

# Proposed revisions to Newton's Demolition Delay Ordinance

Comparative Review of proposed changes

Waban Area Council Meeting - March 11, 2021

Presentation given by Rena Getz

# Public Hearing scheduled for Monday April 12, 2021

<https://us02web.zoom.us/j/88993086742>

**#29-20**

**Review and possible amendment of Demolition Delay and Landmark Ordinances**  
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.

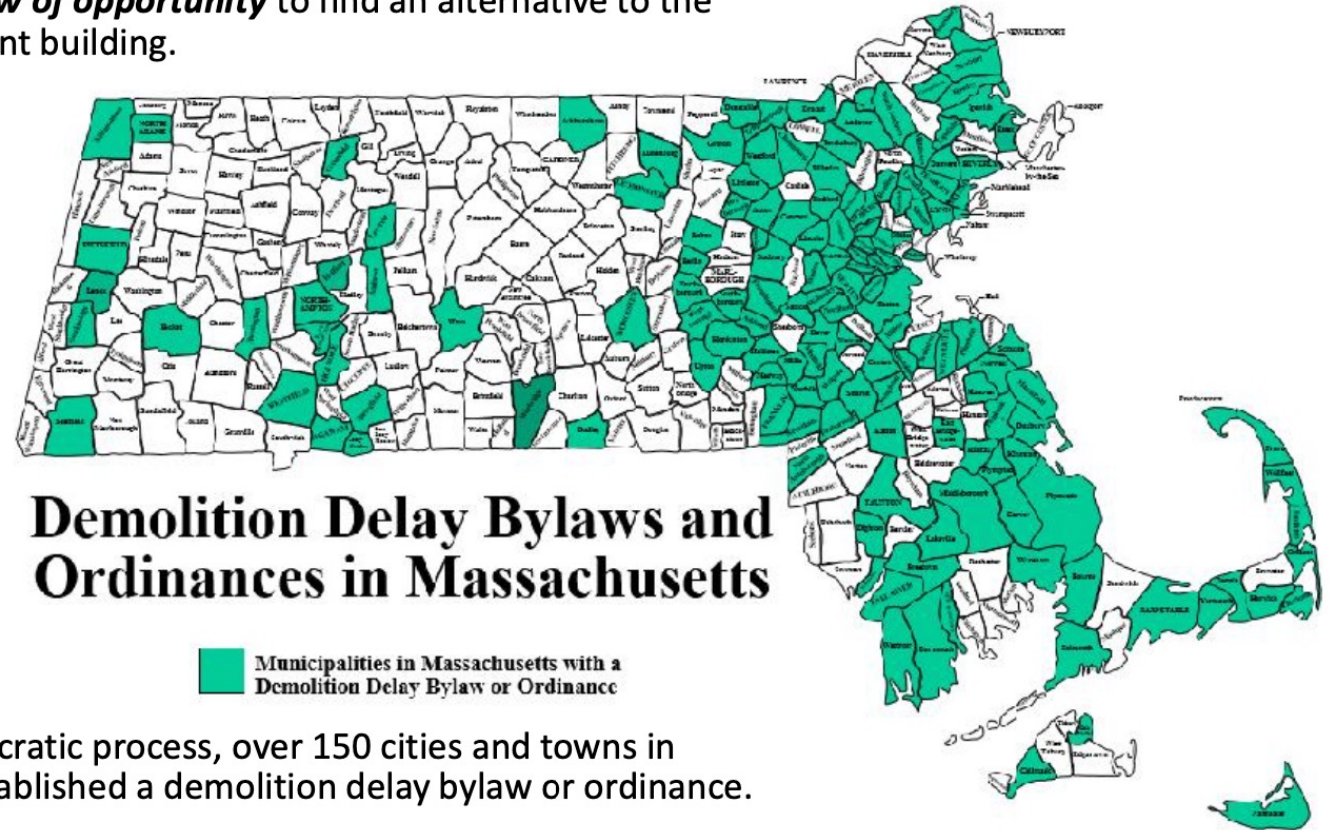
**Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstaining) on 05/19/2020**

- (1) Landmarking - Approved as Amended by Full Council on 06/22/2020**
- (2) Demolition Delay - Held in Committee on 06/22/2020 and 10/15/2020**

Demolition Delay provisions in effect in over 150 cities and towns in the state of Massachusetts.

Demolition Delay is a limited tool but it does exactly what it was designed to do. It provides a ***window of opportunity*** to find an alternative to the demolition of a significant building.

A demolition delay bylaw/ordinance is an essential preservation tool for every city and town.



Through the local democratic process, over 150 cities and towns in Massachusetts have established a demolition delay bylaw or ordinance.



