

ATTACHMENT C

CITY OF NEWTON DEMOLITION DELAY

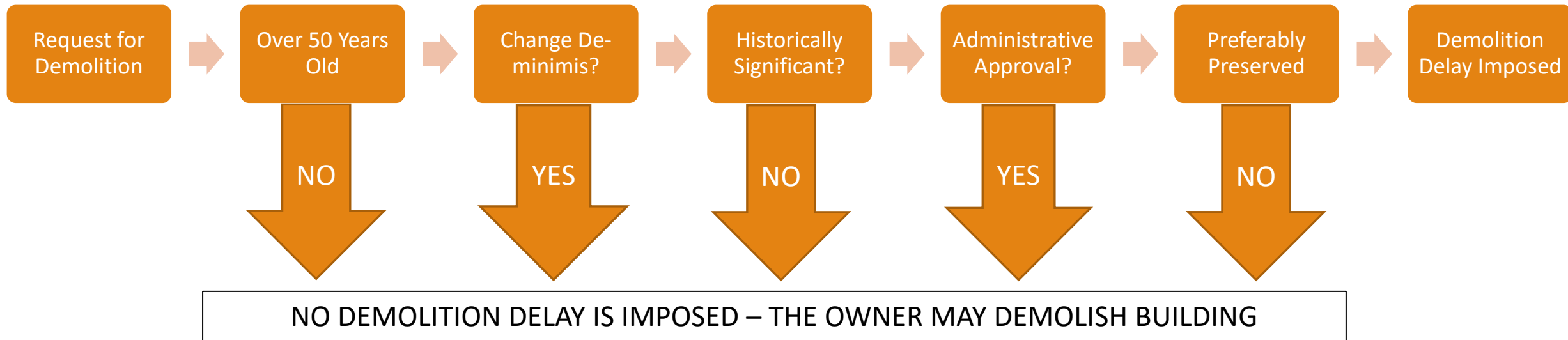
ZONING AND PLANNING COMMITTEE

APRIL 12, 2021

HISTORIC WORKING GROUP

The working group is comprised of Newton Historic Commission Chair, Doug Cornelius, and City Councilors Susan Albright, Lisle Baker, Deborah Crossley and Andrea Kelley.

Demolition Delay Process – Part 1



MAIN POINTS OF PROPOSED AMENDMENT

- The draft restructures and reorganizes the ordinance so that it is more navigable.
- The 50 year benchmark for properties subject to demolition delay is changed to properties built in or before 1945.
- There are new categories of properties which are subject to demolition delay regardless of the building or structure's age.
- The criteria for historical significance has been updated to match the definition in the amended Landmark Ordinance
- The draft provides that the NHC may delegate determinations of historical significant to staff and a designated commission member
- The draft proposes guiding criteria for Preferably Preserved findings.
- The draft seeks to clarify the waiver process with particular focus on waivers for total demolitions.
- The draft explicitly provides for judicial review of preferably preserved findings.

PROPOSED AMENDMENT – CLEAN UP

The demolition delay process is unchanged. The proposed amendment seeks to codify current practice.

- Alphabetize Definitions
- Include definition of “Formally listed as eligible for listing” and Inventory of historic and archaeological assets of the Commonwealth of Massachusetts”
- Require applicant to show proof of legal ownership
- Set forth notice provisions for hearings for Preferable Preserved determinations and applications for Waivers
- Require applicant to show proof of legal ownership
- Changed time in which the NHC must make a determination of historical significance from 15 days to 15 business days
- Make clear that after the expiration of the demolition delay period, the owner may only demolish that portion of the building shown on their application

ORGANIZATION

CURRENT

- The entire Demolition Delay process is contained in Sec. 22-50
- The criteria and process for findings of de minimis alterations and administrative determinations are contained in the definitions section
- The criteria for Historically Significant are contained in the definitions section
- There is no clear delineation in the text between the process for a finding of Historical Significance, Preferably Preserved or a Waiver

PROPOSED

The Demolition Delay ordinance has 10 separate sections:

