CAPE COD COMMISSION

Model Historic Preservation Incentive Bylaw

Overview

The following model bylaw is intended to provide example zoning that incentivizes preservation of historic structures to protect historic character and promote sustainable community development practices that encourage reuse. The bylaw encourages the preservation of historic resources subject to potential redevelopment or alteration by providing development incentives in two categories: 1) flexibility in dimensional requirements; and 2) adaptive reuse.

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.

Model Historic Preservation Incentive Bylaw

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 or encouraging reuse of historic structures rather than demolition – and why the adoption of this bylaw is one method for achieving that goal. It should describe how this bylaw provides applicants with development flexibility and why chosen incentives can further the goals of the town. The bylaw should also articulate the purpose of the bylaw; some examples are provided below, which should be adjusted as needed based on towns' priorities.

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 that may impede the preservation of historically significant buildings and 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 how they want to apply this bylaw and allow flexibility, which may be applied 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 pick and choose which criteria for Eligible Properties best suit their goals, or add additional 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 exterior of the building, and therefore may not permit some of the by-right 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, 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.

c) This bylaw has no applicability to interior renovations that do not affect the exterior structural frame and character-defining features of an Eligible Property.

3) Administration

Commentary: Towns should decide who will be responsible for by-right reviews, which can be an Administrative Review by the Town Planner or another staff member, or through Site Plan Review. This model recommends the Planning Board is the Special Permit Granting Authority for development pursued under this zoning bylaw. The Administrative Review process does not replace or override reviews by the local historical commission, Local Historic District Commission(s), or the local Old Kings Highway Historic District Commission, if applicable. Rather, this bylaw aims to work in tandem with any regulatory review by a local Historical Commission. If an Eligible Property is within a Local Historic District, it may be appropriate for the SPGA to rule only on changes to building coverage, setbacks, and by-right uses along with their associated special permit conditions, but to leave questions regarding alteration of historic features or compatibility of adjacent new buildings to the Historic District Commission.

a) If an Eligible Property is within a Local Historic District, any new construction, demolition, or exterior changes will still require review by the Local Historic District Commission.

b) 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*] to confirm that the building or site proposed to utilize this bylaw for Historic Preservation Incentives is an Eligible Property.
Commentary: Towns should encourage applicants to consult with the [Town] Building Commissioner to identify building code compliance for any proposed work, specifically for any change of occupancy or use.

c) Special Permit Granting Authority and Administrative Approval Authority
   i) The [*Planning Board*] shall be the Special Permit Granting Authority (SPGA) for Special Permit applications for Historic Preservation Incentives under this bylaw.
   ii) The [*Designated Town staff member*], with input from the applicable local Historic Commission, shall conduct by-right Administrative Reviews for projects proposed under this bylaw. *Commentary: The Town staff member may be the Town Planner, Historical Commission Staff Liaison, Local Historic District Commission Staff Liaison, or other designated staff member]*

4) Change, Alteration, Expansion of Non-Conforming Structures and Uses

a) Notwithstanding the provisions of M.G.L c. 40A, and [*Section XX of local Zoning Bylaw],* pre-existing non-conforming Eligible Properties may be changed, altered or expanded only in accordance with, or permitted by, the procedures set forth in Section 5 of this bylaw.

5) Historic Preservation Incentives

Commentary: Towns may adopt both or just one of the following incentive types depending on local priorities and preferences.

a) In exchange for preserving the historically significant features of an Eligible Property as defined in Section 2, an applicant may seek the following types of zoning relief under this bylaw:
   i) <u>Dimensional Standards Flexibility</u>

   Commentary: Towns may decide that the setback requirements for Administrative Approval may vary depending on the underlying zoning district. It is recommended that side setbacks and side addition step backs are at minimum 5 ft, unless the district includes downtown areas where buildings share a common sidewall.

   (1) Flexible Standards Allowed By-Right Requiring Administrative Approval. The following changes and alterations to Eligible Properties are permitted by-right in accordance with Section 3b of this bylaw:
      (a) Additions and alterations to an Eligible Property that meet the following criteria:
         (i) Are limited to the rear and side façade, and

(ii) Side additions are stepped back a minimum of [*5 ft*] from the front façade of the historic building to preserve distinction between old and new portions of the building, and

(iii) Side additions have a street-facing façade width that is no larger than [*25 ft*] or the width of the historic building, whichever is smaller, and

(iv) The distinctive architectural features of the Eligible Property are preserved, and additions and alterations give clear deference to the original historic building's massing, setback, fenestration pattern, roof configuration, and building materials consistent with the findings of the local Historical Commission.

Commentary: If Town staff need assistance in determining distinctive architectural features, they should consult with the local historical commission or Local Historic District Commission to properly identify and ensure preservation of those features.

(v) Provides at least a [*5 ft*] setback from abutting properties.

(b) Alterations or demolitions of later additions to an Eligible Property that the Historical Commission or Local Historic District Commission determines are not historically significant.