# Current Demolition Delay Ordinance Overview

Adopted in 1985, the City of Newton's Demolition Review Ordinance provides opportunities for preserving historic buildings and structures through a review process with a potential one-year delay or an 18 month delay of demolition for historic properties.

*What is the **purpose** of the delay of demolition?*

The intent of delaying demolition is to **provide time** to seek **alternative** preservation solutions for historically significant buildings or structures.

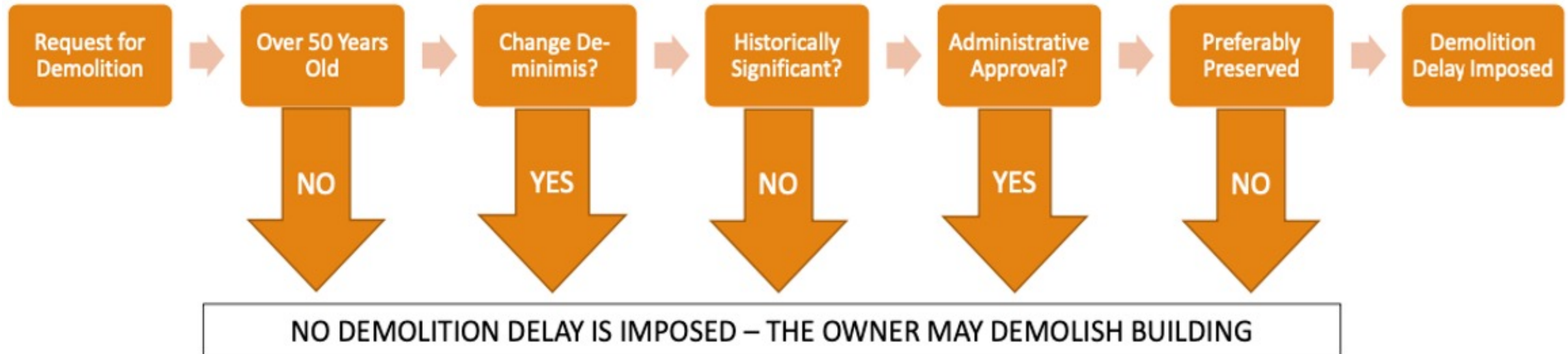
**Possible alternatives** include altering and reusing the building or structure through a renovation or addition project or moving it to another location.

# Overview of proposed changes to Demolition Delay Ordinance

- The proposed revisions **restructures** and **reorganizes** the Demolition Delay Ordinance.
- The demolition delays time periods are **unchanged** - 12 months & 18 months.
- Currently there is a 50 years or older age of property is subject to a demolition delay review. The revisions **propose a change to properties build in or before 1945**.
- There are **new categories** of properties which are subject to demolition delay regardless of the building or structure's age.
- The **criteria** for historical significance has been **updated to match** the definition in the amended Landmark Ordinance
- The draft provides that the NHC may delegate determinations of *historical significant* to staff and a designated commission member
- The draft proposes **guiding criteria** for *Preferably Preserved findings*.
- The draft seeks to **clarify** the waiver process with particular focus on waivers for total demolitions.
- The draft explicitly **provides** for **judicial review** of *preferably preserved findings*.