- Sec. 22-50 – Intent and purpose
- Sec. 22-51 – Definitions
- Sec. 22-52 – Items considered to be de minimis
- Sec. 22-53 – Historically significant
- Sec. 22-54 – Preferably preserved
- Sec. 22-55 – Waiver
- Sec. 22-56 – Emergency demolition
- Sec. 22-57 – Non-compliance and enforcement
- Sec. 22-58 – Securing buildings and structures
- Sec. 22-59 – Applicability and Judicial Review

50 YEAR REQUIREMENT

CURRENT

A property is subject to the demo-delay ordinance if it is 50 years old or older

- 1971

PROPOSED

A property is subject to the demo-delay ordinance if it was built in or before 1945.

- There is not full consensus for this change. 4 members support the proposal. 1 member's preference is to retain the 50 year benchmark.

50 Year Requirement – Additional Discussion

At the February 22, 2021 ZAP meeting, the following alternative provisions were discussed:

1. Maintain a rolling date that is longer than 50 years. The example that was given was require that a property be subject to the demo-delay ordinance if it is 75 years old or older.
2. Require that the City Council review and amend, if appropriate, the designated age of buildings subject to demo-delay review every 10 years.

OTHER PROPERTIES SUBJECT TO DEMOLITION DELAY

The proposed amendment states that any property that meets any of the following criteria is subject to the demolition delay ordinance, regardless of when the building or structure was built:

1. the property is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
2. the property is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
3. the property is listed on the inventory of historic and archaeological assets of the Commonwealth of Massachusetts.

DEFINITION OF HISTORICALLY SIGNIFICANT

CURRENT

Any building or structure which is in whole or in part fifty or more years old and which

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or

(2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or

(3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

PROPOSED – MIRRORS LANDMARKING DEFINITION AND REMOVES ONE CRITERIA

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water;

(2) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;

(3) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or

(4) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

i) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

ii) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

There is not full consensus on the removal of properties located within 150 feet of any federal or local historic district. 3 members support the proposal. 2 members' preference is to retain criteria.

HISTORICALLY SIGNIFICANT - DELEGATION

CURRENT

The determination of Historically Significant may be made by the NHC or the NHC may delegate the determination to commission staff or a designated commission member

PROPOSED

The NHC may delegate the determination to commission staff and a designated commission member

1 member has requested further discussion on inclusion of a mechanism that would require disclosure at NHC meetings of full demolition applications that are found not to be historically significant by commission staff and a designated commission member.

PREFERABLY PRESERVED CRITERIA

CURRENT

If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved

PROPOSED

Items the NHC must consider in determining whether a building or structure's use would be detrimental to the historical or architectural heritage or resources of the City of Newton:

- The historic value and significance of the building or structure;
- The architectural value and significance of the building or structure;
- The general design, arrangement, texture and materials of the features and the relation of those features to similar buildings and structures in the nearby area; and
- The extent of historic fabric remaining in the building or structure.

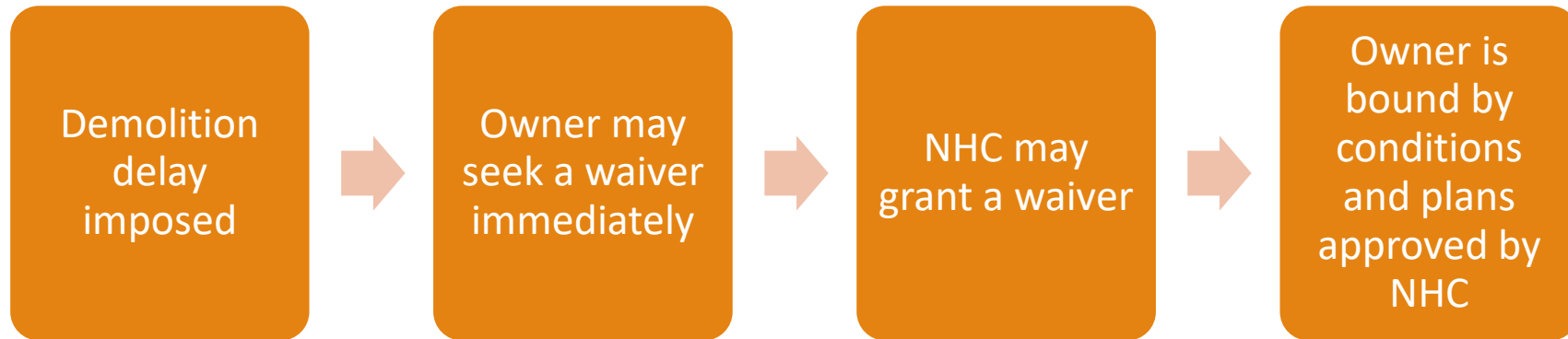
The working group has requested discussion in ZAP on the following 2 additional conditions:

