

Acton Historic District Commission Meeting Minutes, February 2, 2009

This meeting consisted of a Public Hearing on the proposed Chapter P Bylaw changes, a Public Hearing on the proposed Demolition by Neglect Bylaw, and other Commission business.

The Public Hearing on the Chapter P Bylaw changes was noticed and scheduled for 8:00 pm and the Public Hearing on the Demolition by Neglect Bylaw for 8:30 pm at Town Hall Room 204. Because of misinformation respecting the second matter's start time, members of the public were present at 7:30 pm for the Public Hearing on Demolition by Neglect. The public hearings were properly noticed in The Beacon.

Kathryn Acerbo-Bachmann, Scott Kutil, David Honn (DH), Ellie Halsey, Michaela Moran (MM) and Chairman Brian Bendig (BB) were in attendance. BB arrived at 7:50. MM conducted an informal discussion before BB arrived. When BB arrived he discussed generally the Demolition by Neglect Bylaw because so many members of the public were present, but he made it clear the proper public hearing could not start until the noticed time.

BB said that there are two reasons for this Demolition by Neglect Bylaw: (1) Exchange Hall and (2) the Lothrop Mill Building. Why is this Bylaw being offered now? Because there are people who own property in the Historic Districts who do not live in the Districts and do not care as much about their properties and owners who do live in Districts.

BB mentioned that neighboring towns have this Bylaw, for example Lowell and Newton.

BB stated that there is no intent to impose any additional maintenance requirements on the ordinary homeowner.

BB took a question from the public. Question was by Larry Roberts, 44 Windsor Avenue: If a building has no economic value, then why force the owner to keep the building in good repair? BB answered that this is the purpose of the exemption in the Bylaw: if an owner cannot afford the maintenance then he can obtain an exemption.

At 8:05 pm BB read the meeting notice for the Public Hearing on Chapter P Bylaw changes. He opened the hearing and then continued it, with the intent of freeing up the time for continued discussion and review of the Demolition by Neglect Bylaw.

BB noted that there are several important things to focus on in the Bylaw: BB read the Bylaw section on minimum maintenance (section 3.1) and said that the intent is to prevent rotting or deterioration; BB noted that the Town Building Inspector will be involved if there is a complaint under this Bylaw; a Public Hearing is held on the matter of the complaint; and an exemption from the provisions of the Bylaw can be obtained. BB gave an example of an exemption, a Certificate of Hardship that was granted by the Historic District Commission for the Habitat House on River Street.

BB mentioned that neglect penalizes the surrounding homeowners and that this Bylaw would incentivize owners who need it to do some maintenance.

Ellie Halsey said that laws similar to this are very common in the Midwest. From her perspective as a real estate agent, this Bylaw isn't a punishment; rather it is a way to maintain property values.

There was a comment from a member of the public: this Bylaw discourages people from buying a home in a Historic District. There was a question from a member of the public: How does this Bylaw apply to homes outside the Historic Districts? BB answered that he could not answer that question on behalf of the Historic Commission.

Dean Charter, participating as a member of the public, said that he owns a 200 year old barn. His opinion of the proposed Bylaw is that he doesn't need a town Bylaw to help him maintain his barn and the entire Bylaw is huge power grab and a large expansion of police power. He feels that more properties are added to the jurisdictions of the HDC and HC day after day and he believes that this Bylaw is a loaded gun pointed at his head ready to go off if the wind blows a few shingles off of his roof. At this point (8:30) the Public Hearing on the Demolition by Neglect Bylaw was called to order and the legal notice read. BB said that this will not be a joint meeting with the Historical Commission because there was no notice of the Historical Commission co-sponsorship other than that in the newspaper. BB also said that all the meeting minutes that the HDC secretary had taken on the earlier discussions with the public from 7:30 pm on would be entered into the record of the Public Hearing on the Demolition by Neglect Bylaw. BB asked if anyone present had any problem with that arrangement and no one objected.

BB then replied to Dean Charter's concerns by saying that he understood that no one wants to have restrictions on their property rights and due to the process set forth in the Bylaw it is impossible to have an arbitrary enforcement of the Bylaw. BB reiterated the purpose and procedural safeguards set forth in the proposed bylaw.

Bonnie Geithner commented that all properties are important but the Bylaw does not distinguish between her property and Exchange Hall. She said one way to improve the Bylaw would be to have a watch list of deteriorating properties.

Marsha Charter said a new neighbor of hers once commented that her 200 year old barn was decrepit. Her point was that people can differ significantly over the true condition of a building.

A question was asked by a member of the public: what happens if you just put off some needed repair until the end of a number of repairs, are you penalized for this?

A member of the public commented that the problem with the exemption provided by the proposed Bylaw is that you have to apply for it.

Isabel Choate, 225 Newtown Road, asked if there were any other towns with this standalone Demolition by Neglect Bylaw. All of her questions and comments are not recorded here, since she promised to provide them in writing after the meeting. We received her comments and they have been entered into the public record.

Brewster Conant gave an example of a small hen house that was on his property in 1967. It was leaning hard and finally collapsed after a significant snowfall. BB said that these things have to be considered case by case, but that a hen house is not a barn. BB said that all significant structures are already defined by the number of homes in the Historic Resources List.

The question was asked: What keeps the application of this Bylaw from being arbitrary. BB answered that each member of the HDC lives in one of the Historic Districts, the Town Building Commissioner gets involved and his/her approval is required, and there are public hearings.

