M E M O R A N D U M
August 5, 2015

TO: Landmarks Board

FROM: Lesli Ellis, Comprehensive Planning Manager
Debra Kalish, Senior Assistant City Attorney
James Hewat, Senior Historic Preservation Planner
Marcy Cameron, Historic Preservation Planner
Angela Smelker, Historic Preservation Intern

SUBJECT: Public hearing and adoption of an Administrative Rule to clarify the demolition review process pursuant to the rulemaking procedures set forth in Chapter 1-4, B.R.C. 1981.

PURPOSE
At the June 3, 2015 Landmarks Board meeting, the board voted to approve the rule as to substance and begin the rulemaking process set forth in Chapter 1-4, B.R.C., 1981. The purpose of this meeting is to provide an opportunity for feedback from interested parties.

Staff has published the proposed Administrative Rule for a 15-day period prior to the August Board meeting. If the Board does wish to make changes based on written or public hearing comments received, additional publication and review by the City Attorney will be necessary. If the Board does not wish to make changes to the Administrative Rule, the rule will become effective immediately.

- The proposed rule change would allow the staff/Landmarks Design Review Committee (LDRC) to make preliminary determinations as to 1) whether a property may be eligible for landmark designation and 2) whether the proposed demolition (including proposed additions) would cause significant impact or potential detriment to a potential historic resource and would not be significantly inconsistent with the standards for issuance of an LAC. ***See Attachment C: Proposed Process Flow Chart.***
- Currently, if a property is found to be potentially eligible for individual landmark designation, the demolition permit application is referred to the full Landmarks Board for review, even when the work proposed may not impact the potentially historic portion of the building. In that hearing, the board may only

consider criteria in Section 9-11-23(f) and not the extent of the proposed work.

- This proposed demolition review process is intended only to provide for very limited review of what the effect of the "demolition" is on a potential historic resource and not detailed design review of the proposal. Allowing for detailed design review of changes to non-designated buildings that are found to be potential historic resources would require a community wide discussion about expanding the Board's authority to engage in binding design review of non-designated historic resources.

BACKGROUND

- In 2011, Staff and a subcommittee of the Landmarks Board met to explore changes to Section 9-16 of the Boulder Revised Code to exempt minor changes from the review requirements and allow the removal of additions that are less than 50 years old.
- This effort was in response to several demolition applications being reviewed for very minor changes because they met the current definition of demolition, such as an application proposing the removal of a side bay window with an 18-inch exposure to the street on one property and an application proposing the removal of 1970s addition to an otherwise intact Edwardian Vernacular house. Both of these applications triggered full demolition review even though the proposed scope of work had little, if any, impact on the portion of the buildings older than 50 years
- In 2012 and 2013, staff and the Landmarks Board continued to work on a change to Section 9-16, B.R.C., however, a number of unintended implications were identified by exempting portions of a building less than 50 years old from the demolition calculation. These included potentially granting removal of a greater portion of the older portion of the building and implications on the application intake and review process. The proposed ordinance was heard by City Council a number of times but eventually tabled.
- In 2014, the city began working on a draft administrative rule to clarify the demolition review process and work within the existing code language.
- In February 2015, the Landmarks Board subcommittee met with staff to review the proposed rule and provide feedback.
- In April 2015, staff invited a user group of past applicants, preservationists and architects to review the proposed rule. The group voiced support for the rule, recognizing that while it will not solve all of the issues with the demolition ordinance, it will address a major challenge.
- At the June 3, 2015 Landmarks Board meeting, the board voted to approve the rule as to substance and begin the rulemaking process set forth in Chapter 1-4, B.R.C., 1981.

ANALYSIS

Pros

- Allows staff/LDRC the ability to engage in limited review to establish more definitively whether a property is a potential historic resource or not.
- Provides for ability of staff/LDRC to assess of effect(s) of demolition (including proposed additions) when potential historic resources are identified.
- Works within the existing language of the code and does not affect the purpose or intent of the historic preservation ordinance or the city's historic preservation program.
- Allows relatively minor modifications or removal of elements less than 50 years old from buildings that are 50 years old or older without triggering full demolition review and subjecting applicants to unnecessary stays of demolition.
- Benefits applicants undertaking modest changes to buildings that are 50 years old or older that will not affect historic character or result in loss of historic materials.

