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October 14, 2015

VIA EMAIL: jgoldsmith@chatham-ma.gov
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Town Manager
Chatham Town Hall
549 Main Street
Chatham, MA 02633

Deanna Ruffer
Director of Community Development
Zoning Board of Appeals
261 George Ryder Road
Chatham, MA 02633

Re: **Chapter 158, Chatham General ByLaws, Historic Preservation**

Dear Jill and Deanna:

As we discussed when we met on July 22, 2015 together with Chatham Historical Commission Chairman Frank Messina ("the Commission"), the Community Development Department ("the Department"), on behalf of the Commission, has requested legal guidance about the application of the demolition provision of Chapter 158 of Chatham's General Bylaws, Historic Preservation, to the construction of an addition to a building or structure more than 75 years old. Further, you have asked what the scope of the Commission's authority is to review applications for such additions under the current language of the Bylaw and the scope of the Department's authority to refer such applications to the Commission for its review.

The facts as I understand them are as follows. Chapter 158, "Historic Preservation," of the Town's General Bylaws defines demolition as follows:

Means the act of pulling down, destroying, removing or razing a building or structure in whole or in part (including the demolition of exterior walls or roof), or commencing such

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work with the intent of completing the same, all as determined by the Building Commissioner; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair or an addition to any building or structure. [Emphasis added]

Chapter 158-2. Questions have arisen as to whether additions to buildings "whose age is 75 years or more" (Chapter 158-3.A.) are subject to the Commission's review, where some portion of the exterior of such a historic building would be demolished or altered by the construction of an addition to the building. As I further understand the facts, the Commission has historically asserted jurisdiction over the partial demolitions or alterations, specifically the loss of historic materials, associated with additions, due to the fact that additions require the "demolition of exterior walls or roofs" (see above definition of "Demolition"). The Commission requires applicants seeking to construct additions on buildings or structures over 75 years of age to identify the historical materials to be removed for the addition and to provide information about the proposed scale and positioning of the addition so that the Commission can determine if an alternative to demolishing the exterior walls or roofs can be developed pursuant to Chapter 158-4 ("Alternatives to Demolition"). It has been the practice for many years for the Department's liaison to refer applications for structures over 75 years to the Commission for its review where the proposal is to demolish a structure over 75 years or to construct an addition that will result in the demolition of a portion or portions of that structure. The Commission, under its regulations and in accordance with its application forms, reviews each such application to determine if there is an alternative to demolition of the structure or that portion(s) being removed to accommodate an addition. Recently there has been a challenge to the Commission's authority to review such demolitions that involve additions due to the Bylaw language in Chapter 158-2 cited above.

As you note in your request, there is no language in Chapter 158 defining or referring to "loss of historic materials," nor any other reference to the Commission's jurisdiction to review them, although it has authority to review proposed demolitions of buildings and structures themselves, which necessarily includes "historic materials." However, the application forms used by the Historical Commission use this term. Specifically, the application form for "Notice of Intent to Demolish or Partially demolish a Historic Building or Structure Pursuant to Chapter 158 of the Town of Chatham Bylaws" requires an applicant to provide, among other things, "Detailed

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specifications of the extent of demolition and loss of historical materials...” and a “[n]arrative description of proposed demolition, including an estimation of the percent of historic materials to be loss, and the proposed reuse.” Also, the application form for “Substantial Alteration to Historic or Contributing Structure in National Historic Register District Per Section 12(c)(1) of the Cape Cod Commission Act (Old Village Only)” requires an applicant to provide, among other things, “Building plans of existing exterior elevations with full dimensions and clearly indicating portions of existing structure to be altered and historic materials to be lost, “ Detailed specifications of the extent of restructuring causing a loss of historical materials,” and a “[n]arrative description of proposed demolition, including an estimation of the percent of historic materials to be loss, and the proposed reuse.” The regulations evidence the Commission’s intent to protect as much of the historic materials of structures over 75 years as possible.

Also, Section 158-1 of the bylaw provides:

It is the intent and purpose of this chapter to preserve and protect from demolition, whenever possible, historically significant buildings or structures; to encourage owners of such buildings or structures to explore and develop alternatives to such demolition; and thereby to preserve the historic resources of the Town, make the Town a more attractive and desirable place in which to live, and so promote the general welfare.

Further, the Chatham Historical Commission Rules and Regulations defines its purpose as “for the preservation and protection of the historic resources of Chatham” and states in Section VIII. Responsibilities, C. Substantial Alteration that “Substantial Alteration is defined as an alteration which jeopardizes a structure’s individual eligibility for listing in the National Register of Historic Places or its status as a contributing structure in a National Register Historic District.”

Taken together, the Bylaw, the Demolition and Alteration Applications Forms under the Bylaw and the Rules and Regulations indicate the intent of the Commission to regulate demolitions and partial demolitions by reviewing the degree of demolition of historic structures. The language in Chapter 158-3.A., however, diminishes that authority, intentional or not, by exempting “ordinary maintenance or repair or an addition....” However, Chapter 158, as quoted

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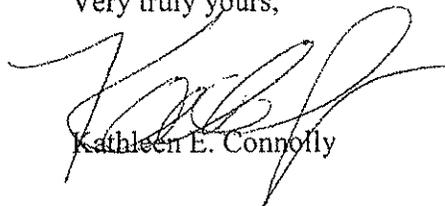
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above, also uses language for the definition of "demolition" that evidences the drafters' intention to retain some jurisdiction over demolitions "in part (including the demolition of exterior walls or roof...)" which necessarily includes additions that add space to a building as well as partial demolitions simply to replace windows or doors. Thus, notwithstanding the exception language, the Commission retains jurisdiction over the "act of pulling down, destroying, removing or razing a building or structure in whole or in part (including the demolition of exterior walls or roof)." The Building Commissioner, pursuant to Section 158-2, is the official charged with making the determination of whether a particular proposal comes under the Commission's jurisdiction.

I recommend that the Bylaw be revised to clarify this jurisdiction as well as to include the application requirements about percentages of loss of historic materials and review of alternatives.

Please feel free to contact me if you have any questions in this regard.

Very truly yours,



Kathleen E. Connolly

KEC

cc: Shanna Nealy, Executive Secretary