

Minutes of the **Bylaw Review Committee** meeting held
October 9, 2013
Town Clerk's Conference Room, Town Hall, 455 Concord Avenue
7:30 PM

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BELMONT, MA

2017 AUG 24 AM 11:06

Attendees: Charles Hamann, Chair, Mark Thurber, Raymond Miyares, Ellen O'Brien Cushman
(ex-officio)

Other Attendees: Bob McGaw , Steve Ganak (Citizen Petitioner for Yard Sale Bylaw)

Agenda:

Special Town Meeting Articles

Demolition Delay: The Committee prepared a single amendment to definition of LIST to include the words, "as it may be modified". Document attached. Unanimous Vote

Committee then reviewed and edited the submitted amendments for form and placement. Documents as submitted and as edited by Committee are attached. Unanimous Vote on each

Yard Sales : Citizen petition submitted in September to limit the number of yard sales a property may hold in each year, along with time limitations, etc requiring a permit. Committee edited the language as prepared by Mr. Ganak (with help of Bob McGaw). Unanimous Vote on edited version as to form and placement. Document attached

Meeting adjourned at 9: 10 PM

Respectfully submitted,
Ellen O'Brien Cushman

Oct 9, 2017 after
BLRC votes

LEGAL LANGUAGE CORRECTION

Article 3: Demolition Delay Amendment Offered by the Bylaw Review Committee

Moved: That the word "as it may be modified" be substituted for the word "adopted" in the definition of LIST, C (h) so that it reads:

- (h) LIST – A list of Buildings, entitled *Belmont's Significant Historic Buildings Subject to Demolition Delay Bylaw*, prepared by the Commission and on file with the Town Clerk, modified pursuant to Subsection D.
-

DEFINITIONS

Article 3 Demolition Delay Amendment by Robert E. McGaw (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the definition of "Demolition" to be in conformity with the Historic District Commission's statement, as follows:

DEMOLITION –The dismantling or voluntary destruction of a Building in its entirety, with or without the intent to replace the construction so affected. For purposes of this Section, the term "Demolition" shall not include any other activities affecting the interior or exterior of the Building, including without limitation, interior or exterior painting, maintenance, modifications, renovations, additions, removals, replacements, or construction of any kind.

Article 3 Demolition Delay Amendment by Roy Epstein (Precinct 6 TMM)

I would like to submit the following amendment to Article 3 ("Demolition Delay") for the Warrant for the November 4, 2013 Special Town Meeting.

Amendment to insert at the end of Subsection C (c):

" but excluding a Building that is a detached garage or other accessory structure on a residential lot."

OPT OUT AND SHIFTING THE BURDEN OF PROOF

Article 3 Demolition Delay Amendment by Robert E. McGaw (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by replacing Subsection D.1 of the proposed Article 60.320 with the following paragraph:

1. This Section shall not be applicable to any Building on the List, until the Commission shall have, by certified mail return receipt requested, notified the owner of record of each Building on the List of the owner's right to remove the owner's Building from the List, such right to be exercised by the owner signing and filing an election ("removal election") with the Town Clerk within 60 days after receipt of such notice. The Commission's notice shall also include a copy of this Section. If the owner duly files such removal election, then the owner's Building shall be removed from the List.
-

Article 3 Demolition Delay Amendment by Vincent Stanton (Precinct 3 TMM) on behalf of resident Jim Aylward

Moved: That the first paragraph of Subsection D, paragraph 1 of the proposed Article 60.320 be replaced with the following paragraph:

1. Upon the effective date of this Section, the Commission shall notify the owner of record of any Building identified on the List as originally filed, of the owner's right to remove the owner's Building from the List by filing a removal election with the Town Clerk within 60 days of such notice. After the owner so elects, the Commission, at its option, shall have 30 days to appeal to the Board of Selectman to have the Building included on the List. The appeal shall be based on a preponderance of the evidence of the Building's significant historical importance presented at a public hearing at which the owner, the Commission, and the public may all present evidence that the Building qualifies or does not qualify to be a on the List based on the following considerations:
-