Cons

- May result in unintended loss of historic resources by allowing only for limited design review of what may be major changes to potential landmarks.
- Limited review of effect of demolition will have to be applied consistently and may cause frustration that only gross elements of proposed new construction can be considered.
- Applicants may choose to challenge staff/LDRC finding of significant impact to potential historic resource at full board who will be limited in assessing proposal in terms of gross elements applied by LDRC without the benefit of detailed design guideline analysis and recommendation from staff.

PUBLIC COMMENT

In April 2015, staff invited a user group of past applicants, preservationists and architects to review the proposed rule. The group voiced support for the rule, recognizing that while it will not solve all of the issues with the demolition ordinance, it will address a major challenge.

ATTACHMENTS

A: Proposed Administrative Rule Clarifying the Demolition Review Process

B: Notice of Rulemaking for Administrative Rule Clarifying the Demolition Review Process per Chapter 1-4 of the Boulder Revised Municipal Code, 1981

C: Process Flow Chart

ATTACHMENT A

LANDMARKS BOARD
CITY OF BOULDER, COLORADO

Regulation Clarifying the Process Provided in Section 9-11-23(d), B.R.C. 1981, for the Review of Permit Applications for Demolition, On-Site Relocation and Off-Site Relocation of Buildings That Are Over Fifty Years Old

1. Purpose and Scope of this Rule.

This rule describes and interprets the process for the review of applications for full or partial demolition or building relocation for buildings that are over fifty years old as provided in Section 9-11-23, B.R.C. 1981.

Section 9-11-23, B.R.C. 1981 does not apply to buildings that have been previously designated as individual landmarks or are located within historic districts.

The review of permit applications for demolition, on-site relocation and off-site relocation of buildings that are over fifty years old is intended to prevent the loss of buildings that may have historic or architectural significance. It also provides the time necessary to initiate designation as an individual landmark or to consider alternatives to demolition of the building.

These rules describe the process of making preliminary determinations as to whether a property may be a historic resource and aid in determining whether the proposed alterations that meet the definition of "demolition" (historic) in Chapter 9-16 of the B.R.C. 1981 would have a significant impact or potential detrimental effect on the city's historic resources and whether any proposed additions to that resource would be significantly inconsistent with the standards for issuance of a landmark alteration certificate. This preliminary review process is not intended to be a detailed assessment against the city's design guidelines for designated resources, but to provide consistency in the processing of applications under Subsection 9-11-23(d), B.R.C. 1981.

This rule is adopted by the Landmarks Board under rulemaking procedures set forth in Chapter 1-4, B.R.C. 1981, and pursuant to the authority granted to the Landmarks Board pursuant to Section 9-11-24, B.R.C. 1981.

1. Definitions.

For the purposes of this rule, the following words and phrases shall have the meaning given in this section, unless context clearly indicates otherwise.

"**Historic resources of the city**" means buildings that may be eligible for designation as an individual landmark; a property that has been identified as having historic or architectural significance on a historic building survey, other documentary record and/or physical evidence and appears to retain its historic architectural integrity.

"**Landmarks Design Review Committee**" or "**LDRC**" means 1 member of historic preservation staff and two members of the Landmarks Board.

"**Partial Demolition**" means proposed demolition that meets the definition of "demolition (historic)" in Section 9-16-1, B.R.C. 1981, that is less than an entire building.

"**Significant impact or potential detrimental effect**" means alteration to the identified architectural or historic character of a building that is substantially inconsistent with the standards for the issuance of a landmark alteration certificate (LAC) found at Sections 9-11-14 and 9-11-18, B.R.C. 1981.

The following are examples of alterations that may have a significant impact or potential detrimental effect on a historic resource of the city:

- Construction of an addition that visually overwhelms the building in terms of location, mass, scale and height.
- Removal of features that may retain historic architectural integrity.
- Removal of a portion of a street-facing wall if that has been identified as older than 50 years in age and retains historic architectural integrity. .