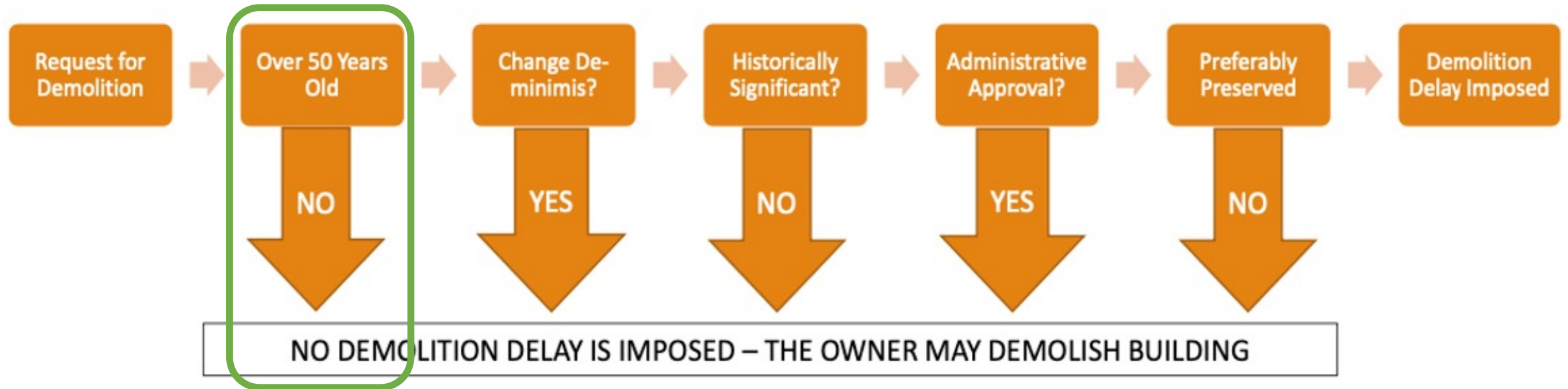
# Current Demolition Delay Process



# Demolition Delay Process

A demolition delay review is a process that requires each step be sequentially addressed and resolved before proceeding to the next step in the process. A building or structure continues through the consideration until it does not meet a determination standard or criteria. At that point the consideration ends, and subject building or structure is eligible for demolition.

# Age of Building or Structure



Build in or before 1945



Proposed Revision

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# Newton buildings by construction date