The degree to which the historic and/or architectural value of the building or structure can be preserved through restoration or replacement.

Whether imposition of demolition delay would cause excessive hardship on the property owner(s).

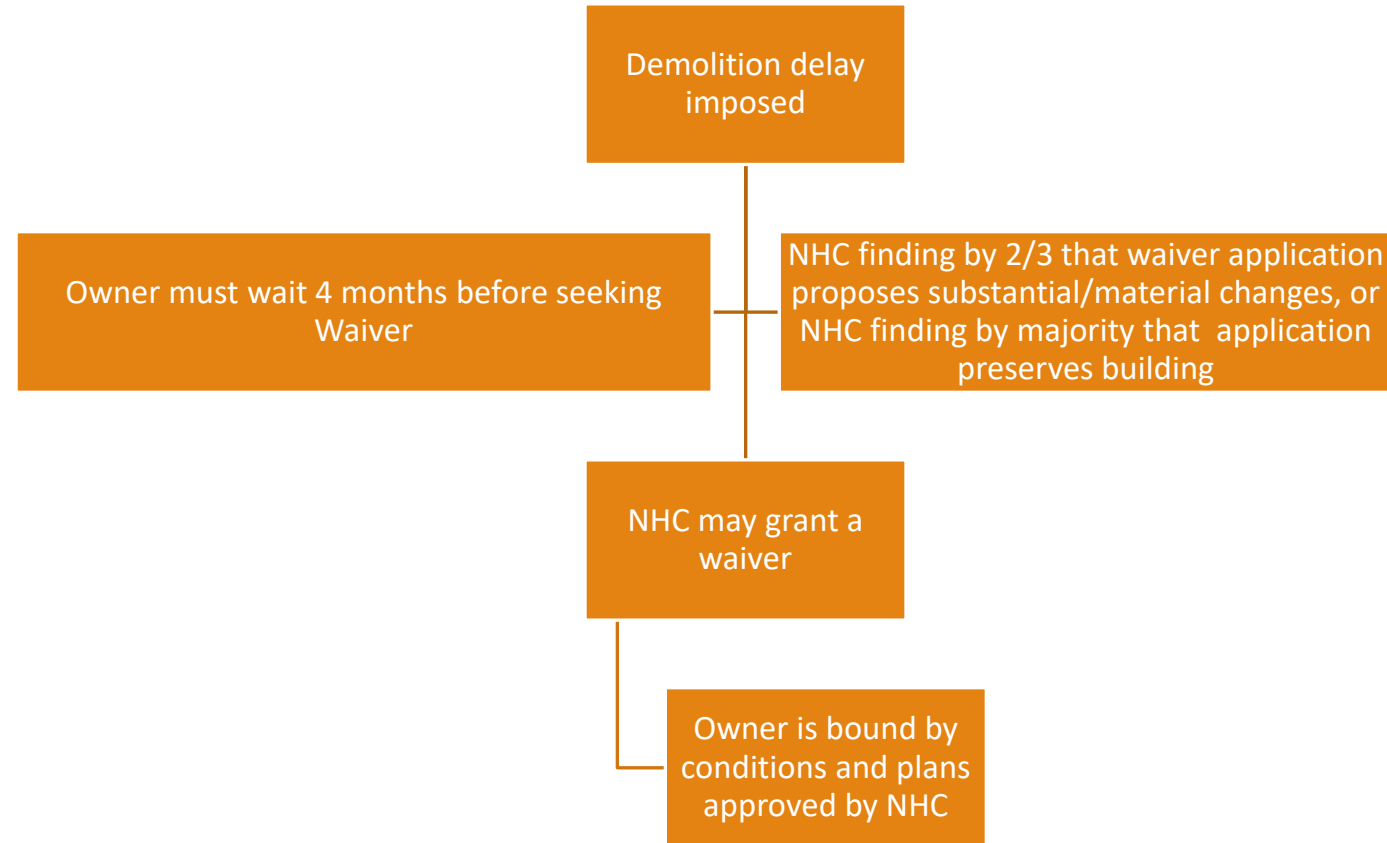
Demolition Delay Process – Part 2

Waiver - Partial



Demolition Delay Process – Part 3

Waiver - Total



WAIVER

CURRENT

- Waiver criteria – the owner has either:
 - made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
 - has agreed to accept a demolition permit on specified conditions approved by the commission.

Additionally, owners that applied for a total demolition may not seek a waiver until 4 months after the finding of preferably preserved unless the NHC finds:

- by a vote of 2/3 substantial and material changes are in the resubmitted application; or
- by a majority vote that the resubmitted application proposes to preserve the building or structure.

PROPOSED

The waiver criteria is unchanged.

Owners that applied for a total demolition must wait 4 months after the finding of preferably preserved unless the NHC finds by a vote of 2/3 that the resubmitted application either proposes substantial and material changes or proposes to preserve the building or structure.

The NHC cannot make such a vote until 30 days after the preferably preserved finding.

JUDICIAL REVIEW

The owner(s) of a building or structure determined to be preferably preserved under Section 22-54 of the Revised Ordinances, may, within twenty (20) days after the commission makes such determination, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the owner(s) of the subject building or structure. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court.

OPEN ITEMS FOR DISCUSSION – 50 Year Requirement

Under the current Demolition Delay Ordinance, a property is subject to review if it is in whole or in part 50 years old or older. Proposed demolition and/or alterations of a building that are less than 50 years old is not reviewed by the Newton Historical Commission (“NHC”) or the NHC staff.

- Working Group Proposal – Preferred by 4 of the 5 Working Group Members
 - Proposed demolition of a building is subject to Demolition Delay review if the building was in whole or in part built in or before 1945.
