

## Chapter 238: Buildings: Delay of Demolition

[HISTORY: Adopted by the Town Meeting of the Town of Killingworth 10-13-2010.<sup>[1]</sup> Amendments noted where applicable.]

### GENERAL REFERENCES

Building Official — See Ch. 24.

Building construction — See Ch. 235.

Street numbers — See Ch. 404.

Subdivision regulations — See Ch. 485.

Zoning regulations — See Ch. 500.

[1] Editor's Note: This ordinance also superseded former Ch. 238, Buildings: Delay of Demolition, adopted 10-27-2008.

### § 238-1 Title and purpose.

- A. This chapter shall be known as "An Ordinance to Encourage the Preservation of Architecturally and Historically Significant Buildings by Delay of Demolition."
- B. This chapter is duly enacted by the Town in order to:
  - (1) Preserve and protect significant buildings and structures within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the Town; and
  - (2) To limit the detrimental effect on community character and heritage that may result from the demolition of such buildings and structures.
- C. Under this chapter, the Town shall impose a waiting period of not more than 180 days before granting a permit for the demolition of any building or structure that is designated as "preferably preserved" according to the definitions in § 238-3 (below). Connecticut General Statutes § 29-406 authorizes municipalities to approve a waiting period before granting any permit for the demolition of any building, structure, or part thereof.
- D. By this chapter, Town residents are alerted to the anticipated demolition of significant buildings or structures and the owners of such buildings or structures are encouraged to consider preservation, restoration, rehabilitation or relocation as alternatives to demolition. To achieve this purpose, the Historic Review Committee or other designated body is authorized to advise the local Building Official with respect to demolition permit applications.

### § 238-2 Intention and limitations

- A. This chapter shall not apply to applications for demolition due to a threat to public health or to emergency demolition orders issued by the Building Official due to a threat to public safety.
- B. This chapter shall not be construed to prevent the ordinary maintenance or repair of any exterior architectural features, nor shall it prevent the erection, alteration or removal of any such feature which the Building Official certifies is required by the public safety because of a condition which is unsafe or dangerous due to deterioration.

### § 238-3 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

#### APPLICANT

Any person or entity who files an application with the Town for a demolition permit. If the applicant is not the owner of the premises upon which the building or structure is situated, the owner's written consent or endorsement of the proposed application must be provided on the permit application at the time of submittal.

**APPLICATION**

A written request to the Town in an authorized format to issue a permit for the demolition of a building or structure.

**BUILDING**

Any combination of materials assembled by human intent to form a shelter for persons, animals or property.

**BUILDING OFFICIAL**

A person hired or appointed by the Town to serve as Building Inspector or otherwise duly authorized to issue demolition permits.

**CALENDAR DAY**

A standard day, including Monday through Sunday, and includes all designated holidays.

**COMMITTEE**

The Historic Review Committee or other designated body authorized to advise the Building Official on the issuance of demolition permits under this chapter.

**DELAY**

A period of up to 180 calendar days imposed by the Town, during which the owner of a preferably preserved property shall consider any viable alternatives to demolition, including reservation, restoration, rehabilitation, relocation or detailed recordation. The one-hundred-and-eighty-day delay period shall begin on the date that the building official determines that the application for a demolition permit is complete.

**DEMOLITION**

The intentional act of substantially pulling down, destroying, dismantling, defacing, removing or razing a building or structure, or commencing the work of a total, substantial, or partial destruction with the intent of completing the same; also the act or process of delaying or withholding maintenance of a building or structure in such a way as to cause or allow significant damage to occur which may result in a public hazard or nuisance.

**DEMOLITION PERMIT**

The Town permit issued by the Building Official authorizing the full or partial demolition of an existing building or structure, excepting for this chapter only any permit issued solely for the demolition or removal of interior features with no effect on the exterior appearance of the building or structure.