## Newton buildings by construction date



1946 - 2019

1916 - 1945

1871 - 1915

1851 - 1870

1831 - 1850

1775 - 1830

Pre - 1774

1946-2019

1916-1945

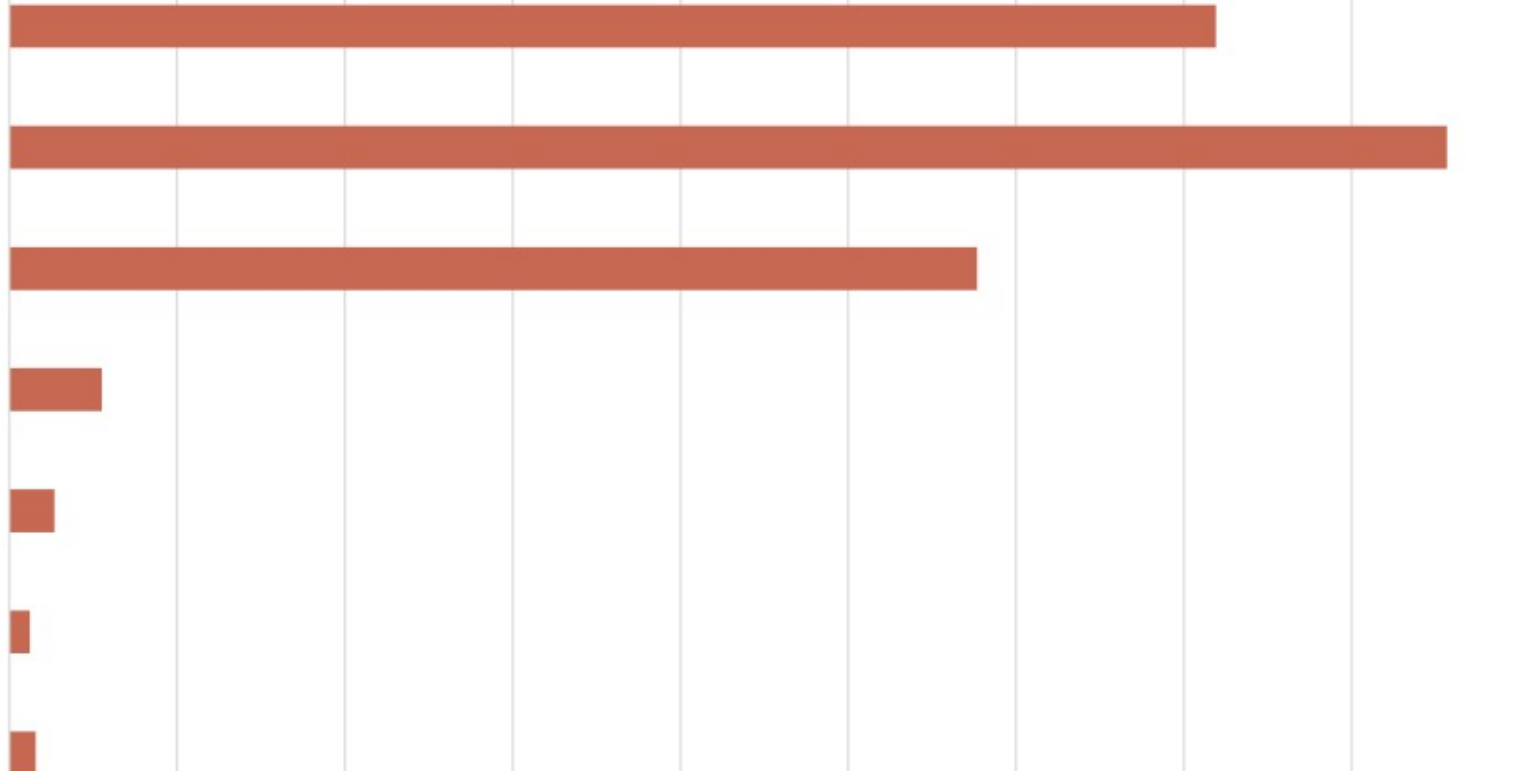
1871-1915

1851-1870

1831-1850

1775-1830

Pre-1774



## Newton Builds by date range and percentage surveyed & listed Macris database (% of Total)

<b>DATE</b> of Construction (Year Range)	<b>Numbers</b> of Buildings (% of Total)	Properties <b>surveyed</b> and on <b>MACRIS</b> (% surveyed in Date Range)
1946 to 2019	<u>7100</u> (32%)	<u>1260</u> (18%)
1916-1945	<u>8600</u> (38%)	<u>1515</u> (17.6%)
1871-1915	<u>5800</u> (26%)	<u>3493</u> (60%)
1851-1870	<u>600</u> (2%)	<u>532</u> (89%)
1831-1850	<u>250</u> (1%)	<u>178</u> (71%)
1775-1830	<u>50</u> (0.2%)	<u>42</u> (84%)
1774 or earlier	<u>55</u> (0.2%)	<u>30</u> (55%)
Total # buildings	22,387 (100%)	7,118 (total)

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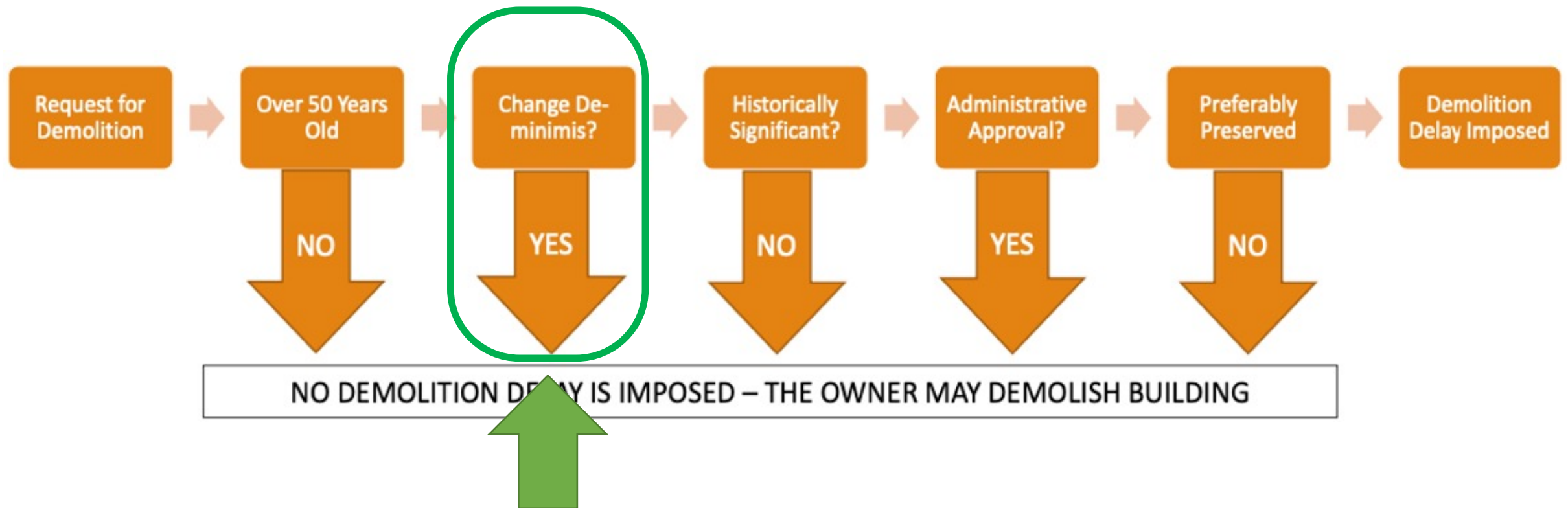
# Number and style of House types affected

Q. How many homes need to be reviewed?

A. Ms. Holmes answered that there are approximately **7,100 buildings** that were constructed in Newton, between 1946-2021. **84% of those structures have not been surveyed.** If a property owner did not get listed approximately **5,600 to 6,000** of those buildings can “fall through the cracks”. **She then said that doing 1945 at this time, is not a prudent number to work with.**