(c) The reduction or elimination of required off-street parking spaces for an Eligible Property due to a site or use change or expansion, provided that such reduction does not shift demand for parking onto public streets or any areas not equipped to handle such activity.

(2) Flexible Standards Requiring Special Permit. The following changes and alterations to Eligible Properties are permitted by Special Permit authorization:

Commentary: Towns may decide that building coverage calculations may vary depending on the target zoning district. For example, they may be higher in village centers or areas where lot sizes are smaller. In addition, building setback requirements may also vary depending on the zoning district. For example, a front setback may be smaller in village centers or areas where buildings are closer to the street compared to residential areas where setbacks may be larger. Towns also could waive the below requirements in certain zoning districts to further incentivize the preservation of Eligible Properties.

(a) Building Coverage: The maximum building coverage may be modified to incentivize the reuse of historic structures. The building coverage incentive calculation shall be as follows:

(i) The Maximum Building Coverage percentage allowed in [*section of Zoning Bylaw*] may be increased by a factor of no greater than [*1.25*].

(b) Building Setbacks

(i) The side and rear setback requirements set forth in [*Town Zoning Bylaw*] may be reduced by up to [*one half*] the minimum required setback in the relevant zoning district, but in no case shall the side and rear setbacks be less than [*5 ft*].

(ii) The front setback requirements set forth in [*Town Zoning Bylaw*] may be reduced by up to [*one half*] the minimum required setback in the relevant zoning district, but in no case shall the front setback be less than [*5 ft*].
Commentary: Towns are encouraged to reduce Front Setbacks to further incentivize applicants to take advantage of the provisions within this bylaw. However, this should be allowed only in zoning districts where doing so would not prove detrimental to the historic character of the Eligible Property or streetscape. It is recommended that any additions or new construction are not allowed directly in front of a historic building. However, on the rare occasion where construction in front would be appropriate, there should be support from the local Historical Commission or an impartial historic preservation consultant before allowing it. For example, a side addition may extend closer to the street than the historic building without extending in front of it, preserving the connection between the historic building and the street.

(c) Where a rear addition is set [*75 ft*] or more behind the front building mass, the street-facing façade width may be up to [*50 ft*], provided that clear deference is given to the original historic building's massing.

(d) Accessory Dwelling Units (ADUs): The maximum size of an ADU on an Eligible Property may be increased up to [*1,500 square feet*] or no greater than [*65%*] of the principal dwelling Gross Floor Area, whichever is less.

ii) Adaptive Reuse Flexibility

Commentary: The purpose of Adaptive Reuse Flexibility is to allow for a limited number of additional uses as special exceptions for historic resources to encourage their preservation through expanded use opportunities. This can help to stimulate investment in the historic structure and allow for the long-term maintenance and upkeep of the property without altering its historic integrity. This section allows use changes and conversions on Eligible Properties to uses that may not be otherwise permitted in a zoning district. Towns should choose which uses are most appropriate, depending on the requirements and context of the applicable districts or locations. Towns should add or eliminate the by-right uses to reflect what makes the most sense locally. This may change depending on the zoning districts or locations where this bylaw applies. The uses allowed by-right or by Special Permit under this bylaw could also vary by zoning district if the Town desires.

(1) The following uses are allowed by-right on an Eligible Property:

(a) Residential (Single-family dwelling, Two-family dwelling, Multi-family dwelling, Assisted or independent living facility, Community home, Congregate housing or congregate care facility, Nursing home)
(b) Mixed-use (Commercial and Residential Uses combined)
(c) Lodging/Visitor Accommodations
(d) Professional Offices
(e) Municipal Uses
(f) Retail
(g) Restaurants/Dining
(h) Arts and Cultural Institutions

(2) Proposed uses not allowed by-right under this bylaw or the underlying zoning will be required to obtain Special Permit approval from the SPGA.

6) Historic Preservation Incentives Review Procedures

a) Administrative Approval. The *[Town Planner]* shall review the application for compliance with the purposes and standards set forth in this bylaw. The *[Town Planner]* may approve an application subject to such reasonable conditions as may be necessary or appropriate to enforce compliance with the pertinent requirements of the [*Town*] Zoning Bylaw. The [*Town Planner*] shall have [*30 days*] from the receipt of a complete application to determine compliance with this bylaw in accordance with Section 5(1).
Commentary: Providing a deadline may help applicants better understand the review process and have more realistic expectations of the overall timeline. Shorter review times may encourage more applicants to take advantage of this bylaw.

b) Special Permit. The SPGA, after making the Findings Required, may grant a Special Permit to authorize the proposed development on an Eligible Property.

i) Findings Required:

(1) The uses or the flexibility of standards and requirements authorized in this bylaw will facilitate maintenance and preservation of the historic resources on the Eligible Property;
(2) The proposed development, renovation, repair, adaptive reuse, or relocation preserves the historical and architectural features of the Eligible Property;
(3) The proposed new development, including additions, complements the historic character of the Eligible Property, maintains consistency with local Design Guidelines, if applicable, and does not obstruct the view of historical and architectural features;
(4) The proposed relocation of an historic building or structure on an Eligible Property, if applicable, is a practical or reasonable preservation measure that will best preserve the integrity of the historic resource;

(5) The historical and architectural features associated with the Eligible Property will be preserved in accordance with Section 7;
(6) The flexibility granted under this bylaw will not generate negative impacts on the surrounding area, or that any negative impacts generated are feasibly mitigated;
(7) The proposed development is consistent with the [*Town*] Local Comprehensive Plan and the [*Town*] Historic Preservation Plan.

