

**RYE PLANNING BOARD
RULES & REGULATIONS COMMITTEE
MEETING**

**Tuesday, August 27, 2019
9:00 a.m. – Rye Town Hall**

Present: Chair Patricia Losik, Jeffrey Quinn, Planning/Zoning Administrator Kim Reed and Demolition Review Committee Chair David Choate

I. Call to Order

Chair Losik called the meeting to order at 9:00 a.m.

II. David Choate to discuss changes to Heritage Commission zoning

Proposed changes to Demolition Review Procedure:

- 1. Discussion on proposed addition to review criteria – “If the building is 50 years of age or if it is 500 square feet or larger”**

Referring to criteria for review (for demolition), David Choate noted the main concern is for buildings 50 years of age or 500 square feet or larger. Right now, it has to meet both criteria (509.3A). If a property does not meet both criteria, the building would not go before the committee.

Chair Losik asked if it is the sense of the committee that they are more focused around the age of the building and the more significant matter associated with the age.

Mr. Choate replied the age and the architectural features are important.

Chair Losik stated that looking at the ordinance now with the language, “greater than 50 years old and 500 square feet or larger”, fits. If the word “and” is taken out and the word “or” put in, it would be saying that what would be going before the committee is any project greater than 500 square feet. She asked if this is the intent.

Mr. Choate explained there are buildings within 50 years that would be considered significant.

Chair Losik reviewed the criteria under 509.7; characteristics to determine if a building is potentially significant or significant.

- A) The building is of such interest or quality that it would meet national, state or local criteria for designation as a historical, cultural, architectural landmark.
- B) The building is of such unusual or uncommon design, texture or materials that it could not be reproduced or could be reproduced only with great difficulty and expense.

- C) The building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.
- D) Retention of the building would help preserve and protect a historic place or area of historic interest.

She noted that they are all not specific to a historic characteristic. In Section A, there is cultural and architectural in addition to historic. Section B does not have a reference to historical. In Section C, architectural and community value is added and D is clearly locked in to historic.

Member Quinn noted that he has a problem with the entire section of 509. He continued that he would not support changing the wording to “or”. In looking at the relative nature of the term “historical”, in many cases it comes down someone’s opinion as to whether it is historical or not. Virtually, everything is historical. He stated that some of the terminology that is used, such as “permit”, sounds very formal and formidable. There has been an argument to make this the last “permit” given in the process. If this is just advisory, he does not think the word “permit” is appropriate. He pointed out that Section 509 says authority is given to the building inspector to determine whether or not the building meets the criteria for historical review. In looking at Section B, it states “unusual or uncommon design”. He noted that a house two doors down from his property is certainly an uncommon design for the neighborhood. Given that stipulation, if someone wanted to tear the house down, they would fall under the criteria for demolition review even though the house is not much more than 10 years old.

Chair Losik commented that would be the case if “and” was changed to “or”. She pointed out that the criteria is for buildings greater than 50 years old. The house would not fall under the current criteria.

Member Quinn stated that when he counts out 50 years, he is almost in the late 60’s to 1970’s. He does not think that qualifies as “historical”. It seems that the building inspector has deferred the review over to the Demolition Committee.

Chair Losik clarified that the committee (Demolition Committee) is only an advisory board.

Member Quinn confirmed. He stated that Mr. Choate is also asking for this to be the last “permit” issued before anything happens.

Regarding “permit”, Chair Losik asked if he is referring to 509 (F) when it talks about “shall not delaying the issuance of a demolition permit”.

Member Quinn confirmed.

She asked if the building office issues the permit.

Mr. Choate confirmed. He explained that if there was no Demolition Review Committee, a demolition permit would still have to be issued by the building inspector. The committee does not affect the issuance of a demolition permit. He continued that when the ordinance was put into place, there were people who felt there needed to be some level of review. All the

committee has is the court of public opinion and persuasion. The committee does not have any say, except for something in the Historic District. The Demolition Committee review does not hold up the process because there are a number of steps that someone has to go through to demolish the building. A lot of times they have to go before the ZBA or Conservation Commission before the project can be started. He noted that 50 years is used because that is the federal guideline.

