building, or

(ii) the Commission is satisfied that for at least six (6) months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.

N4. Enforcement and Remedies

4.1 The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.

4.2 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 three (3) years after the date of the completion of such demolition unless authorized by the Commission pursuant to Section 4.4. As used herein "premises" includes the parcel of land upon which the demolished significant building was located.

4.3 Upon a determination by the Commission that a building is a preferably-preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Commissioner. Should the owner fail to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition for the purposes of Section 4.2.

4.4 At any time, the owner of property on which a significant building has been voluntarily demolished in violation of Sections 4.2 and 4.3 of this bylaw can apply in writing to the Commission for an exemption to the provisions of Sections 4.2 and 4.3, such application to state with particularity the facts and circumstances to prove to the Commission that an exemption is warranted due exigent circumstances or disasters beyond the owner's (and, if different than the owner, the permit applicant's) control. The Commission may in its discretion determine that the written request states sufficient grounds for exemption from the provisions Sections 4.2 and 4.3 and authorize an exemption from this bylaw. Any exemption granted pursuant to this Section 4.4 shall apply only to the voluntary demolition for which the owner submitted a written exemption request, and not for any subsequent voluntary demolition to which this bylaw would otherwise apply.

N5. Municipal Buildings

No provision of this bylaw shall apply to buildings owned or operated by the Town of Acton or the Acton Water District.

(This section was inserted at the Special Town Meeting of 11/28/90)

N6. Local Historic Districts

This Bylaw shall not apply to any proposed demolition of a building which is located within a Local Historic District established under the Local Historic District Bylaw, Chapter P of the Town of Acton Bylaws. The Historic District Commission established under the Local Historic District Bylaw shall have sole jurisdiction over any demolition proposals within a Local Historic District pursuant to all procedures, standards and the COMMISSION shall limit its review powers established under this Bylaw to the public way from which the review of the BUILDING or STRUCTURE is, in the opinion of the COMMISSION, most relevant to the integrity of the DISTRICT.

N7. Severability

The sections, paragraphs, sentences, clauses and phrases of this bylaw are severable, and if any phrase, clause, sentence, paragraph or section of this bylaw shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrase, clauses, sentences, paragraphs and sections of this bylaw.

**PROCEDURE FOR THE PRESERVATION OF
ARCHAEOLOGICALLY SIGNIFICANT RESOURCES**

Section 1. Intent and Purpose

This bylaw is adopted for the purpose of preserving and protecting archaeologically significant resources and remains within the Town, to avoid, minimize or mitigate possible harm to such resources and remains, and to encourage owners and developers of property within the Town to consider less disruptive alternatives when developing or redeveloping property in archaeologically sensitive areas.

Archaeologically significant resources and remains are fragile and non-renewable features that embody the significant cultural heritage of the Town and provide a material record to understand and explain the Town's history, and thereby enrich and enhance the Town's quality of life. Therefore, to achieve the above stated purposes, the Acton Historical Commission is empowered to advise the Building Commissioner, Planning Board and Board of Health with respect to the issuance of permits required for the development or construction of new improvements on certain properties located in sensitive areas as specified in the Acton Archaeological Sensitivity Maps, Acton Town Wide Survey Post-Contact Archaeological Sensitivity and Acton Town Wide Survey Pre-Contact Archaeological Sensitivity, and the Building Commissioner, Planning Board and Board of Health will issue such permits for properties situated within specified archaeologically sensitive areas in accordance with this bylaw.

Section 2. Definitions

2.1 "Alter" or "Alteration" – *Any activity that modifies the natural or existing topography and conditions of real property in such a manner that it may adversely affect any Archaeological Resources located on, at or under such property. These activities may include, but are not limited to: removal (excavation or grading) or placement (filling) of soil, sand, gravel, stone or other earth materials; removal of ground cover vegetation or trees; dredging or filling of wetlands; the construction, modification, or expansion of subsurface utilities (e.g., septic systems, telephone, television, electrical, gas, security services, or water supply), roadways, or parking areas; and the development, construction, modification or expansion of proposed or existing buildings, structures or any other improvements on any Undeveloped Land.*

2.2 "Archaeologically Sensitive Zone(s)" – *Areas within the Town known to contain, or that may contain, Archaeological Resources determined on the basis of environmental attributes such as soils, proximity to wetlands or other water sources, documentary or cartographic evidence, written or oral tradition, and discoveries of historic and archaeological resources, shown on and identified as a "Moderate" or "High" Sensitivity Zone in the Survey.*

2.3 "Archaeological Resource(s)" – Any location, structure or site used for prehistoric or historic period occupation, subsistence, industry, trade/commerce, transportation, agriculture, burial and other cultural purposes, containing material remains of human activity.