Article 3 Demolition Delay Amendment by Eric Smith (Precinct 6 TMM)

I write to file the following motion under Article 3 (the proposed Demotion Delay Bylaw) of the Warrant for the Special Town Meeting on November 4, 2013:

MOVED, that Subsection D1 of the proposed § 60-320 be amended by deleting the phrase "The basis for this appeal shall be limited to a factual demonstration that the Building does not qualify to be a Significant Building, "and substituting therefor the phrase "In any appeal, the Commission shall have the burden of showing that the Building is of historical significance by a factual demonstration".

FINANCIAL IMPACT

Article 3 Demolition Delay Amendment by Robert E. McGaw (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the last two bulleted paragraphs of Subsection F.1 of the proposed §60.320 to read as follows (added language is ***bolded and italicized***; deleted language is shown as ~~double-strike-through~~):

- ***Reasonably*** participate in the investigation of preservation ***alternatives*** ~~options~~ for the Preferably Preserved Building; and

I intend to withdraw my second bullet in deference to Jack Weis' amendment

Article 3 Demolition Delay Amendment by Jack Weis (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the last bulleted paragraph of Subsection F.1 of the proposed §60.320 to read as follows:

- "Reasonably cooperate with the Commission and any interested parties seeking alternatives to the Demolition of the Preferably Preserved Building; provided, however, that neither the owner nor the Applicant shall be obligated to incur or suffer out-of-pocket financial costs or expenses beyond the cost and expense associated with attending and participating in the Commission's meetings to discuss the application."

Article 3: Demolition Delay
Amendment Offered by the Bylaw Review Committee

Moved: That the word “modified” be substituted for the word “adopted” in the definition of LIST, C (h) so that it reads:

- (h) LIST – A list of Buildings, entitled *Belmont’s Significant Historic Buildings Subject to Demolition Delay Bylaw*, prepared by the Commission and on file with the Town Clerk, modified pursuant to Subsection D.
-

Article 3 Demolition Delay
Amendment by Robert E. McGaw (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the definition of “Demolition” to be in conformity with the Historic District Commission’s statement, as follows:

DEMOLITION – For purposes of this Section the term “Demolition” shall mean and include only the dismantling or voluntary destruction of a Building in its entirety, with or without the intent to replace the construction so affected. For purposes of this Section, the term “Demolition” shall not include any other activities affecting the interior or exterior of the Building, including without limitation, interior or exterior painting, maintenance, modifications, renovations, additions, removals, replacements, or construction of any kind.

Article 3 Demolition Delay
Amendment by Roy Epstein (Precinct 6 TMM)

I would like to submit the following amendment to Article 3 (“Demolition Delay”) for the Warrant for the November 4, 2013 Special Town Meeting.

Amendment to insert a new sentence at the end of paragraph C(c):

This section shall not apply to a Building that is a detached garage or other ancillary structure on a residential lot.

**Article 3 Demolition Delay
Amendment by Robert E. McGaw (Precinct 1 TMM)**

I move that Article 3 on the Warrant be amended by replacing Subsection D.1 of the proposed Article 60.320 with the following paragraph:

1. This Section shall not be applicable to any Building on the List, until the Commission shall have, by certified mail return receipt requested, notified the owner of record of each Building on the List of the owner's right to remove the owner's Building from the List, such right to be exercised by the owner signing and filing an election ("removal election") with the Town Clerk within 60 days after receipt of such notice. The Commission's notice shall also include a copy of this Section. If the owner duly files such removal election, then the owner's Building shall be removed from the List.
-

**Article 3 Demolition Delay
Amendment by Vincent Stanton (Precinct 3 TMM)
on behalf of resident Jim Aylward**

Moved: That the first paragraph of Subsection D, paragraph 1 of the proposed Article 60.320 be replaced with the following paragraph:

1. Upon the effective date of this Section, the Commission shall notify the owner of record of any Building identified on the List as originally filed, of the owner's right to remove the owner's Building from the List by filing a removal election with the Town Clerk within 60 days of such notice. After the owner so elects, the Commission, at its option, shall have 30 days to appeal to the Board of Selectman to have the Building included on the List. The appeal shall be based on a factual demonstration with substantial evidence of the Building's significant historical importance presented at a public hearing at which the owner, the Commission, and the public may all present evidence that the Building qualifies or does not qualify to be a on the List based on the following considerations:
-

**Article 3 Demolition Delay
Amendment by Eric Smith (Precinct 6 TMM)**

I write to file the following motion under Article 3 (the proposed Demotion Delay Bylaw) of the Warrant for the Special Town Meeting on November 4, 2013:

MOVED, that paragraph 0.1 of the proposed § 60-320 be amended by deleting the phrase "The basis for this appeal shall be limited to a factual demonstration that the Building does not qualify to be a Significant Building, "and substituting therefor the phrase "In any appeal, the Commission shall have the burden of showing that the Building is of historical significance by a factual demonstration".

Article 3 Demolition Delay
Amendment by Robert E. McGaw (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the last two bulleted paragraphs of Subsection F.1 of the proposed §60.320 to read as follows (added language is ***bolded and italicized***; deleted language is shown as ~~double strike-through~~):

- ***Reasonably*** participate in the investigation of preservation ***alternatives*** ~~options~~ for the Preferably Preserved Building; and
 - Reasonably cooperate with the Commission and any interested parties in seeking alternatives to the Demolition of the Preferably Preserved Building; ***provided, however, that neither the owner nor the Applicant shall be obligated to incur or suffer a financial cost or expense in connection therewith.***
-

Article 3 Demolition Delay
Amendment by Jack Weis (Precinct 1 TMM)

I move that Article 3 on the Warrant be amended by changing the last bulleted paragraph of Subsection F.1 of the proposed §60.320 to read as follows:

- “Reasonably cooperate with the Commission and any interested parties seeking alternatives to the Demolition of the Preferably Preserved Building; provided, however, that neither the owner nor the Applicant shall be obligated to incur or suffer out-of-pocket financial costs or expenses beyond the cost and expense associated with attending and participating in the Commission’s meetings to discuss the application.”

FINAL DEMOLITION DELAY GENERAL BYLAW

§60-320. DEMOLITION DELAY

A. Intent and Purpose.

This Section is adopted for the purpose of preserving and protecting Significant Buildings within the Town of Belmont 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. Through this Section, owners of Preferably Preserved Buildings are encouraged to seek out and consider alternative options that will preserve, rehabilitate or restore such Buildings; and residents of the Town are alerted to impending demolitions of Significant Buildings. By preserving and protecting Significant Buildings, this Section promotes the public welfare by making the Town a more attractive and desirable place in which to live and work. To achieve these purposes, the Belmont Historic District Commission is authorized to advise the Inspector of Buildings with respect to Demolition Permit Applications.

B. Time Limitation.

The provisions of this Section shall be null and void and of no force and effect on and after June 30, 2016.

C. Definitions.

For the purposes of this Section, the following terms shall have the following definitions:

- (a) APPLICANT – Any person or entity that files an Application for a Demolition Permit.
- (b) APPLICATION – An Application for a Demolition Permit.
- (c) BUILDING – A roofed Structure enclosing useful space.
- (d) COMMISSION – The Belmont Historic District Commission.
- (e) DEMOLITION – The removal or dismantling of a Building in whole or substantial part, with or without the intent to replace the construction so affected. For purposes of this Section, the term “Demolition” shall not include routine maintenance, interior renovations, removal or construction of porches, decks, windows, additions or other types of renovations for which Commission approval is generally not required.
- (f) DEMOLITION PERMIT – The permit required by the Inspector of Buildings for Demolition of a Building, excluding a permit required solely for the Demolition of the interior of a Building.
- (g) INSPECTOR OF BUILDINGS – The person authorized by law to issue Demolition Permits within the Town of Belmont.
- (h) LIST – A list of Buildings, entitled *Belmont’s Significant Historic Buildings Subject to Demolition Delay Bylaw*, prepared by the Commission and on file with the Town Clerk, as it may be modified pursuant to Subsection D.