**PREFERABLY PRESERVED**

Any significant building or structure for which it is determined by the Historic Review Committee, following a public hearing, to be in the public interest to encourage preservation rather than demolition. A preferably preserved building or structure shall be subject to a demolition delay of up to 180 calendar days under this chapter.

**SIGNIFICANT BUILDING**

Any building or structure within the municipal boundaries which, in whole or in part, is known or presumed to be at least 75 years old and which has been determined by the Historic Review Committee or other designated authority to be significant to the community based on one or more of the following criteria:

- A. The building or structure is listed on the State or National Register of Historic Places, or is partially or completely within the boundaries of an area so listed; or
- B. The building or structure has been determined by the State Historic Preservation Office and/or the National Park Service to be eligible for listing on the State or National Register of Historic Places; or

- C. The building or structure has documented associations with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the town, the state, or the nation; or
- D. The building or structure has documented historical or architectural importance in terms of period, style, method of construction, specific use, or association with a recognized builder or architect, either by itself or in the context of a group of buildings.
- E. The building or structure is listed as an historically significant building or site in the Killingworth Plan of Conservation and Development.

**STRUCTURE**

Any combination of materials assembled, built, or constructed by human intent to shelter property or activities.

**§ 238-4 Permit required.**

- A. No person, firm, corporation, or other entity shall demolish any building, structure, or part thereof without obtaining a permit from the Building Official.
- B. The Building Official shall not issue a demolition permit for a building or structure that is, in part or in whole, at least 75 years old except as provided in this chapter. If the age of the building or structure is unknown, not indicated, or in dispute, it shall be assumed to be at least 75 years old for the purpose of this chapter.
- C. In addition to complete demolition of a building or structure, the following actions shall require a demolition permit under this chapter, unless the Historic Review Committee determines that the action is taken for the purpose of restoration or preservation of a building or structure that is at least 75 years old:
  - (1) Removal of a roof for the purpose of raising the overall height of a roof, rebuilding the roof to a different pitch, or adding another story to a building.
  - (2) Removal of one or more exterior wall(s) or partition(s) of a building.
  - (3) Gutting of a building's interior to the point where exterior features (windows, doors, etc.) are impacted.
  - (4) Removal, renovation, or modification of more than 25% of a structure's overall gross square footage as determined by the Building Official.
  - (5) The lifting and/or relocating of the subject building on its existing site or to another site.

**§ 238-4.1 Preliminary application.**

- A. Any person wishing to obtain a permit to demolish a building or structure more than 75 years old may, prior to making the application prescribed in § 238-5, submit to the Historic Review Committee, and the Committee may consider and discuss with the prospective applicant, a preliminary application. The submission of such preliminary application shall not constitute an application under § 238-5. Six copies of such preliminary application shall be filed and shall include:
  - (1) A site plan for the subject property, which includes all existing structures, setbacks, landmarks, septic system location, wells, outbuildings, and any stone walls or other historical landmarks on the subject property.
  - (2) A brief description of the building or structure, including its age, construction materials, previous and present use, and reasons for demolition.
  - (3) A photograph of the building or structure.
- B.

The Historic Review Committee shall determine whether a complete application as prescribed in § 238-4 shall be required. If the Committee determines that a complete application is not required, the Building Official may proceed with issuance of the demolition permit.

### **§ 238-5 Application contents.**

Any person wishing to obtain a permit to demolish a building or structure, in whole or in part, shall file an application verified under oath in the office of the Town Building Official on a form approved by the Town Building Official, which application shall include the following:

- A. The common name, if any, and actual street address, as well as the map and lot number, of the building or structure to be demolished.
- B. The names, current addresses and telephone numbers of the legal owner(s) and tenants, if applicable, of the building or structure to be demolished.
- C. The age of the subject building or structure to be demolished, including copies of the Assessor's records, deeds, and historical documentation, substantiating the building's age.
- D. The actual square footage or dimensions of the building or structure to be demolished as determined by a Connecticut-licensed architect or professional engineer.
- E. A brief but detailed description of the construction materials, interior configuration, and previous and present use of the existing building or structure. (Drawings are encouraged.)
- F. A series of photographs, including both the interior and the exterior of the building or structure, showing at least two elevations. Exterior photographs must include all sides of the subject building.
- G. A detailed report substantiating the reason for requesting a demolition permit. The report shall include documentation developed by a Connecticut-licensed architect or professional engineer. Additionally, the applicant shall provide a detailed A-2 Site Survey for the subject property, which includes all existing structures, setbacks, landmarks, septic system location, wells, outbuildings, and any stone walls or other historical landmarks on the subject property.
- H. The application must include the names and addresses of the current owners of all properties adjoining (and across the street from) the property on which the building or structure to be demolished is located, according to an attached copy of a pertinent portion of the current Assessor's map.
- I. The applicant must also provide, at the time of application for a demolition permit, copies of the certified mail return receipt notifications for each of the notifications which have been sent to the property owners so listed within Subsection H above.
- J. No application for demolition will be accepted for any subject property until all applicable fees are paid, and all back taxes have been paid to current status.

### **§ 238-6 Procedures; Historic Review Committee.**

- A. The Building Official shall not issue a demolition permit for any building or structure in the Town except under the provisions outlined in this chapter.
- B. Upon adoption of this chapter, the Town, through the Board of Selectman, shall appoint an Historic Review Committee of five persons. The initial membership of the Committee shall be appointed by the Board of Selectmen following the adoption of this chapter by Town Meeting, and their terms shall begin as of the date of appointment and run as follows: two members to serve until December 31, 2009, two members to serve until December 31, 2010, and one member to serve until December 31, 2011. Thereafter, the term of each member shall be for one year. Vacancies may be filled by the Board of Selectmen to fill the unexpired portion of any term. No more than three members may be members of the same political party. Nominations to the Historic Review

Committee shall be solicited from the Municipal Historian, the Killingworth Historical Society, and other qualified agencies and associations.

- C. The Board of Selectmen shall appoint two alternate members to the Historic Review Committee. The term of each alternate member shall be for one year. An alternate member shall be seated by the Chairman of the Historic Review Committee when a regular member of such Committee is absent or is disqualified. Such alternate members shall, when seated, have all the powers and duties of regular Historic Review Committee members.
- D. For every building or structure for which an application for demolition permit has been filed, the following process shall apply:
  - (1) Within seven calendar days from the date of receipt of a complete application, including all required attachments and enclosures as well as payment of all applicable fees, the Building Official shall forward a copy of the complete application to the Historic Review Committee Chairman.
  - (2) Within 15 calendar days from the date of receipt of a complete application, the Historic Review Committee shall make a written determination of the significance of the building or structure using the criteria stated in § 238-3 above.
  - (3) Within 20 calendar days from the date of receipt of a complete application, the Historic Review Committee shall provide the Building Official, the legal owner(s) of record/applicant(s), and any/all tenants of the subject building with a copy of the written determination listing the reason(s) that the building or structure is either significant or not significant. Except for notification to the Building Official, all written findings shall be sent via certified mail with return receipt.
  - (4) If the building or structure is deemed not significant, or if the Historic Review Committee fails to notify the Building Official, in writing, of its determination within the allotted time, the Building Official may proceed with issuance of the demolition permit.
  - (5) Within 35 calendar days from the date of receipt of a complete application, the Historic Review Committee shall hold a public hearing to solicit public comment on any building or structure that the Historic Review Committee has determined to be significant. Public notice of the time, place, and purpose of the hearing shall be posted in a conspicuous place in the Town Office Building for a period of not less than seven days prior to the date of said hearing. The Historic Review Committee shall also notify the Building Official, in writing, of the meeting time and place. The legal owner(s) of record/applicant(s) and any tenants shall also be notified, in writing, of the meeting time and place, via certified mail/return receipt. Any interested party shall have the opportunity to speak at the public hearing, subject to normal limitations and procedures.
  - (6) Within 45 calendar days from the date of receipt of a complete application, unless the owner/applicant consents, in writing, to a continuance of the date for such decision for a certain period of time, the Historic Review Committee shall decide by majority vote whether the significant building or structure is deemed preferably preserved. If that majority vote is in the affirmative, the Historic Review Committee shall next determine the length of time for such delay, to a maximum of 180 days from the date of receipt of a complete application. The Historic Review Committee shall notify the Building Official of its decision in writing. The legal owner(s) of record/applicant(s) and any tenants shall also be notified, in writing, of the Committee's decision.
  - (7) Upon written notification of the legal owner(s) of record/applicant(s), as well as any tenants, by the Historic Review Committee that the building or structure is not preferably preserved; or if the decision of the Historic Review Committee is appealed to the Board of Selectmen and the Board upholds the appeal by determining that the building or structure is not preferably preserved, or if the Historic Review Committee fails to notify the Building Official of its decision within the allotted time, the Building Official may then proceed to issue a demolition permit.
  - (8) Upon notification by the Historic Review Committee that the building or structure is preferably preserved, the Building Official shall delay the issuance of a demolition permit for the time period determined by the