**\*ZAP Report 022221 – p.5**

# Is the proposed change De-minimus?



# De-minimus change - defined

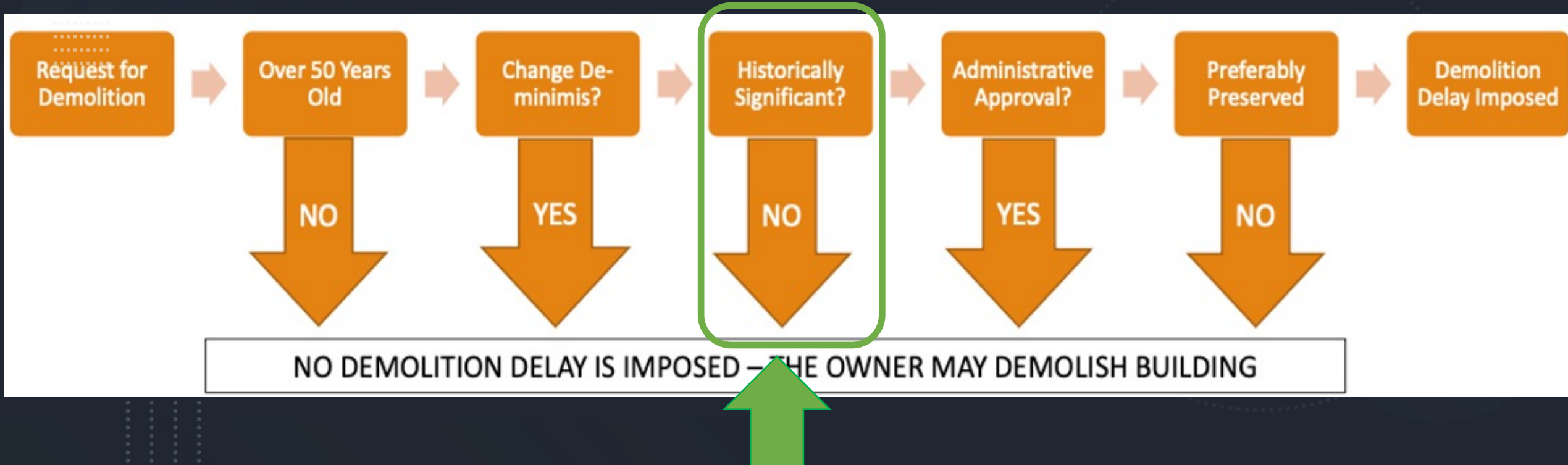
## De-minimis change – defined

- **Sec. 22-52. Items considered to be de minimis.** Notwithstanding the provisions of Sections 22- 53 and 22-54, the commissioner may issue a demolition permit without commission review if, after consultation with commission staff, the commissioner determines that **the plans do not involve removal of any architecturally significant features and are limited to:**
  - (1) Removal of open porches and entryways of only a set of stairs, an entrance platform and a roof which are utilitarian in design;
  - (2) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single exterior wall;
  - (3) Removal or alteration of less than 50% of the roof structure; or
  - (4) Normal maintenance of a buildings exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).



# Historically Significant Determination Process

- Added Local Landmark Criteria + 1945 date - **decreases** the number of properties that would be eligible for a Historical Significance determination. Of the ~7,100 structures built in the 1946 -2021 time period (84%) of these properties have not been surveyed and therefore **ineligible** for a determination of historic significance.\*





# Definition of Historically Significant

## CURRENT

Any building or structure which is in whole or in part fifty or more years old and which

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or

(2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or

(3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

## PROPOSED – MIRRORS LANDMARKING DEFINITION AND REMOVES ONE CRITERIA

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water;

(2) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;