2.4 "Commission" – The Acton Historical Commission.

2.5 "Permit" – Any permit, order, license, approval or entitlement from a Permit Granting Authority that is required in connection with the Alteration of any Undeveloped Land.

2.6 "Permit Granting Authority" – Any of the Building Commissioner, Planning Board or Board of Health that is the designated governmental authority for the granting of any permit required for the development or construction of new improvements that will or may Alter any Undeveloped Property located in an Archaeologically Sensitive Zone.

2.7 "Survey" – The Acton Archaeological Sensitivity Maps, Acton Town Wide Survey Post-Contact Archaeological Sensitivity and Acton Town Wide Survey Pre-Contact Archaeological Sensitivity, prepared by the Public Archaeological Lab (PAL), dated July 15, 2008. The Survey (and any subsequent amendment(s)) is incorporated into this Bylaw by reference, and is available for review by the public at the Town Clerk's office.

2.8 "Threatened Archaeological Resource(s)" – Any Archaeological Resource that is likely to be adversely impacted, as determined by Commission, by any Alteration of Undeveloped Land for which a Permit is sought.

2.9 "Undeveloped Land" – Any land located partly or wholly within the Town, irrespective and independent of Town lot lines, subdivisions or zoning districts, upon which there is no existing building, structure or other vertical improvements. For purposes of this Bylaw, the boundaries of Undeveloped Land begin one hundred and fifty feet (150') from any existing building, structure or other vertical improvement. Undeveloped Land shall not include any single lot of land that is zoned for single-family residential use and is currently occupied by a residential structure, except to the extent that such lot is part of a new subdivision or development in connection with the planned Alteration for which a Permit is sought.

Section 3. Procedure

3.1 Any owner or developer proposing or pursuing an Alteration on any Undeveloped Land shall submit a statement indicating whether the subject Undeveloped Land is located in an Archaeologically Sensitive Zone with its

application to any Permit Granting Authority for the first Permit required in connection with such Alteration. If any of the subject Undeveloped Land is within an Archaeologically Sensitive Zones (i.e., a "Moderate" or "High" Sensitivity Zone in the Survey), then the applicant shall submit: (1) a statement indicating which Archaeologically Sensitive Zone the subject Undeveloped Land is located in; and (2) a brief narrative summary of the planned or proposed Alteration; and (3) a site plan of the proposed Alteration. In addition, if the Undeveloped Land for which a Permit is sought lies within an Archaeologically Sensitive Zone designated as:

- (a) "High Sensitivity" then the Permit applicant must also submit a copy of an archaeological survey of the subject Undeveloped Land, commissioned by the applicant; or
- (b) "Moderate Sensitivity" and the Alteration, taken as a whole, modifies a land area equal to or greater than 50,000 square feet or will result in five (5) or more residential units, then the Permit applicant must also submit a copy of an archaeological survey of the subject Undeveloped Land, commissioned by the applicant.

3.2 Within ten (10) days of receipt of a Permit application for an Alteration on any Undeveloped Land, the Permit Granting Authority in receipt of such application shall confirm whether the subject Undeveloped Land is located in an Archaeologically Sensitive Zone, and if so, it shall forward a copy of such Permit application (with pertinent attachments) to the Commission. The Permit Granting Authority shall also notify the Commission (by e-mail or similarly expedient means) when such a Permit has been sent to the Commission for consideration. No Permit requiring review by the Commission shall be issued at that time, but the Permit Granting Authority may continue its review of the application. The Commission shall promptly supply the Massachusetts Historical Commission with a copy of any such Permit application and associated materials so received from the Permit Granting Authority.

3.3 Within sixty-five (65) days after receipt of the Permit application from the Permit Granting Authority, the Commission shall conduct a public hearing and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant). The Commission and Permit applicant may, by mutual agreement, extend the date for such hearing.

3.4 In order to assist in its consideration of the Permit application, the Commission at any time may, but is not obligated to, conduct any of the following activities: (1) request access from the applicant (or owner of the subject Undeveloped Land, if not the applicant) to physically observe the presence of any Archaeological

Resources on the subject Undeveloped Land, (2) commission its own archaeological survey or other consultant review of the subject Undeveloped Land to determine the presence of any Archaeological Resources and the impact that the applicant's proposed Alteration may have on any such Archaeological Resources, or (3) seek comments from the Massachusetts Historical Commission or the State Archaeologist.