Historic Review Committee from the date of receipt of a complete application. During such delay period, the Building Official shall not issue any permits for new construction or alterations on the subject property.

- (9) Upon notification by the Historic Review Committee that a building or structure is deemed to be preferably preserved, and within 60 calendar days from the date of receipt of a complete application, or within 10 calendar days from the decision of the Board of Selectmen on final appeal, the following actions shall be taken:
- (a) The applicant shall publish in a local newspaper having substantial circulation in the Town a legal notice entitled a "Notice of Intent to Demolish," which shall include:
    - [1] Notice that an application has been filed for a demolition permit;
    - [2] The common name and actual street address of the building or structure to be demolished;
    - [3] The name and address of the owner(s) of the building or structure to be demolished;
    - [4] The age of the building or structure to be demolished;
    - [5] Notice that the Historic Review Committee has determined that the building or structure is preferably preserved; and
    - [6] The date after which the demolition permit can be issued.
  - (b) The applicant shall mail copies of the Notice of Intent to Demolish by certified mail with return receipt to the owners of all properties adjoining and across the street from the property on which the building or structure to be demolished is situated. In addition, the applicant shall provide the Historic Review Committee copies of the signed receipts, as they are returned;
  - (c) The applicant shall mail copies of the Notice of Intent to Demolish by certified mail with return receipt to the Killingworth Historical Society, Town of Killingworth Municipal Historian, and to any person, organization, firm, corporation, or other entity who has requested, in writing, from the Town Building Official copies of any such notices filed pursuant to this chapter. The Town Building Official shall maintain the list of those requesting to be so notified, and shall delete from the list those who do not annually renew in January, in writing, the request to be notified; and
  - (d) The Building Official shall oversee the posting of a sign by the applicant in a conspicuous location of the property on which the structure is situated. The sign shall be at least 24 inches by 36 inches in size, visible from the nearest public street. Such sign shall include a copy of the Notice of Intent to Demolish and shall contain the word "DEMOLITION" in capital letters no less than three inches in height. If there is more than one structure or building proposed for demolition, one sign shall be posted in respect to each structure. All signs required hereunder shall remain posted on the property, if the permit is issued, until the completion of all demolition activities authorized by the permit.
- (10) If the Historic Review Committee shall decide that the building or structure is deemed preferably preserved, then the owner and/or applicant may appeal that decision to the Board of Selectmen. Such an appeal shall be filed by the owner/applicant not more than 10 calendar days from the date of Notice of Decision by the Historic Review Committee. Such appeal shall be in writing, signed by the owner and applicant, and shall include a statement concerning the basis for such appeal, which may be procedural or factual or both. Upon notice of receipt of such an appeal, the Historic Review Committee shall provide to the Board copies of the application and all materials received and/or considered by the Committee in its deliberations. The Board shall hold a public hearing on said appeal within 25 calendar days of receipt of said appeal, and such public hearing may be continued by the Board, with the consent of the owner and/or applicant, for a maximum of an additional 15 calendar days. The Board shall consider all of the material provided to it by the Historic Review Committee and any additional material or testimony received at the public hearing, and shall render its decision on said appeal at a regular or special meeting held within 15 calendar days after the public hearing has been closed.