(3) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or

(4) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

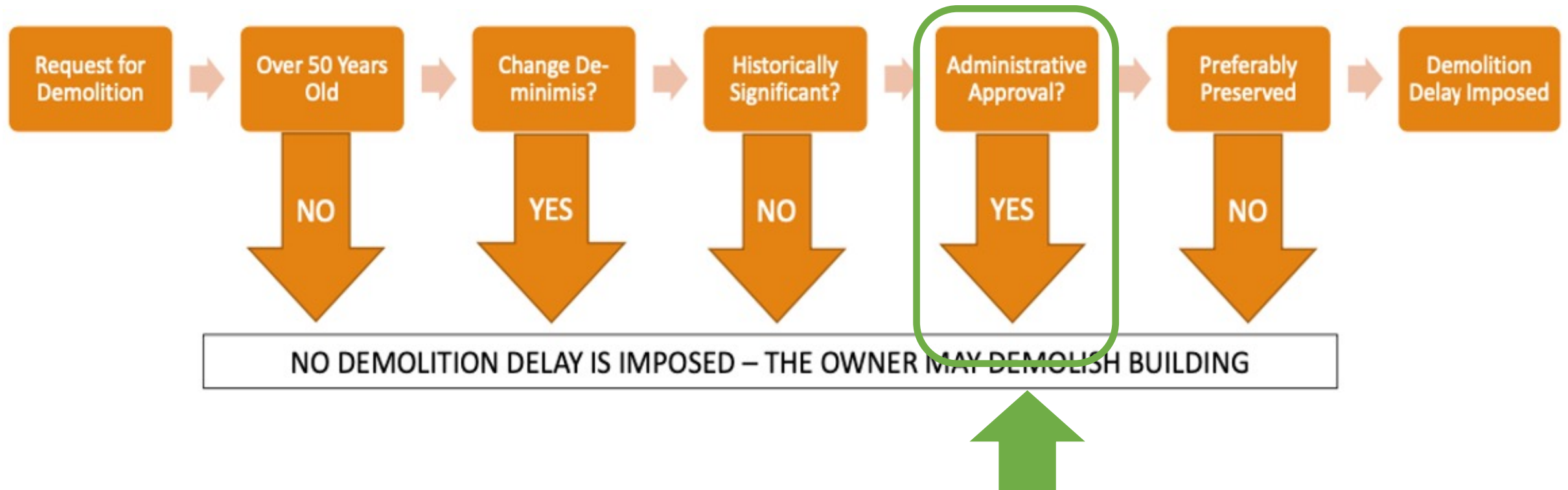
i) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

ii) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

There is not full consensus on the removal of properties located within 150 feet of any federal or local historic district. 4 members support the proposal. 1 member's preference is to retain criteria.



# Historically Significant Delegation





# Historically Significant Delegation

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## CURRENT

The determination of Historically Significant may be made by the NHC or the NHC may delegate the determination to commission staff or a designated commission member

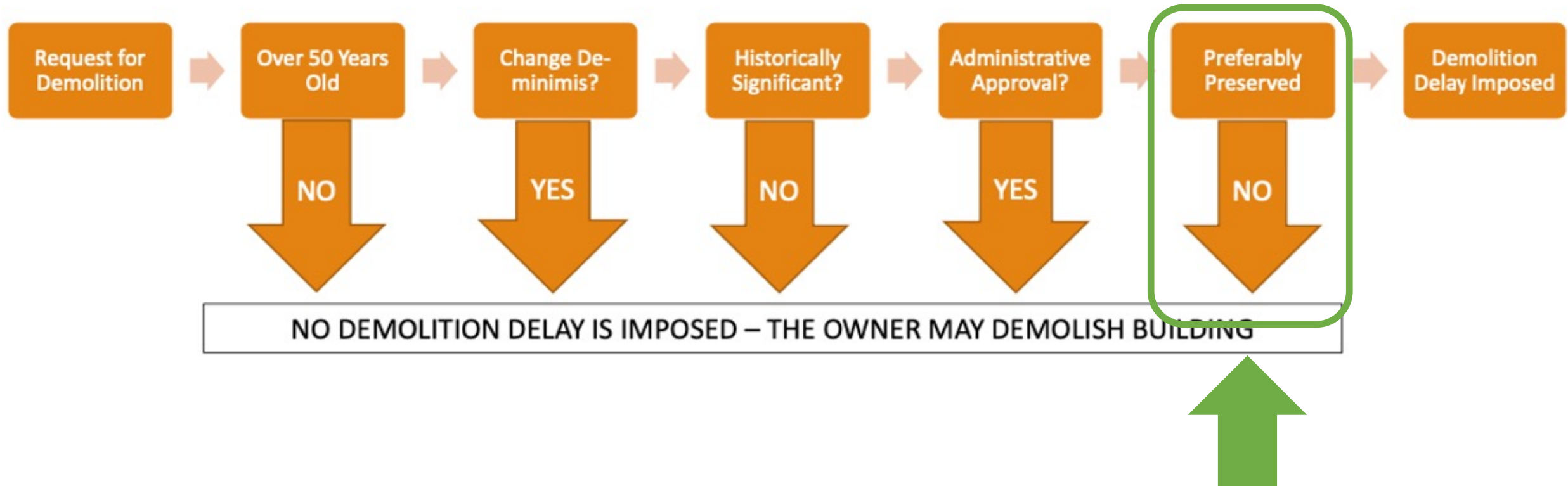
## PROPOSED

The NHC may delegate the determination to commission staff and a designated commission member

There is not full consensus on delegation to staff and a commission member for total demolitions. 4 members support this proposal. 1 member's preference is to permit delegation of determinations of historical significance to staff and a commission member for partial demolitions and require determinations for total demolitions be made by the full NHC.