- 3.5** *If, after such hearing, the Commission determines that the Alteration for which the Permit is sought will not adversely impact any existing Archaeological Resource at the subject Undeveloped Land (including by reason of measures adopted by the applicant to avoid, minimize or mitigate possible harm to such Archaeological Resource), the Commission shall so notify the Permit Granting Authority within twenty one (21) days of such determination. Upon receipt of such notification, or after the expiration of twenty one (21) days from the date of the conduct of the hearing if it has not received notification from the Commission, the Permit Granting Authority may, subject to the requirements of any other applicable laws, bylaws, rules and regulations, issue the Permit.*
- 3.6** *If the Commission determines that the Alteration for which the Permit is sought will adversely impact any existing Archaeological Resource at the subject Undeveloped Land, the Commission shall so advise the applicant and the Permit Granting Authority within twenty one (21) days of said hearing, and the Undeveloped Land shall be deemed to contain a Threatened Archaeological Resource. Upon a determination by the Commission that Undeveloped Land for which a Permit is sought contains one or more Threatened Archaeological Resources, the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant) shall be responsible for properly securing such Archaeological Resources to the satisfaction of the Massachusetts Historical Commission.*
- 3.7** *Neither the requested Permit nor any other Permit that would Alter the same Undeveloped Land may be issued until at least eighteen (18) months after the date of such Threatened Archaeological Resource determination by the Commission. Notwithstanding the preceding sentence, the Permit Granting Authority may issue the requested Permit (or any other Permit that would Alter the same Undeveloped Land) at any time after receipt of either (1) written advice from the Commission to the effect that the Commission is satisfied that the Permit applicant (or owner of the subject Undeveloped Land, if not the applicant) has undertaken or is undertaking bona fide and reasonable measures to avoid, minimize or mitigate possible harm to any Archaeological Resource(s) located on the subject Undeveloped Land, or (2) written notice from the Board of Selectmen that the Permit has been approved pursuant to an appeal under Section 4.1 of this bylaw.*

Section 4. Enforcement and Remedies

- 4.1** *The Permit applicant (or owner of the subject Undeveloped Land, if not the applicant) may appeal any Threatened Archaeological Resource determination by the Commission to the Board of Selectmen within twenty-one (21) days from the date of the issuance of such determination. Any such appeal shall be heard by the Board of Selectmen within forty-five (45) days of receipt of the appeal request, and the Board shall render a decision as to such appeal within thirty (30) days of the close of the hearing. The determination of the Commission shall remain in effect during the time that an appeal is pending.*
- 4.2** *The Commission and Permit Granting Authorities are each authorized to institute any and all proceedings in law or equity as it deems necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.*
- 4.3** *For any Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of this bylaw no Permit shall be issued by a Permit Granting Authority for a period of three (3) years after the date of the completion of such Alteration unless authorized by the Commission pursuant to Section 4.5. For purposes of this Section 4.3, the term Threatened Archaeological Resource shall include any Archaeological Resource that the Commission would have been reasonably likely to determine to be a Threatened Archaeological Resource that was voluntarily Altered before such determination could be issued.*
- 4.4** *Should the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant) fail to secure any Threatened Archaeological Resource as required under this Bylaw, the loss of such Threatened Archaeological Resources through fire or other cause shall be considered voluntarily Altered for the purposes of Section 4.3.*
- 4.5** *At any time, the Permit applicant (or owner of the subject Undeveloped Land, if not the applicant) of Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of Sections 4.3 and 4.4 of this bylaw can apply in writing to the Commission for an exemption to the provisions of Sections 4.3 and 4.4, such application to state with particularity the facts and circumstances to prove to the Commission that an exemption is warranted due exigent circumstances or disasters beyond the applicant's and landowner's control. The Commission may in its discretion determine that the applicant's or owner's written request states sufficient grounds for exemption from the provisions Sections 4.3 and 4.4 and authorize an exemption from this bylaw.*

Section 5. Miscellaneous

5.1 *No provision of this bylaw shall apply to buildings owned or operated by the Town of Acton or the Acton Water District.*

5.2 *The sections, paragraphs, sentences, clauses and phrases of this bylaw are severable, and if any phrase, clause, sentence, paragraph or section of this bylaw shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrase, clauses, sentences, paragraphs and sections of this bylaw.*