### § 238-7 Emergency demolition.

If, after a thorough formal inspection, the Building Official finds that a building or structure subject to this chapter poses 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 building or structure, then the Building Official may issue an emergency demolition permit to the owner of the building or structure. The Building Official shall forward a written report to the Historic Review Committee detailing the condition of the building or structure and the basis for the Building Official's decision.

### § 238-8 Issuance of permit.

- A. During the demolition delay period as determined by the Historic Review Committee, the legal owner(s)/applicant(s) of a preferably preserved property shall pursue and give due consideration to all possible alternatives to demolition, including preservation, restoration, rehabilitation, relocation or detailed recordation of the affected building or structure. In order to avoid or mitigate the anticipated effects of demolition, the legal owner(s)/applicant(s) shall make a good faith effort to accommodate reasonable requests from any interested parties for information about or possible access to the building or structure for the sole purpose of evaluating alternatives to demolition. All such written alternatives must be made in writing and made available to both the legal owner(s)/applicant(s) and any tenants and the Historic Review Committee.
- B. If no viable alternatives to demolition are identified and accepted within the demolition delay period, the Building Official may proceed to act on the permit application.

### § 238-9 Period of permit validity.

Any permit issued pursuant to this chapter shall be valid for a period of six calendar months from the date of issuance. If the demolition contemplated by said permit has not commenced within said six-month period, then the legal owner(s) of record of such building or structure shall be required to apply for either an extension of time, not to exceed six calendar months, or apply for a new demolition permit. Such an application for either an extension or for a new permit must satisfy all notification requirements of this article should said owner still wish to demolish said building or structure.

### § 238-10 Fees and costs for demolition permits.

- A. The fee for a demolition permit is based on the fair market value of the demolition work, plus all administrative costs related to any required public hearings. The applicant for the demolition work shall pay a permit fee based on the fee schedule established in accordance with the requirements of the State of Connecticut State Building Code<sup>[1]</sup> and § 29-406, Connecticut General Statutes. All costs relating to the publication of a legal notice, certified mailings, and the posting of the demolition sign, if applicable, shall be collected prior to issuance of a demolition permit. Both established fees and expenses relating to the demolition permit process are considered to be nonrefundable, regardless of the outcome of the process.

[1] *Editor's Note: See Connecticut General Statutes § 29-251 et seq.*

- B. No demolition permit, building permit or certificate of occupancy shall be issued for the subject premises until all required fees and costs have been paid.

### § 238-11 Penalties for offenses.

- A. The Board of Selectmen and the Building Official are each specifically authorized to institute, upon the recommendation of the Historic Review Committee, any and all actions or proceedings, in law or in 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.

During the application-processing period and during the demolition delay period, if applicable, the owner shall adequately maintain and protect the building or structure in order to prevent any further deterioration. Failure to do so shall be considered demolition by neglect and may be subject to penalties.

- C. In the case of full or partial demolition of any building or structure in the absence of or in advance of a valid demolition permit, the Building Official shall impose a two-year moratorium on the property during which no earthwork, landscaping, construction or further demolition may take place on the subject property or on any adjoining parcels under common ownership and control.
- D. Any persons failing to abide by the provisions of this chapter or Connecticut General Statutes §§ 29-401 through 29-415 shall be fined \$1,000 or imprisoned not more than six months, or both, per day, as each day constitutes a separate violation, pursuant to Connecticut General Statutes § 29-254a.

### **§ 238-12 Administration.**

The Historic Review Committee may select a chairman and secretary and adopt such rules and regulations as are necessary to administer the terms of this chapter.

### **§ 238-13 Severability**

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