Overview

The following model bylaw is intended to provide zoning that incentivizes the preservation of historic structures to protect historic character and promote sustainable community development practices that encourage reuse. The bylaw allows for the creation of bonus lots as a preservation incentive to encourage the preservation of historic resources subject to potential redevelopment or alteration.

The bylaw is intended to apply to historic structures and sites town-wide or within specific areas, including those not within Local Historic Districts, depending on what a community prefers. It is intended to be an example for communities as they look to amend their zoning, providing a bylaw framework they can adapt to suit their individual situation. As always, towns should consult with town counsel during development and adoption of any zoning changes.

Blue italicized text provides context and commentary for municipalities to help guide them in implementation and adoption of the zoning bylaw. [*Italicized & bracketed*] text includes suggestions for certain parameters and may be changed depending on what best reflects a community's needs.

Historic Preservation Model Bylaw: Creation of Bonus Lots

Commentary: Towns are encouraged to include an introduction that states the problem that this bylaw is trying to address - for example, protecting historic resources from demolition – and why adoption of this bylaw is one method for achieving that goal. It should describe how this bylaw provides applicants with development flexibility and why creation of bonus lots can further the goals of the town. The standards of this bylaw may change depending on the area(s) of town in which this bylaw is applied.

1) Purpose

a) Encourage the preservation, rehabilitation, enhancement, and adaptive re-use of historic structures and historic sites,
b) Support development and redevelopment that reflects local context, respects historic character, and increases useability of existing buildings,
c) Permit flexibility of zoning regulations in exchange for protecting historically significant sites,
d) Stimulate investment in cultural assets to allow for the long-term maintenance and upkeep of historic buildings without significantly altering their character, and
e) Promote sustainable development by discouraging demolition and the destruction of historical materials.

2) Applicability

Commentary: Towns should be clear about where they want to apply this bylaw, which may be town-wide, in certain zoning districts, for buildings of a certain age, or for a list of specific buildings or properties that are historically significant. Towns may also decide to expand the applicability of the bylaw in the future. The definition of an Eligible Property may differ by town depending on what makes the most sense on the local level and where this bylaw will be applied. Towns should choose which criteria for an Eligible Property best suit their goals, or add ones not provided here as needed.

a) This bylaw applies to Eligible Properties, as defined in Section 2b, in the following locations: [*Insert zoning district name(s) and/or describe location(s) as shown on relevant map*]
b) Eligible Property:
    i) A property with a building that is [*75*] years old or older, OR
    ii) A property listed on or eligible for the National Register of Historic Places, either individually listed or designated as a contributing structure in a National Register Historic District, OR
    iii) A property with an Historic Preservation Restriction, OR
    Commentary: Existing Preservation Restrictions would still be applicable and may place

specific limits on changes to the site, and therefore may not permit some of the changes suggested in this bylaw

iv) A property within a Local Historic District with a building that is [*75*] years old or older on it, OR

v) A property within a State-designated Cultural District defined by M.G.L. c. 10, § 58A with a building that is [*75*] years old or older, OR

vi) A property within a Cape Cod Commission designated Community Activity Center with a building that is [*75*] years old or older, OR

vii) A property determined by the [*Town*] Historical Commission to be historically significant, through a written determination of Historical Significance, following a finding by the Commission that such building or structure:

(1) Is associated with one or more historical persons or events, or with the cultural, economic, social, or political history of the Town or Commonwealth, OR

(2) Possesses architectural value or significance in terms of period, style, method of construction, or association with an historically prominent architect or builder, either by itself or within the context of a group of buildings or structures, a site, or setting.

viii) A property listed on an inventory of significant historic properties determined by the [*Town*] Historical Commission OR a property listed on the [*Town*] Historical Properties Inventory.

3) Definitions

Commentary: The purpose of this section is to provide definitions only for terms relevant to the creation of bonus lots that are not otherwise defined in the municipal zoning bylaw or that have a specific applicability to this Historic Preservation Incentive Zoning. Any of the following terms that are already defined under municipal zoning and compatible with this bylaw section should not be included here.

a) Bonus Lot(s): A new lot created under this bylaw within an Eligible Property, that is not an Eligible Lot as defined herein, and therefore does not contain an historic building or structure.

b) Eligible Lot(s): A new lot created under this bylaw within the Eligible Property on which an historic building or structure is located.