Administrative Approval by [*Town Planner*]	**Special Permit Review by Planning Board**
The following incentives are allowed by-right: (a) Additions and alterations to an Eligible Property that meet the following criteria: i. Are limited to the rear and side façade, and ii. Side additions are stepped back a minimum of [*5 ft*] from the front façade of the historic building to preserve distinction between old and new portions of the building, and iii. Side additions have a street-facing façade width that is no larger than [*25 ft*] or the width of the historic building, whichever is smaller, and iv. The distinctive architectural features are preserved, and additions or alterations give clear deference to the original historic building's massing, setback, fenestration pattern, roof configuration, and building materials, and v. Provide at least a [*5 ft*] setback from abutting properties. (b) Alterations or demolitions of later additions without historic significance, as determined by the Historical Commission or Local Historic District Commission.	The following incentives will be allowed by Special Permit: (a) Building Coverage: The maximum building coverage percentage allowed may be increased by a factor of no greater than [*1.25*]. (b) Building Setbacks i. Side and rear setback requirements may be reduced by up to *[one half*] the minimum required setback in the relevant zoning district, but in no case shall the side and rear setbacks be less than *[5 ft]*. ii. Front setback requirements may be reduced by up to [one half] the minimum required setback in the relevant zoning district, but in no case shall the front setback be less than *[5 ft].* (c) Where a rear addition is set [*75 ft*] or more behind the front building mass, the street-facing façade width may be up to [*50 ft*], provided that clear deference is given to the original historic building's massing.

(c) The reduction or elimination of required off-street parking spaces due to a site or use change or expansion, provided that such reduction does not shift demand for parking onto public streets or any areas not equipped to handle such activity. (d) Adaptive Re-use as per Section 5(a)(ii).	(d) Accessory Dwelling Units (ADUs): maximum size may be increased to [*1,500 square feet*] or no greater than [*65%*] of the principal dwelling Gross Floor Area, whichever is less.
Approval Criteria	**Findings Required**
Complies with all requirements of this bylaw, the [*Town*] Local Comprehensive Plan, Historic Preservation Plan, and the other relevant sections of the [*Town]* Zoning Bylaw.	Complies with all requirements of this bylaw and the [*Town*] Zoning Bylaw, and: 1. The uses or the flexibility of standards and requirements authorized in this bylaw will facilitate maintenance and preservation of the historic resources on the Eligible Property; 2. The proposed development, renovation, repair, adaptive reuse, or relocation preserves the historical and architectural features of the Eligible Property; 3. The proposed new development, including additions, complements the historic character of the Eligible Property, maintains consistency with local Design Guidelines, if applicable, and does not obstruct the view of historical and architectural features; 4. The proposed relocation of an historic building or structure on an Eligible Property, if applicable, is a practical or reasonable preservation measure that will best preserve the integrity of the historic resource; 5. The historical and architectural features associated with the Eligible Property will be preserved in accordance with Section 7;

	6. The use or the modification of dimensional requirements will not generate negative impacts on the surrounding area, or that any negative impacts generated are feasibly mitigated. 7. The proposed development is consistent with the [*Town*] Local Comprehensive Plan and the [*Town*] Historic Preservation Plan.

7) Special Permit Conditions

Commentary: Towns may choose one or more of the following conditions to be imposed when granting a Special Permit for Historic Preservation Incentives. Preservation Restrictions in Massachusetts are a binding legal agreement authorized under M.G.L. c. 184, § 31-33 and require input and approval from the Massachusetts Historical Commission (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 impose additional conditions, including fines or other remediation methods, should the Special Permit be violated.

a) In accordance with [*Special Permit Section*] of the [*Town*] 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, modifications, or relocation of an existing historic structure, including a schedule of work to be performed, and 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,

ii) Preservation Restriction or a deed restriction recorded at the Barnstable County 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,

iii) Termination of Special Permit rights granted under this bylaw resulting from any unapproved substantial alteration or destruction of historical or architectural features of an Eligible Property,

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 a Special Permit approval, at the discretion of the SPGA.

8) Design Guidelines

Commentary: Towns are encouraged to adopt design guidelines that provide additional guidance for developers and relevant town boards and commissions as to the types of modifications and alterations to historic resources that are acceptable locally, and those should then be referenced here.

a) "[*Town*] Historic Preservation Design Guidelines," shall constitute rules and regulations guiding the reuse or redevelopment of historic structures developed under this bylaw.

9) Appeals

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

10) Conflicts

a) In the event of a conflict between this section and other sections of the local zoning bylaw, 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.