- (i) PREFERABLY PRESERVED BUILDING – Any Significant Building that the Commission determines, following a public hearing, should be preserved or rehabilitated rather than demolished.
- (j) SIGNIFICANT BUILDING – A Building that is listed on the List.
- (k) STRUCTURE – Anything constructed or erected, the use of which requires fixed location on the ground.

D. The List of Buildings.

1. Upon the effective date of this Section, the Commission shall notify the owner of record of any Building identified on the List as originally filed, of the owner's right to appeal to the Board of Selectmen within 60 days of such notice to have the Building removed from the List. The basis for this appeal shall be limited to a factual demonstration that the Building does not qualify to be a Significant Building, based upon the following considerations:
 - Whether the Building is associated with events that have made a significant contribution to our history;
 - Whether the Building is associated with the lives of persons historically significant in our past;
 - Whether the Building embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic value; or represents a significant and distinguishable entity whose components may lack individual distinction;
 - Whether the Building has recognized national, state, or local level historical significance;
 - The historic context of the Building; and,
 - The integrity of the historic Building.
2. Additional Buildings shall not be added to the List.
3. Buildings that are located within the McLean Hospital National Historic District, the Common Street Historic District, the Pleasant Street Historic District and the Richardson Farm Historic District, as well as the Belmont Center Fire Station and Waverley Square Fire Station and all municipal buildings shall be ineligible for inclusion on the List.
4. The Demolition of a Building following the issuance of a Demolition Permit shall automatically result in the removal of such Building from the List.

E. Review Procedure.

1. No Demolition Permit for a Significant Building shall be issued until the provisions of this Section have been satisfied.
2. An Applicant proposing to demolish a Significant Building shall file with the Inspector of Buildings an Application containing the following information:

- The address of the Building to be demolished;
- The owner's name, address and telephone number;
- A description of the Building;
- A photograph or photographs of the Building and photographs of neighboring Buildings.

If the Applicant is not the owner of the Building, the Application shall demonstrate the owner's assent to the filing of the Application.

3. The Inspector of Buildings shall, within seven days of receipt of such Application, forward a copy thereof to the Commission.
4. Within 35 days of receipt of the Application from the Inspector of Buildings, the Commission shall hold a public hearing to determine if it is in the public interest for a Significant Building to be preserved or rehabilitated rather than demolished and, based on such determination, whether the Significant Building is a Preferably Preserved Building. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in the same manner as meeting notices posted in Belmont under the Open Meeting Law, MGL c.30A, §20, for a period of not less than seven days prior to the hearing date. The Inspector of Buildings, the Applicant and the owner of the Building (if different from the Applicant) shall be notified in writing of the meeting time and place no less than 14 days prior to the hearing date.
5. Within 10 days of the first date of such Public Hearing, the Commission shall provide written notification to the Inspector of Buildings and the Applicant of its determination as to whether the Significant Building is a Preferably Preserved Building. If agreed to in writing by the Applicant, the determination of the Commission and notification to the Inspector of Buildings may be postponed to a specified date. If the Commission does not provide written notification to the Inspector of Buildings and the Applicant of its determination in writing by such deadline, then the Inspector of Buildings may issue the Demolition Permit.
6. If the Commission determines that the Significant Building is not a Preferably Preserved Building, the Commission shall so notify the Inspector of Buildings and Applicant in writing. The Inspector of Buildings may then issue the Demolition Permit.
7. If the Commission determines that the Significant Building is a Preferably Preserved Building, a Demolition Permit may thereafter be issued no sooner than six months for residential buildings and 12 months for commercial, institutional, and religious Buildings after the date that the Application was filed with the Inspector of Buildings, unless a shorter time is otherwise authorized by the Commission based on its finding that the intent and purpose of this Section, as provided in Subsection A hereof, will be adequately served. If a Building is of mixed-use, having both residential and commercial, institutional or religious uses, then the relevant delay for the issuance of a Demolition Permit shall be the longer of the applicable delay periods.

