

# CITY OF PORTSMOUTH

## LEGAL DEPARTMENT

### MEMORANDUM

DATE: NOVEMBER 15, 2023  
TO: PHYLLIS ELDRIDGE, CHAIR, ZONING BOARD OF ADJUSTMENT  
FROM: TREVOR P. MCCOURT, DEPUTY CITY ATTORNEY *TPM*  
RE: DEMOLITION REVIEW

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At your request, this memorandum provides a brief overview of how the City reviews and processes demolition of structures, explaining the procedures followed by both land use boards and City staff. This memorandum does not address review by any state or federal agencies, environmental concerns, or the handling or disposition of hazardous materials.

Based upon commentary by the public and by members of the Board, it seems an overview of how demolitions are handled under City ordinances could be helpful. This memorandum provides, in general terms, an explanation of the process. A more detailed explanation can be provided upon request.

When a property owner proposes demolition of a structure, the baseline requirement is that the property owner apply for a demolition permit. Demolition permit applications are reviewed by Planning staff for compliance with local ordinances, and by Building Inspections and Fire Department staff for compliance with applicable codes.

In addition to this threshold review, demolitions can then be fairly broken into two categories – those within the Historic District and those outside the Historic District. Each are addressed in turn.

#### **Historic District**

When a property owner proposes to demolish a structure within the Historic District, that application is subject to rigorous review as against those standards defined by ordinance. See City Ordinance Chapter 10, Section 10.631.30. This review is enabled by statute. See RSA 674:46. The Historic District Commission (HDC) has authority to deny demolition applications under certain circumstances. For example, the Rockingham County Superior Court recently upheld a decision of the HDC and the Zoning Board of Adjustment (BOA) denying a property owner's application to demolish the so-called Times building located at 278 State Street.<sup>1</sup>

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<sup>1</sup> See Peter N. Floros as Trustee of the PNF Trust of 2013 v. Zoning Board of Adjustment of the City of Portsmouth, Docket No. 218-2018-CV-00177 (May 11, 2023).

## **Outside the Historic District**

The City's ability to apply criteria, other than safety, to applications for the demolition of structures outside the Historic District is limited. The City can only consider safety factors when reviewing applications for demolitions outside the Historic District. Therefore, the current regulatory process only seeks to provide a public forum for the discussion of demolition. If a property owner needs relief from the BOA or approval from the Planning Board as a part of a project including the demolition of a building, a public hearing will be held pursuant to state statute with notices delivered to abutters, and concerned parties will have the opportunity to voice concerns about a proposed demolition before it occurs.

Likewise, recognizing the historic nature of the City and the desire of residents to voice concerns regarding demolition, the City created the Demolition Review Committee (DRC) in order to fill the void between the land use boards. See generally, City Ordinance Chapter 14, Article II. Therefore the DRC provides the opportunity for a public forum for those demolition applications outside the Historic District and which do not require relief from a land use board. The DRC provides a notice, delay, and a public hearing in circumstances prescribed by ordinance for the discussion of demolition of buildings in the City. The DRC acts as a bridge between land use boards, offering a public platform for discussing demolition applications outside the Historic District. It is important to note the DRC has no authority to prevent the demolition of any structure.

## **Appeals**

Any aggrieved party seeking to appeal a decision of the BOA, the Planning Board or the Chief Building Inspector must follow the process set by statute.<sup>2</sup> For the Planning Board and BOA, that means appealing to Superior Court, the Housing Appeals Board or the BOA, as appropriate. The issuance of a building permit may be appealed to the Building Code Board of Appeals. RSA 674:34. Please note that any recommendation made by the DRC is advisory only and non-binding on property owners. Therefore, the final step of review by the DRC is issuance of a demolition permit, appealable to the Building Code Board of Appeals. The DRC is not an appellate body, and cannot accept appeals or review decisions made by other land use boards or City officials.

cc: Karen S. Conard, City Manager  
Susan G. Morrell, City Attorney  
Peter Britz, Director of Planning and Sustainability

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<sup>2</sup> See, generally RSA 674:14, RSA 676:5, and RSA Chapter 677.