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# Preferably Preserved Finding Process



# Preferably Preserved Criteria added

- **Current**

- If the commission finds that the demolition proposed in the application would result in the demolition of a ***historically significant*** building or structure **whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton**, then the commission shall find that the building or structure should be ***preferably preserved***. Sec. 22-54.(f)....

## **Proposed**

Current Criteria + **the following *Criteria***

(f) ....In making such finding, the commission shall consider the following conditions:

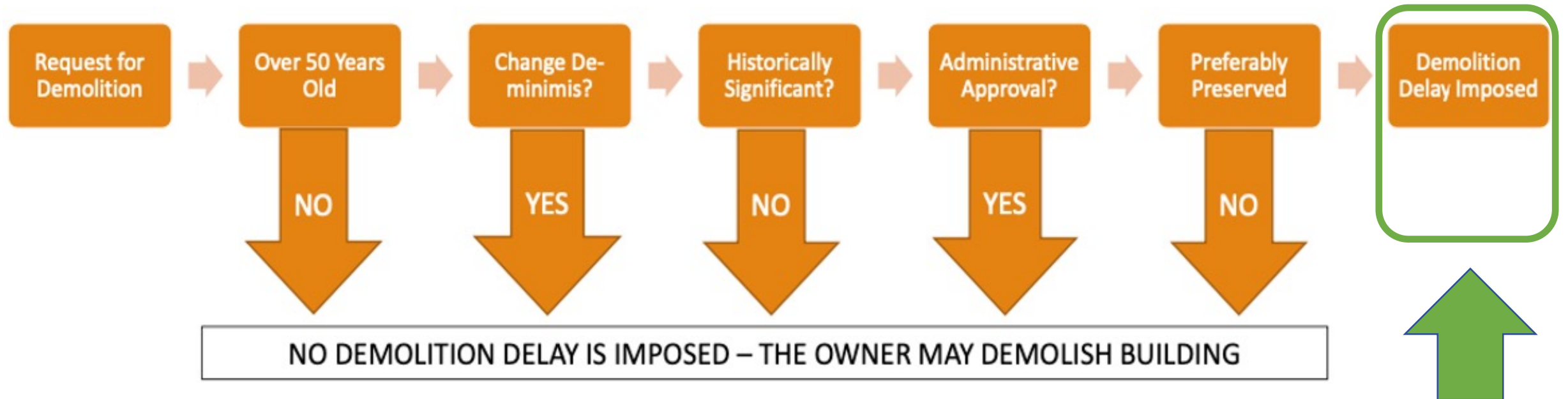
- 1) the historic value and significance of the building or structure;
- 2) the architectural value and significance of the building or structure;
- 3) the general design, arrangement, texture and materials of the features and the relation to those features to similar buildings and structures in the nearby area; and
- 4) the extent of historic fabric remaining in the building or structure.

# Judicial Review

The owner(s) of a building or structure determined to be preferably preserved under Section 22-54 of the Revised Ordinances, may, within twenty (20) days after the commission makes such determination, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the owner(s) of the subject building or structure. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court.

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# Demolition Delay Applied



# Demolition Delay time periods

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- **Full demolition** of a historically significant building are sent to the Newton Historical Commission for review at its monthly meeting. If the Commission determines a building or structure is ***preferably preserved***, a demolition delay of up to one-year or 18 months can be imposed, during which time the property owner and Commission members can work together to seek alternatives including: altering and reusing the building or structure; or moving the building or structure to another location.
- A **delay** of 18-months can be imposed for properties listed or eligible for listing on the National Register of Historic Places. A delay of 12-months can be imposed for all other properties.



# Waiver

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## CURRENT

- Waiver criteria – the owner has either:
  - made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
  - has agreed to accept a demolition permit on specified conditions approved by the commission.

Additionally, owners that applied for a total demolition may not seek a waiver until 4 months after the finding of preferably preserved unless the NHC finds:

- by a vote of 2/3 substantial and material changes are in the resubmitted application; or
- by a majority vote that the resubmitted application proposes to preserve the building or structure.

## PROPOSED

The waiver criteria is unchanged.

Owners that applied for a total demolition must wait 4 months after the finding of preferably preserved unless the NHC finds by a vote of 2/3 that the resubmitted application either proposes substantial and material changes or proposes to preserve the building or structure.