Chair Losik asked how something would be determined an architectural or cultural landmark. Referring to the Frank Lloyd Wright house, she commented it is built in the spirit or faux replica. Does that make it an architectural or cultural landmark? Should it warrant the committee's time and expertise? She asked if this would be the spirit of 509.

Mr. Choate replied that he thinks so. It is a way to try to have another layer of review for these buildings. He agrees that historic preservation is by some means subjective. There is no criteria that says if it is or not historic. A lot of it has to do with feelings.

Chair Losik stated she is having difficulty crossing the bridge to "or" where the committee would be involved in looking at every structure. She suggested that the question of "and" versus "or" be turned over to Attorney Donovan because he will have the whole scope of understanding 509.

Mr. Choate commented if there is concern about the workload of the committee, they are happy to take that on.

Chair Losik explained it is not just the work load. Her concern is whether this is under the providence of the committee. Before this door is open, she would like to have a broader understanding from a State view from Attorney Donovan.

2. Discussion regarding meetings – *“Initial determination of significance can be made by an email poll of the majority of Committee members or by an in person meeting” – “Initial determination meeting shall be held as soon as possible, but not later than ten (10) business days from notification of receipt of the application by the Building Inspector”*

Chair Losik asked if it is true that information and discussions go back and forth through email.

Mr. Choate explained that someone files for a demolition permit and pays a fee with the building department. The application is stamped with the date it was received. If it meets the criteria, the application package is emailed to the chair of the Demolition Review Committee. The chair then submits the package to the committee by email. It is established that the committee has to have a meeting within five (5) business days of receiving the application.

Referring to 509 A (1), Chair Losik noted that it states; "Building Inspector notifies the applicant"; "Within 5 days he forwards the application to each member of the Demolition Review Committee". Referring to 509 B, she noted that it states; "The Demolition Review Committee shall meet within 5 days of the receipt of the application".

Mr. Choate agreed. This is to determine its significance. If it is deemed to be significant, then the committee has to hold a public hearing within 12 days of making that determination.

Member Quinn commented that the determination of significance is not happening in public.

Mr. Choate pointed out that all meetings are public.

Member Quinn stated that all the packets are emailed. He thought he heard “if we think it is significant”.

Mr. Choate explained that in the past, the committee members used to determine, amongst themselves by email, if it was significant. If it was not, they never had a meeting. It is very clear that it can’t be done that way. Now, the committee is very rigid with the process. The committee schedules a meeting and it is noticed on the town’s website. He pointed out there have been some problems with timing of meetings and notice requirements.

Chair Losik agreed that 10 days for the meeting makes sense. She pointed out that it is not the building inspector, or agent of the building inspector, that forwards the application to each member of the Demolition Review Committee. She heard that the chair gets the information from the building inspector, or the building inspector’s agent, and the chair forwards it to the committee.

Mr. Choate commented that this was decided by the building inspector.

Chair Losik noted that the language should conform to the process. **(509.5 A.2)**

Referring to 509.3 B, Member Quinn asked about the revision in 2014 to “50 years”.

Planning Administrator Reed explained that it used to be 75 years. At the time, the chair of the committee came to the Rules and Regulations Committee and asked for it to be changed to 50 so they could have more control. The committee felt that 75 years was too long.

Referring back to the review process, Chair Losik clarified there is no “email poll of majorities” for establishing significance or any decision of the committee.

Mr. Choate confirmed. He noted that if the initial determination meeting is changed to 10 days it will solve the email issue.

Member Quinn and Chair Losik agreed it should be changed to 10 business days. It was noted that the proposed change regarding the email poll could be disregarded. Initial determination of significance will be made “by and in person meeting”. It was also agreed that it should be 5 business days for the public hearing notice.