- Working Group Proposal – Preferred by 1 of the 5 Working Group Members
 - Retain the Demolition Delay jurisdiction over buildings that are 50 years old or older contained in the current ordinance.
- 2 Proposals Discussed at the February 22, 2021 ZAP Meeting
 - Increase the age requirement of buildings subject to Demolition Delay review. The example that was stated at the ZAP Meeting was to require that a property be subject to the Demolition Delay Ordinance if the building is 75 years or older.
 - Require that the City Council review and amend, if appropriate, the designated age of buildings subject to demo-delay every 10 years.

OPEN ITEMS FOR DISCUSSION – Properties Near Historic Districts

Under the current Demolition Delay Ordinance, a building is Historically Significant if it is located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district. 3 of the 5 Working Group members support removing such properties from the criteria for Historically Significant. The remaining 2 members support retaining the criterion.

OPEN ITEMS FOR DISCUSSION – Historically Significant – Staff Review

Under the current Demolition Delay Ordinance, the determination of whether a building is Historically Significant may be made by the NHC or the NHC may delegate the determination to commission staff or a designated commission member.

Determinations of whether a building is Historically Significant may be made by the NHC or the NHC may delegate the determination to commission staff and a designated commission member.

1 Working Group member has requested further discussion on inclusion of a mechanism that would require disclosure at NHC meetings of full demolition applications that are found not to be historically significant by commission staff and a designated commission member.

OPEN ITEMS FOR DISCUSSION – Preferably Preserved Criteria

Additional criteria the NHC must consider in determining whether a building meets the definition of Preferably Preserved:

- The degree to which the historic and/or architectural value of the building or structure can be preserved through restoration or replacement.
- Whether imposition of demolition delay would cause excessive hardship on the property owner(s).