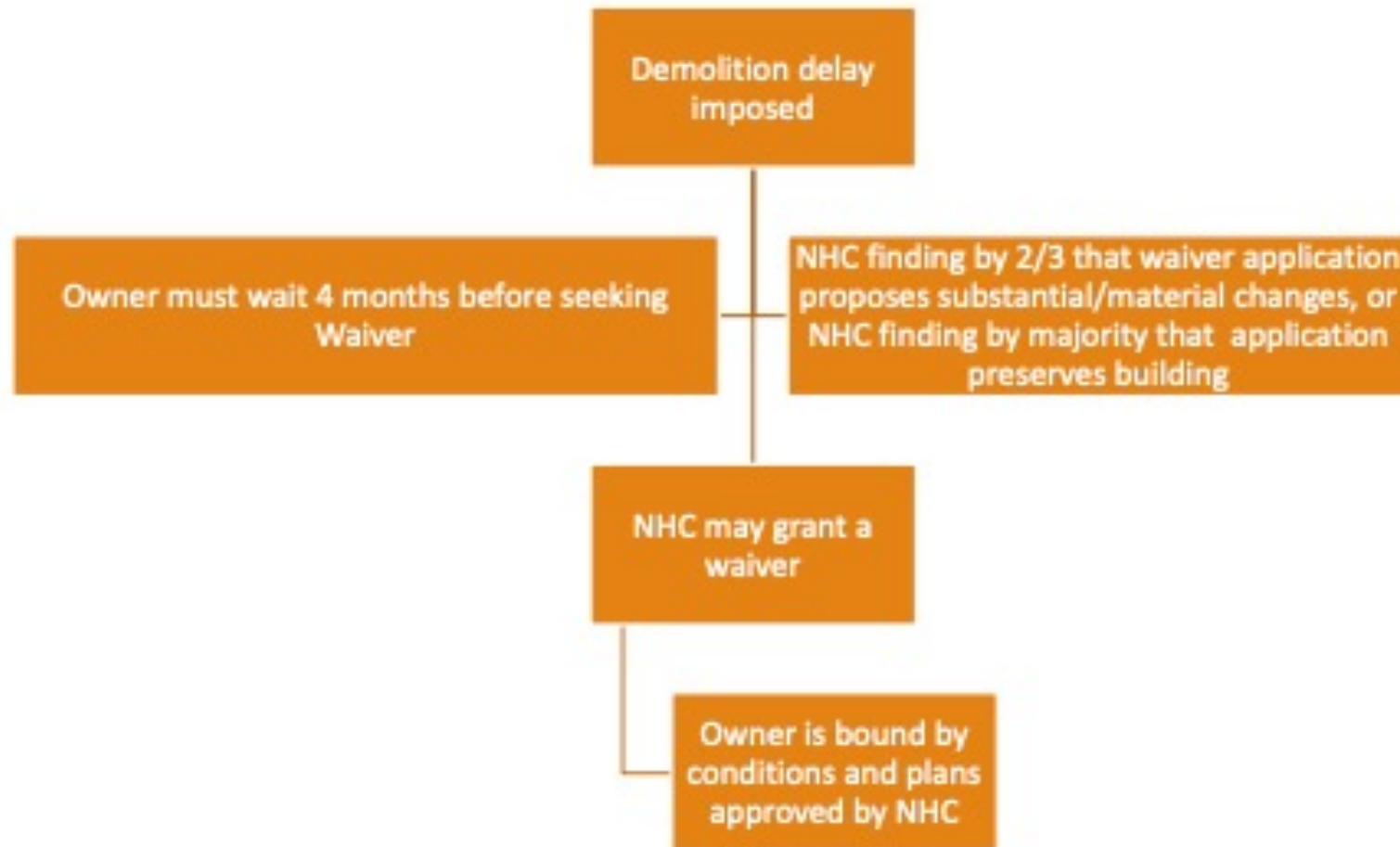
The NHC cannot make such a vote until 30 days after the preferably preserved finding.

# Waiver Process for Partial Demolition





# Waiver Process for Full Demolition



## Sources:

Most of the content in this PowerPoint is cited below from slides presented at a meeting of a City of Newton subcommittee or commission.

**\* Demolition Delay Bylaws and Ordinances Dec 30 2020 – Chris Skelly**

**Link - <https://www.preservationmass.org/demolitiondelay>**

**\* ZAP Report – October 2 2019**

**Link = <https://www.newtonma.gov/Home/ShowDocument?id=18937>**

**\* NHC Meeting – January 28, 2021**

**\* ZAP Report – Feb 22 2021**

**link = <https://www.newtonma.gov/Home/ShowDocument?id=67000>**

# Factoid:

**Neither the Demo Delay Ordinance  
nor listing on the National Register of  
Historic Places can necessarily  
prevent demolition.**

**Newton Local Landmarks are  
preserved in perpetuity**