3. Discussion regarding proposed additions to the permit issuance – “*A demolition permit may be issued with conditions.*” – “*A demolition permit shall be issued only after all unappealable local, state and federal permits have been received by the applicant.*”

Mr. Choate stated that the committee would like to add that demolition permits may be issued with conditions. There are already some conditions, such as the disconnection of utilities. He noted that Portsmouth has a Demolition Review Committee that has no ability to prevent the demolition (except for homes in the Historic District). However, Portsmouth can issue permits with conditions that have to be documented by the applicant. Rye’s Demolition Review Committee would like to have the ability to add a condition that allows the structure to be photographed by the Historic Society (for the purpose of documenting its existence). The committee is requesting the right to add reasonable conditions.

Speaking to Planning Administrator Reed, Chair Losik noted that this should also be brought to Attorney Donovan’s for his opinion.

Referring to the permit being issued after all other permits are issued, Mr. Choate the reason is because everything else would have happened and there would be no doubt in the approvals. A lot of times when people are denied at a board, they do not proceed with the project. This would prevent someone from receiving a demolition permit and tearing down a structure before they find out if they can even proceed with the project.

Member Quinn stated that the board is advisory, but now there is a request to issue a permit with conditions. This sounds like it could hold an owner up and make it so they could not do what they want with the property. He is concerned this will hold up the building inspector from issuing a demolition permit, even though he is satisfied with everything he is concerned about. The only thing that is left is whether the committee thinks it is historically significant. Then the committee is going to issue conditions. He asked what would happen if the applicant decides not to meet those conditions.

Mr. Choate pointed out it would not be a condition that says it can’t be torn down. It would be for something reasonable. (He read from Section 509.5 F and 509.6 A.)

Referring to 509.6 A, Chair Losik stated that this is the real focus. The committee is asking to be allowed, out of the public hearing, to attach conditions to the demolition permit. This basically says the applicant cannot demolish until all of the conditions are met. She clarified that the committee, which does not have statutory force, is asking to add conditions. It then goes back to 509.6 A, which says all conditions must be satisfied before demolition. If this is done last, all the federal and state requirements also have an issuance policy that those are all met. She asked if there are any intertwining (federal and stated) conditions that have impact to the Demolition Review Committee.

Mr. Choate replied that would probably only apply in the Historic District. He pointed out there have not been any requests in that district that he knows of. He also pointed out that the Historic District Commission can actually deny the demolition.

Chair Losik clarified they are talking about non-historic demolitions. She asked why a homeowner would need to wait to get all the other permits.

Mr. Choate explained that the applicant files for a building permit. The building inspector will determine if a variance for a setback, wetlands or other approvals are needed. The demolition permit should be filed at the same time so the process is started, so the applicant is not held up at the end.

There was some discussion on the process the applicant follows in getting a building permit. There was also discussion on the request to add to the criteria (as listed in proposed changes memorandum) “historical or architectural interest”. It was agreed that this is already covered and should be disregarded.

Mr. Choate stated the he wanted to discuss whether a building that is being dismantled and removed is considered demolition. He would think it was. If it is not demolition, it may need to be addressed.

Chair Losik noted this would be a question for Attorney Donovan.

It was agreed there should be a definition for “demolition”.

4. Discussion on adding another alternate position

Mr. Choate spoke about the issues with having enough members for a quorum at a meeting. **(509.4 C)**

There was discussion on the number of members needed for a quorum. For the Demolition Review Committee a quorum is two members, as there are three regular members on the committee. There was also discussion on making a change of “two alternate members who are not members of the Heritage Commission”.

Mr. Choate agreed that his request of another alternate is not an issue.

III. Next Steps:

- Kim Reed to speak with Attorney Donovan regarding “and” versus “or”.
- Kim will also speak with Attorney Donovan regarding the addition of conditions on permits.
- David Choate will start work on drafting a definition of “demolition”.
- The Committee will meet on September 9th, 9:30 a.m.
- David Choate will meet with the Committee again on September 24th, 8:00 a.m.

IV. Other Business

There was discussion about asking the ZBA to add demolition review to their applicant checklist.

V. Public Comment

No members of the public present.

Adjournment

Motion by Jeff Quinn to adjourn at 10:37 a.m. Seconded by Pat Losik. All in favor.

Respectfully Submitted,
Dyana F. Ledger