F. Responsibility of Owners.

1. The owner of a Significant Building for which a Demolition Permit is being sought shall:
 - Provide such information as is reasonably requested by the Commission in connection with its consideration of whether the Significant Building is a Preferably Preserved Building;

- Allow exterior access to the property on which the Significant Building is located, as reasonably requested by the Commission; and
- Secure the Significant Building, if vacant, to the satisfaction of the Inspector of Buildings until a Demolition Permit is issued.

An Applicant who has applied for a Demolition Permit for a Preferably Preserved Building shall:

- Participate in the investigation of preservation options for the Preferably Preserved Building; and
 - Reasonably cooperate with the Commission and any interested parties in seeking alternatives to the Demolition of the Preferably Preserved Building.
2. If the owner of a Significant Building fails to secure the Building to the satisfaction of the Inspector of Buildings, the subsequent destruction of the Building through any cause, shall be considered a voluntary Demolition in violation of this Section if such destruction could have been prevented by the required security measures.

G. Emergency Demolition.

1. Nothing in this Section shall restrict the Inspector of Buildings from ordering the immediate Demolition, in accordance with applicable law, of any Building in the event of imminent danger to the safety of the public. In the event that the Inspector of Buildings is informed that a Significant Building is dangerous to life or limb, or otherwise may be subject to a removal order, the Commission shall be notified and, where practicable, the Commission or its designee shall be allowed to accompany the Inspector of Buildings during the inspection of the Building.
2. As soon as practicable after the Inspector of Buildings has issued an emergency Demolition order for a Significant Building, a copy of such order shall be provided to the Commission, together with copies of all documentation relevant thereto.

H. Administration, Enforcement and Remedies.

1. The Commission may adopt such rules and regulations as are necessary to administer the provisions of this Section, but may not increase the length of the delay period stated herein.
2. In computing any period of time prescribed in this Section, the day of the act, event, or default after which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next business day.
3. The Commission and the Inspector of Buildings are each specifically authorized to institute any and all actions and proceedings, in law or equity, as either of them may deem necessary and appropriate to obtain compliance with the requirements of this Section or to prevent a threatened violation thereof.
4. Any owner of a Significant Building that is demolished without first obtaining a Demolition Permit in accordance with the provisions of this Section shall be subject to a penalty of \$300.00. Each day that such violation exists until a faithful restoration of the demolished Significant Building or


other remediation or remediation plan has been approved by the Commission shall constitute a separate offense. The Inspector of Buildings may enforce this Section by non-criminal disposition as provided in MGL c.40, §21D.

5. If a Significant Building is voluntarily demolished without first obtaining a Demolition Permit in accordance with the provisions of this Section, no building permit authorizing construction on the lot on which the Building was located or on any adjoining lot under common ownership therewith shall be issued for a period of two years from the date of the Demolition, unless agreed to by the Commission.

I. Severability.

If any provision of this Section shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible, and the balance of the Section shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof, as set forth in Subsection A.