4) Administration

Commentary: This model bylaw recommends the Planning Board as the Special Permit Granting Authority under this zoning bylaw. Towns are encouraged to facilitate a pre-application meeting with the Building Commissioner in situations when relocation, rehabilitation, or other issues related to buildability are contemplated.

a) Prior to filing an application for Historic Preservation Incentives approval, an applicant shall schedule a pre-application meeting with the [*Town Planner or other designated Town staff member*], who will then have [*30 days*] to provide written confirmation that the property proposed to utilize this bylaw for Historic Preservation Incentives is an Eligible Property. Properties with an existing recorded Preservation Restriction under M.G.L. c. 184, §§ 31-33 are automatically Eligible Properties and may proceed directly to Special Permit application without the pre-application confirmation step.

b) The Planning Board shall be the Special Permit Granting Authority (SPGA) for Special Permit applications for Historic Preservation Incentives under this bylaw.

c) The SPGA, after making the Findings Required below, may grant a Special Permit to allow for dimensional requirements flexibility for the creation of bonus lots.

5) Creation of Bonus Lots Standards

Commentary: Towns should choose which standards and regulations are most appropriate, depending on the requirements of the target districts. This may include whether to allow a single bonus lot or multiple bonus lots. For example, a district with historic properties on lots over an acre may be particularly appropriate for consideration because the land area could allow space for both the historic structure and one or more additional lots. Towns are encouraged to consider the land area of all historic parcels to see where this bylaw could be most effective.

a) In exchange for preserving historically significant buildings or structures on an Eligible Property as defined in Section 2b, an applicant may seek a Special Permit modifying certain standards to allow for the creation of a bonus lot(s). The following standards shall be applied:
    i) The Eligible Property shall be located in [*Zoning District(s)*], and
    ii) Any Eligible Lot and Bonus Lot created under this bylaw shall:
        (1) Contain not less than [*one half*] the minimum dimensional requirements of the zoning district in which the Eligible Property is located, and
        (2) Have a minimum contiguous upland area of [*5,000 sq ft*], and
        (3) Have frontage on a public or private way of at least [*20 ft*].

6) Creation of Bonus Lots Review Procedures

a) The SPGA, after making the Findings Required, may grant a Special Permit to authorize the creation of bonus lots from an Eligible Property.
    i) Findings Required
        (1) The creation of bonus lots authorized in this bylaw will facilitate the maintenance and preservation of the historical and architectural features of the Eligible Property;

(2) A proposed relocation of an historic building or structure on an Eligible Property, if deemed necessary and appropriate, is:
    a. A practical or reasonable preservation measure that will best preserve the integrity of the historic resource;
    b. Not detrimental to abutting properties or the public or private way on which the Eligible Property has frontage
(3) The historical and architectural features associated with the Eligible Property will be preserved in accordance with Section 7;
(4) The flexibility granted under this bylaw will not generate negative impacts on the character of the surrounding area, or that any negative impacts generated may be feasibly mitigated.
(5) Any Eligible Lot and Bonus Lot meet the requirements for an Approval Not Required (ANR) plan pursuant to G.L. c. 41, § 81P.

7) Special Permit Conditions

Commentary: Towns should choose one or more of the following conditions to be imposed when granting a Special Permit for the creation of bonus lots. Preservation Restrictions in Massachusetts are a binding legal agreement authorized under M.G.L. c. 184, § 31-33 and require input and approval from MHC. Not all historic properties may be appropriate for this type of restriction. The Town may consider instead requiring other types of restrictions that specify preservation of historic features, such as a deed restriction, which can last for 30 years and may be renewed. Regardless of the type of restriction required, the Town should designate a local board or staff person to monitor properties with a restriction and ensure that they are preserved as required. Towns may also provide for additional conditions, including fines or other remediation methods, should the Special Permit be violated.

a) In accordance with [*Special Permit Section of the Town's Zoning Bylaw*], the Planning Board shall also condition its Special Permit approval with one or more of the following:

    i) Conditions relating to the repair, restoration, modification, or relocation of an existing historic structure, including a schedule of work to be performed, shall ensure the preservation and integrity of the historic structure and prevent deterioration due to neglect or disuse, intentional or otherwise. Such conditions shall provide that existing historic structures be secured and maintained in a good state of repair, and
    ii) The scale, massing, and architectural character of any proposed structure on a Bonus Lot will be compatible with the historic structure on the Eligible Lot and the character of the surrounding area, and
    iii) A Preservation Restriction or a deed restriction recorded at the Barnstable Registry of Deeds pursuant to M.G.L. c. 184, § 31-33, which shall provide

conditions under which alterations, additions or modifications may be made to the Eligible Property, and

iv) Any substantial alteration or destruction of historical or architectural features of an Eligible Property may result in remediation requirements, such as requiring a performance bond or other financial security sufficient to fund restoration of any damaged or altered historic fabric, held for [*10*] years following the creation of the Bonus Lot, at the discretion of the SPGA, and

v) A certified Approval Not Required (ANR) plan shall be recorded with the Barnstable County Registry of Deeds.

8) Appeals

a) *[Towns can insert a reference to the Appeals process in their zoning bylaw.]*

9) Conflicts

a) In the event of a conflict between this section and other sections, the requirements of this section shall apply. Where this section does not provide specific regulations, other existing zoning sections which do provide specific standards still apply.