The following are examples of alterations that may not have a significant impact or potential detrimental effect on a historic resource of the city:

- Work that does not involve portions of a building that are documented as being less than 50 years in age.
- Removal of a non-character defining feature (including an addition)
- Construction of an addition that would not be substantially inconsistent with the standards for issuance of an LAC in terms of location, mass, scale and height.

"**Staff**" means the city manager or designated historic preservation staff.

2. Initial Review of Permit Applications for All Accessory Buildings Over Fifty Years Old (Demolition or Relocation), All On-Site Relocations of Buildings Over Fifty Years Old, and All Demolition and Off-Site Relocation of Primary Buildings Constructed During or After 1940.

For all accessory buildings over 50 years old, all on-site relocations of buildings over 50 years old and all demolitions and off-site relocations of buildings constructed during or after 1940, staff will determine whether the building may be a historic resource of the city.

a. If staff determines that the building, or that portion of the building proposed for demolition, is not a historic resource of the city, it shall approve the permit application if all other requirements of the permit process have been met.

b. If staff determines the building or portion of the building proposed for demolition may be a historic resource of the city, it shall assess whether the work constituting a demolition will have a significant impact or potentially detrimental effect upon the resource.
c. A determination by staff that a building, or portion thereof, may be a historic resource to the city, that determination shall only be discussed at a public hearing by the Landmarks Board.
d. If staff determines that the work constituting a demolition will have no significant impact or potentially detrimental effect on the historic resource, it shall approve the permit application.
e. If staff determines that the work constituting a demolition may have significant impact or potentially detrimental effect on the historic resource , the issuance of the permit shall be stayed pursuant to Section 9-11-23(d)(1) and staff shall forward the permit application to the Landmarks Board for a public hearing as required by Section 9-11-23(f), B.R.C. 1981.
f. In making a determination as to whether the work constituting a demolition may have a significant impact or potentially detrimental effect on the historic resource, staff will explain how the proposed work has a significant impact or potential detrimental effect, but may not advise the applicant of alterations that could be made to the application to avoid a significant impact or potentially detrimental effect.
g. During the hearing before the Landmarks Board, the applicant may contest the determination that the building, or that portion of the building proposed for demolition, may be a historic resource of the city, the determination of significant impact or potentially detrimental effect and/or or the designation of the building as an individual historic landmark.

3. Initial Review for Demolition and Off-Site Relocation of Pre-1940 Buildings

The Landmarks Design Review Committee will review all demolition and off-site relocation permit applications for buildings built prior to 1940 and will make a determination as to whether the building, or that portion of the building proposed for demolition, may be a historic resource of the city.

a. If all three members of the LDRC determine that the building is not a historic resource of the city, staff shall approve the permit application.

b. If one or more of the members of the LDRC determines that there is probable cause to believe that the building, or that portion of the building proposed for demolition, may be a historic resource, the LDRC shall assess whether the work proposed in the application will have significant impact or potentially detrimental effect upon the resource.

c. A determination by one or more of the LDRC members that a building, or portion thereof, may be a historic resource to the city, that determination shall only be discussed at a public hearing by the Landmarks Board.
d. If all three members of the LDRC determine that the work proposed in the permit application will have no significant impact or potentially detrimental effect on the resource , staff shall issue the permit application if all other requirements of the permit process have been met.

e. If one or more of the members of the LDRC determines that the work proposed in the permit application will have significant impact or potentially detrimental effect on the resource, the issuance of the permit shall be stayed pursuant to Section 9-11-23(d)(2) and the LDRC shall forward the permit application to the Landmarks Board for a public hearing as required by Section 9-11-23(f), B.R.C. 1981.

f. In making a determination as to whether the work proposed in the application would constitute a significant impact or potentially detrimental effect on the historic resource, the LDRC shall explain how the proposed work meets that definition, but may not advise the applicant of alterations that could be made to the application to avoid significant impact or potentially detrimental effect.

h. During the hearing before the Landmarks Board, the applicant may contest the determination that the building, or that portion of the building proposed for demolition, may be a historic resource of the city, the determination of significant impact or potentially detrimental effect, and/or the designation of the building as an individual historic landmark.

