

# New Marlborough Historic Structure Demolition Pause Bylaw

To Determine if the Town of New Marlborough will vote to adopt the following General Bylaw:

**Section 1:** Intent and Purpose. This bylaw is adopted for the purpose of protecting and preserving significant historical structures, which constitute or reflect important features of the history, architecture, and/or historical character of the Town of New Marlborough. Through this bylaw the town seeks to encourage owners and businesses to preserve, rehabilitate, reuse and/or restore such significant structures rather than demolishing them.

**Section 2:** Definitions. For the purpose of this bylaw the following words and phrases will have these meanings:

- a. *Structure:* Any edifice or building of any kind that is constructed or erected and requires a permanent location on the ground, or is attached to such a structure (not including wheels).
- b. *Commission:* The New Marlborough Historical Commission
- c. *Committee:* Two members from the New Marlborough Planning Board, two members from the Historical Commission and one at large member appointed by the Selectmen.
- d. *Demolition:* Any act of destroying, pulling down, removing or razing more than 40% of a significant structure.
- e. *Demolition Permit:* The permit issued by the Building Inspector as required by State Building Code for the demolition or partial demolition or removal of a structure from its' lot, or moving such structure on the lot.
- f. *Permit:* Written authorization from the Building Inspector that will allow or disallow a particular action with respect to construction and/or demolition.
- g. *Significant Structure:* The Committee shall determine that a structure be designated as a significant structure if it was built prior to the date Nineteen hundred one (1901) **and** meets one or more of the following criteria:
  - 1. *National Register of Historic Places:* the structure is listed on, is within an

area listed on or is the subject of a pending application for listing on the National Register of Historic Places.

2. *Historical Importance:* the structure meets the criteria of historical importance if it meets one or more of the following:

- a. as character, interest or value as part of the development, heritage or cultural characteristics of the town of New Marlborough, Berkshire County, the Commonwealth of Massachusetts or the nation;
- b. is the site of an historic event;
- c. is identified with a person or group of persons who had some historic influence on society;
- d. exemplifies the historic cultural, political, economic, or heritage of The Town of New Marlborough.

3. *Architectural Importance:* the structure meets the criteria of architectural importance if it meets one or more of the following:

- a. portrays the environment of a group of people in an era of history characterized by a distinctive architectural style;
- b. embodies distinguishing characteristics of an architectural type; is the work of an architect, master builder or craftsman whose individual work has influenced the development of the Town or region; contains elements of architectural design, detail, materials or craftsmanship which represent a significant innovation.

4. *Geographic Importance:* the structure or site meets the criteria of geographic importance if either:

- a. the site is part of, or related to, a historically relevant square, park or the structure, as to its unique location or:
- b. its' physical characteristics, represents an established and familiar visual historic feature of the neighborhoods, village centers, or the community as a whole

**Section 3: Required Review Procedure**

No permits for demolition of a *Significant Structure*, as determined under Section 2, (Definitions), shall be issued without following the provisions of this bylaw.

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

- a. address of the structure to be demolished.
- b. owner's name, address and telephone number.
- c. description of the structure.
- d. reason(s) for requesting a demolition permit,
- e. brief description of the proposed reuse, reconstruction or replacement.
- f. photograph(s) of the structure.

The Building Inspector, upon receipt of an application for demolition of a structure subject to this bylaw, shall within the next seven (7) business days forward a copy of each such application for a demolition permit to (or shall satisfy himself that a duplicate of such application has been submitted to) the Committee. No demolition permit shall be issued at that time.

Within thirty (30) days from receipt of the application for a permit from the Building Inspector, the Committee shall make a determination as to whether the structure is a Significant Structure as defined in Section 2. The Committee shall make its determination in a public meeting of members or through use of a predetermined *Significant Structures* list developed and maintained through processes determined by the Committee consistent with this bylaw. If the Historic Committee determines the structure to not be significant, the Committee shall notify the Building Inspector in writing within five (5) business days and the permit may be granted through the normal building permit process. If the Committee determines the structure to be significant, the permit will be put on hold until the Committee holds a public hearing and determines if the structure is considered a *Significant Structure*.

Such public hearing will be held within thirty (30) days of determination by the Committee that a structure for which a demolition permit has been requested is a *Significant Structure*. Notice of the public hearing shall be published in a local newspaper two (2) weeks in advance of the hearing and the structure owner and all abutters notified in writing at the same time.

If, after such hearing, the Committee determines that the demolition of the structure would not be detrimental to the historical, geographical or architectural heritage or resources of the Town, the Committee shall so notify the Building Inspector within ten

(10) business days of such hearing. Upon receipt of such notification, or after the expiration of ten (10) business days from the date of the conclusion of the hearing if she/he has not received notification from the Committee, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations, issue the demolition permit.

### **Maximum Pause Period**

If the Committee determines that the demolition of the structure would be detrimental to the historical, geographical or architectural heritage or resources of the Town, such structure shall be considered a *Significant Structure*. Upon such determination by the Committee, no permit for demolition, new construction or alterations to the subject structure shall be issued for a period of nine (9) months from the date of receipt of the permit request by the Building Inspector. The Committee may reduce the maximum pause period if preservation, rehabilitation, reuse and or restoration of a *Significant Structure* is deemed impracticable.

No permit for demolition of a structure determined to be a *Significant Structure* in order to build a new structure(s) shall be granted until all approvals necessary for the issuance of permits for new structure(s), including any necessary zoning variances or special permits, are granted and all appeals concluded.

The Building Inspector may issue a demolition permit for a *Significant Structure* within the nine (9) months delay only if the Committee notifies the Building Inspector in writing that the Committee finds the intent and purpose of this bylaw is served even with the issuance of the demolition permit.

Following the nine (9) month delay period, the homeowner can proceed with the Building Inspector to obtain a demolition permit. If demolition does not occur within twenty-four (24) months of the permitted date, the permit will expire.

### **Section 4: Administration.**

The Committee may adopt such rules and regulations as are necessary to administer the terms of this bylaw. The Committee is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw. The Committee may develop a list of Significant Structures that will be subject to this bylaw. Structures proposed for the Significant Structure list shall be added following a public hearing.

### **Section 5: Emergency Demolition:**

If after an inspection, the Building Inspector finds a structure subject to this bylaw to pose 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, the Building Inspector may issue an emergency demolition permit to the owner of the structure. The Building Inspector shall then prepare a report explaining the condition of the building and the basis for his decision, which shall be forwarded to the Committee within seven (7) days.

**Section 6: Enforcement and Remedies:**

The Building Inspector is specifically authorized as enforcing person 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 bylaw or to prevent a threatened violation thereof, including, but not limited to non-criminal disposition pursuant to MGL c.40 §21D and Articles of the General Bylaw.

Any owner of a structure subject to this bylaw who demolishes a structure without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of Five Hundred Dollars (\$500.00). Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished structure is completed, or unless otherwise agreed to by the building inspector AND the Committee.

If a structure subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two (2) years from the date of the demolition on the subject parcel of land unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Committee and Building Inspector.

**Section 7: Appeal:**

Appeals from decisions or determinations of the Committee following a Public Hearing may be made by the applicant(s) or the abutter(s) to the courts under the certiorari statute, MGL c.249, Section 4.

**Section 8: Severability.**

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