A comment was made by a member of the public: If people don't do any maintenance then the HDC gets involved. What worries me is who reports that a property is deteriorating. BB responded by saying that people come to the HDC now with complaints about other people's property and we know how to separate improper motivations from legally recognized ones.

Bonnie Geithner commented that there is no statewide minimum maintenance law.

Isabel Choate commented that the Bylaw is too intrusive.

Nancy Tavernier wondered if we can ask the Town Building Commissioner to do more in a time of budget constraints. BB responded that Frank Ramsbottom spent a great deal of time with the Lothrop Mill situation and that work would have been prevented if the town had such a bylaw. The Bylaw is not intended to be a burden on the Building Commissioner but the Commissioner is the person empowered to make a decision.

Dennis Ahern said that the \$100 fine in the proposed Bylaw would make it attractive to raise revenue. BB responded by saying that the Concord judges are extremely reluctant to levy fines on a property owner and that in BB's experience as a member and chair of the HDC fines are never levied.

Isabelle Choate commented that the Bylaw is too onerous for the average homeowner if it is meant just to prevent the kind of deterioration at Exchange Hall.

Peter Grover said that perhaps instead of having a Bylaw that applies to all properties we might want to just protect a handful of properties. The Bylaw was not intended to intimidate property owners. Maybe we should change the focus of the Bylaw? BB responded by saying that Town Counsel could be consulted about identifying specific properties that are at risk.

David Honn mentioned that some property owners have other intentions. They want their property to deteriorate to the point where it needs to be demolished because this is a strategy for putting new development on the property. Someone from the public responded to this by saying the Town might need an additional Bylaw which requires the property owner to rebuild the structure as it was prior to demolition.

Nancy Anderson commented that a Bylaw should not penalize everyone for the actions of a few.

Dennis Ahern asked about how a homeowner might be helped to maintain their property. MM responded by saying that she is now discussing loans that might be made by the CPC to help homeowners maintain their property.

Mr. Donahue from Windsor Avenue said that the Town should help homeowners whose properties are deteriorating. MM pointed out that the Town built a parking lot for Exchange Hall, across the street from the building, to help make it more commercially viable. The CPC funding she is hoping to acquire would be used as a revolving fund that would make loans to homeowners, not grants, because grants come with a preservation restriction. Ellie Halsey added that the revolving fund would be administered

by a local bank. MM would like to find a way to give out money (grants) without requiring a preservation restriction.

Terra Friedrichs asked: What is it that would prevent the homeowner from having to put money into a pile of rubble? BB responded that it is the exemptions in the Bylaw that prevent this. A member of the public then asked the question: How does the exemption apply to Exchange Hall. Can't Glenn Berger use the exemptions to avoid fixing his property? BB replied that Glenn Berger can apply for exemptions like everyone else. Terra Friedrichs added that we have lost several historic buildings in the past due to neglect.

A member of the public asked: What happens now? BB replied that the Bylaw could be changed to single out particular properties, if it is legally feasible. The Bylaw could include a grievance mechanism.

At this point BB suggested that we close the Public Hearing and reconvene at a future time. Someone wanted to know how people will be notified of the next hearing: by email or by mail? MM wondered if we have another hearing will there be time to bring the Bylaw before Town Meeting? BB and MM agreed that this Bylaw will probably not come before Town Meeting this year.

A member of the public asked if the Bylaw could include a blanket exemption for residential owner occupied homes? This suggestion was very favorably received, given owner-occupied concerns and the fact that the impetus for the bylaw idea came from the neglect practiced at other than owner-occupied properties.

Anne Forbes suggested that the HDC find documents and guidelines that other towns use in their Demolition by Neglect Bylaw. HDC already has done so.

The Public Hearing on the proposed Demolition by Neglect Bylaw was closed at 9:50 pm.

BB opened the continued Public Hearing from 8:00 pm on altering section 6.2 of the Chapter P Bylaw.

DH said that we should look at all the facades as if there were no vegetation at all anywhere and explain that to the selectmen. Terra Friedrichs added that she doesn't want her neighbors to be able to neglect one view of their home. DH explained that the Bylaw change says that the HDC can now pick which view is not applicable or out of our jurisdiction. DH has drafted the proposed new wording of 6.2 and the introductory remarks. BB said that we should send this new wording of paragraph 6.2 to everyone who came to the earlier Public Hearing: people left their emails and there are homeowners from each of the three Historic Districts.

The Public Hearing on altering section 6.2 was closed and the HDC moved on to other business.

BB brought up the issue of the "after the fact COA" on Lisa Millets siding, application 0821. BB and other HDC members have looked at the work. All concerned agreed the siding would have been approved had she followed through with the application. BB moved to approve 0821 and Kathryn Acerbo-Bachmann seconded. The motion was approved unanimously.

BB said that the Town Counsel has gotten involved in the 83 River Street matter. BB told the Anderson law office that we need to issue a violation.

BB mentioned that "Freeze Plans", to freeze the zoning, have been submitted for the High Street and the Lazaro Property.

Our next meeting should be Tuesday February 17th, but there is a possible planning board conflict, in which case the meeting is moved to the 18th or the 23rd.

Kathryn Acerbo-Bachmann said the Susan Maycock lecture in April has been moved.