4. Limit of Issued Permit

For applications where the building was determined to be a potential historic resource of the city, but the proposed work was determined to not have a potentially significant impact or detrimental effect, the permit issued by staff approves only the work proposed in the permit application, as shown on plans and drawings submitted to the city. Should the applicant propose work other than what is included in the submitted plans and drawings, it must submit a new application and receive approval of the new application from staff, the LDRC or the Landmarks Board, as required by Section 9-11-23, B.R.C. 1981, and this rule.

For applications where the building was determined to not be a potential historic resource of the city, the permit issued by staff approves full demolition. Should the applicant propose work other than what is included in the submitted plans and drawings, additional review and approval is not required from staff, the LDRC or the Landmarks Board.

APPROVED by the Landmarks Board as a regulation this ____ day of ____ 2015.

_____
James Hewat
Secretary to the Board

Proposed rule approved as to form and legality by the City Attorney's Office on June 8, 2015, by Debra S. Kalish, City Attorney.

Proposed rule approved prior to publication by the Landmarks Board on June 3, 2015.

Three copies of the proposed rule filed with the City Clerk on June __, 2015.

Date of publication of notice in the Daily Camera on _____, 2015.

Approved by the Landmarks Board without change after considering public comment on _____, 2015 by Kate Remley, Acting Chair of the Landmarks Board.

Adopted rules filed with the City Clerk and effective on _____, 2015.

ATTACHMENT B

CITY OF BOULDER
Community Planning & Sustainability
Historic Preservation Program
1739 Broadway, Third Floor P.O. Box 791 Boulder, Colorado 80306
Phone: 303.441.1880 Fax: 303.441.3241

Notice of Rule-Making

The Landmarks Board of the City of Boulder proposes to adopt the following rule by the rulemaking procedures set forth in Chapter 1-4 of the Boulder Revised Municipal Code, 1981.

The Secretary of the Board has filed three copies of the proposed rule with the City Clerk, located in the Municipal Building, 1777 Broadway, Boulder, Colorado, on July 20, 2015. Those copies are available for public review and comment until August 4, 2015. Written comments should be submitted to Marcy Cameron at cameronm@bouldercolorado.gov or the above address by July 31, 2015.

A public hearing will be held by the Landmarks Board on August 5, 2015 sometime after 6 p.m. to consider adoption of these rules. The hearing will be held in the City Council Chambers, 1777 Broadway, Second Floor. Public testimony will be accepted.

The proposed rule was approved as to substance prior to publication by the Landmarks Board at their June 3, 2015 meeting.

The proposed rule was approved as to form by the City Attorney's Office on June 8, 2015.

Notice of intent to adopt the rule was published in the Daily Camera on July 21, 2015.

REGULATION RULE

Regulation Clarifying the Process Provided in Section 9-11-23(d), B.R.C. 1981, for the Review of Permit Applications for Demolition, On-Site Relocation and Off-Site Relocation of Buildings That Are Over Fifty Years Old.