TRUE COPY, ATTEST:


Ellen O'Brien Cushman, Town Clerk
Belmont, MA

February 6, 2014
Effective Date

Substitute Motion For Article 5, Yard Sale General Bylaw, Text After Amendment by Bylaw Review Committee

Moved: To amend Article 5 by substituting for the text of Article 5 as printed in the Warrant, the text as set forth in the document labeled "Substitute Motion for Article 5, Yard Sale General Bylaw, Text After Amendment by Bylaw Review Committee" that was distributed to Town Meeting Members

§60.900 Yard Sales

A. Intent. It is intent of this Section to allow residents to conduct Yard Sales from the premises where their residence is located, if conducted in accordance with this Section and all other applicable laws and does not cause a public nuisance. The willingness of neighboring residents to tolerate such sale events cheerfully can be expected only if they take place infrequently and are conducted in a manner that is respectful of the neighborhood.

B. Yard Sales Permitted. Yard Sales may be conducted only in accordance with this Section.

C. Definitions.

ESTATE SALE – A sale conducted by a duly authorized representative of a decedent's estate for the purpose of disposing of personal property owned by the estate.

LICENSEE — The resident who is issued a license to hold a Yard Sale pursuant to this Section.

MANAGED ESTATE SALE – An Estate Sale that is conducted or managed by a person engaged in the business of conducting or managing Estate Sales.

YARD SALE– An event involving the sale or display for sale of personal property at residential premises that is advertised to or otherwise made open to the general public for that purpose.

D. Application.

1. No person may hold a Yard Sale in the Town of Belmont except under the authorization of a license issued by the Town Clerk at least three business days prior thereto.

2. No license authorizing a Yard Sale may be issued except to a resident of the premises at which the Yard Sale will be conducted.

3. If a license application is approved, the Town Clerk shall provide the license to the applicant and a copy to the Police Department. If the application is denied, the Town Clerk shall notify the applicant and the Police Department, indicating the reasons for the denial.

4. No fee shall be required for the issuance of a Yard Sale license.

E. Yard Sale Limitations.

1. No more than two separate Yard Sales may be conducted in any calendar year at any single residence.

2. A Yard Sale may be held on no more than two consecutive days, and shall be conducted only between 8 a.m. and 5:00 p.m. each day.

3. A Licensee shall produce the Yard Sale license for inspection to any person making a request therefor.

4. Only the Licensee and the residents of the premises where the Yard Sale is held may conduct the Yard Sale.

5. Care shall be taken to avoid creating traffic congestion or parking conditions that would substantially impair access to neighboring properties.

6. The Belmont Police may order the immediate cessation of any Yard Sale that is being conducted without a license, is otherwise in violation of this Section, or is creating a public nuisance or threat to public safety.

7. After a Yard Sale is over for the day, all unsold items and other objects associated with the Yard Sale shall be stored out of public view no later than the end of the day.

8. Within 24 hours after a Yard Sale ends, the Licensee shall be obligated to remove all Yard Sale signs located off the premises where the Yard Sale was conducted.

F. Administration, Enforcement.

1. The Town Clerk is authorized to administer this Section and issue licenses for Yard Sales, and may promulgate regulations from time to time in connection with the administration of this Section.

2. In addition to the provisions for enforcement set forth elsewhere in this Section, the provisions of this Section and any regulations promulgated thereunder may also be enforced by non-criminal disposition as provided in MGL c. 40, §21D ("Section 21D"); provided, however, that an enforcing person taking cognizance of such a violation shall give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof in accordance with the provisions of Section 21D. The penalty for such violation shall be \$50 for each offense. Each day or part thereof during which the violation persists shall constitute a separate offense. As used in this Section, "enforcing person" shall mean any police officer of the Town of Belmont, the Director of Public Works, and any other Town employee designated by the Board of Selectmen as an enforcing person.

G. Exclusions. This Section is not applicable to any of the following:

1. Managed Estate Sales.

2. Activities conducted within residential buildings in connection with private sales of individual items of personal property made through newspaper advertisements, want-ads, private on-line or web-based auction sales, or the like, that does not involve the viewing, inspection, or purchase of the items by the general public at the residential premises, and does not have any signs or advertising on or about the premises.