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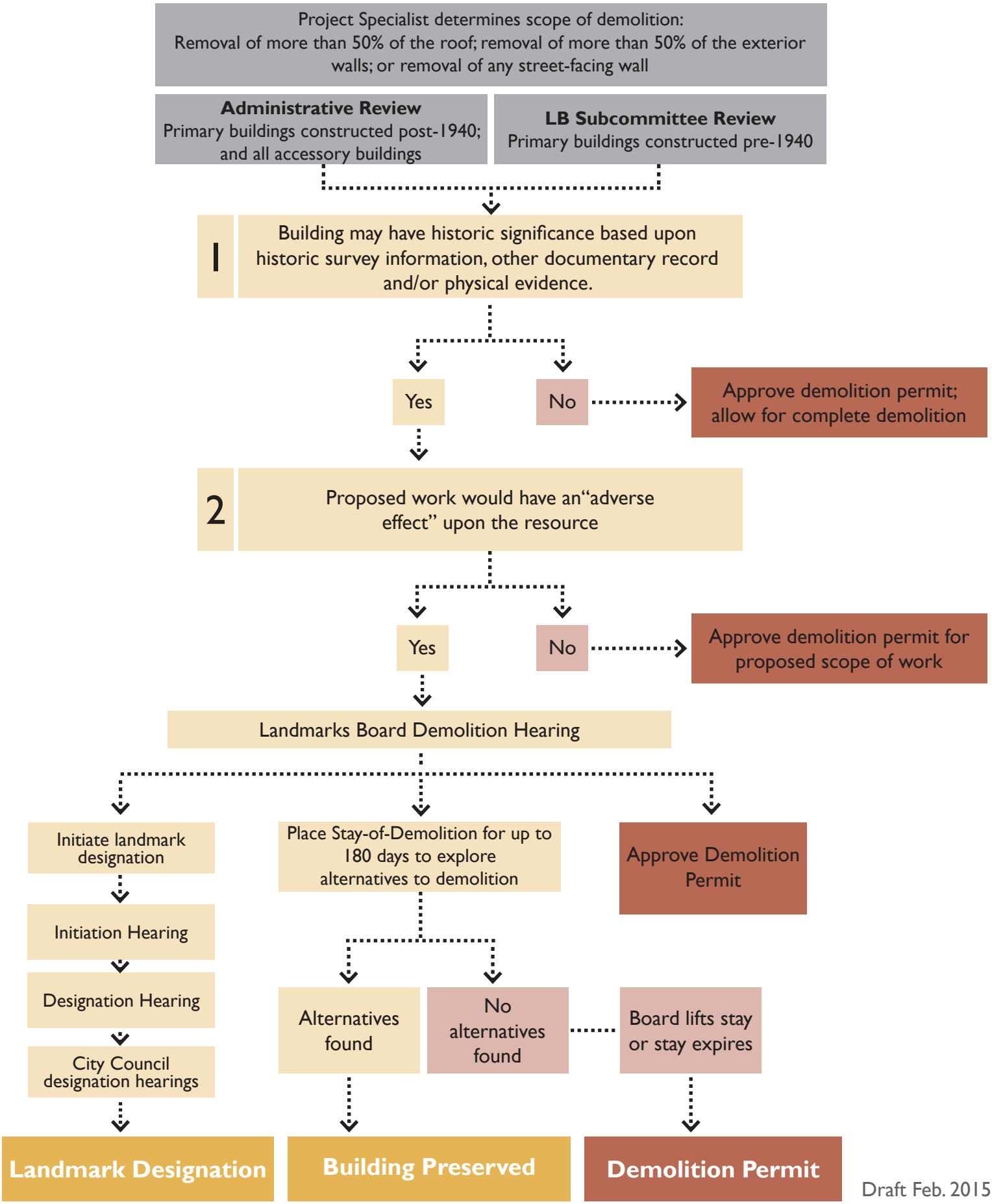
The review of permit applications for demolition, on-site relocation and off-site relocation of buildings that are over fifty years old is intended to prevent the loss of buildings that may have historic or architectural significance. It also provides the time necessary to initiate designation as an individual landmark or to consider alternatives to demolition of the building.

These rules describe the process of making preliminary determinations as to whether a property may be a historic resource and aid in determining whether the proposed alterations that meet the definition of "demolition" (historic) in Chapter 9-16 of the B.R.C. 1981 would have a significant impact or potential detrimental effect on the city's historic resources and whether any proposed additions to that resource would be significantly inconsistent with the standards for issuance of a landmark alteration certificate. This preliminary review process is not intended to be a detailed assessment against the city's design guidelines for designated resources, but to provide consistency in the processing of applications under Subsection 9-11-23(d), B.R.C. 1981.

A full and complete copy of the proposed administrative rule is available for public review at Central Records at the Municipal Building, 1777 Broadway Street 2nd floor, Boulder Colorado, 80302 or online at www.boulderhistoricpreservation.net.

CITY OF BOULDER
DEMOLITION REVIEW PROCESS FOR NON-LANDMARKED BUILDINGS OVER 50 YEARS OLD



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