

Minutes
Demolition Review Committee Meeting for 100 Pinehurst Road

Portsmouth City Hall
Conference Room A

2:00 P.M.

September 5, 2018

Committee Members: Chair Beth Moreau, City Principal Planner Nick Cracknell, Chief Building Inspector Robert Marsilia, Historic District Commission Vice-Chair Jon Wyckoff, Portsmouth Advocates Representative Barbara Ward, City Attorney Robert Sullivan

Pro tem Chair Beth Moreau called the meeting to order at 2:00 p.m.

Selection of Chair

Attorney Sullivan welcomed the Committee and public. He noted that he had asked Ms. Moreau to be Chair pro tem for the first Demolition Committee meeting, and he asked the Committee for a formal vote.

Mr. Wyckoff moved to elect Ms. Moreau as Chair, and Mr. Cracknell seconded. The motion passed by unanimous vote.

Adoption of Robert's Rules of Order

Mr. Cracknell moved to adopt Robert's Rules of Order, and Ms. Ward seconded. The motion passed by unanimous vote.

Introduction of Committee Members

The Committee members briefly introduced themselves.

Comments Regarding the Demolition Ordinance

Chair Moreau read Section 14.205, Section 2, of the Housing Ordinance pertaining to the Demolition Procedure.

Attorney Bernie Pelech stated that he objected to the procedure, noting that he had never been before a forum where the applicant did not have the option of making the first presentation. He also noted the lack of evidence pertaining to the issue of the significance of the existing building. He said that he had only heard objections to what was proposed to be constructed on the site, which he felt was irrelevant to the building's significance.

Carol Eaton of 155 Pinehurst Road stated that she also had concerns with the procedures. Sally Mulhern of 60 Pinehurst Road said that she and her husband were attorneys and perceived a significant procedural defect in the matter. She outlined the steps that a person had to go through if they wanted to demolish a home that consisted of filing a written application, posting a notice on the house, and posting a public notice in the newspaper. She said all three steps were done, but the problem was that the correct notice was neither put on the sign or in the newspaper. She quoted the Ordinance and emphasized that all words “shall” be in the notice, and she said they were not. She said that a notice involved legal rights. She noted that many houses in Portsmouth were being demolished and replaced and that notice was necessary for due process procedures, including the opportunity to be heard. She asked that the committee hearing not move forward and be adjourned due to the inadequate newspaper notice.

Barbara Ward said she thought the thing that was missing was the term ‘is of significance’, i.e. that there would be a public hearing on the matter within 75 days of notice if no written objection was received. Chair Moreau said the notices were getting confused because there was no public hearing prior to the initial notice.

Attorney Sullivan stated that the issue was an administrative function and that the Committee’s responsibility did not include dealing with procedural issues. He said the Inspection Department would review the issue. Ms. Ward said there was no indication in the legal notice that there was a possibility of review by a committee because the second paragraph was missing. Ms. Mulhern said that two of the proper components of a notice had not been met, causing a lack of opportunity for citizens to be heard. Attorney Sullivan reiterated that the issue was an administration function of the Inspection Department. Inspector Marselia confirmed that the Inspection Department would review the issue thoroughly but had determined that the demolition was adequately noticed.

David Mulhern of 60 Pinehurst Road asked that the meeting be adjourned for five minutes so that the issue could be discussed with Attorney Sullivan.

Chair Moreau adjourned the meeting for five minutes.

When the discussion ended, Chair Moreau called the meeting back to order.

Attorney Sullivan advised the Committee that notice issues were administrative items to be resolved by the Inspection Department and that they would be reviewed by Chief Building Inspector Marselia after the meeting was adjourned. He stated that the proper action for the Committee was to proceed with the hearing as required by the Ordinance, subject to the relevant decision as described in the Ordinance and by the Chair.

Ms. Mulhern asked that the decision be noted by a show of hands from citizens who objected to the decision. Ten people objected.

Chair Moreau stated that the meeting would proceed.

Presentation by Appealing Party

Carol Eaton, Licensed Professional Engineer, described her background. She read excerpts from the Building Permit and gave a detailed description of the proposed work. She said it was a significant renovation of a residential structure that would remain a single-family one and use the existing footprint and decking. She said an expanded Cape would be built that would include a second floor. She noted that there would be seven parking spaces consisting of five regular parking spaces and two loading spaces. She explained what would be done to the lot as part of the demolition, noting that it was significant to the characteristics of the property. She reviewed the elevations and site plan. She described the proposed retaining wall and how much fill would be required relating to the property's slope, noting that it would change the characteristics of the neighborhood. She noted that there was no grading plan and emphasized that the project would have a 3-1/2 times larger living area than existing and a 70% increase in impervious area. She said the overall characteristics of Pinehurst Road were houses dating from the 1930s through 1950s, with some 1980 structures, and that most of the homes were renovated in keeping with the neighborhood. She showed photos of those homes, along with a photo of a new home that fit well into the neighborhood. She showed a diagram of the proposed project and asked how it would get built on the small sloping lot and how it was in character with the neighborhood.

Ms. Eaton reviewed the pertinent regulations of the Demolition section of Ordinance 14.201, stating that its purpose was to encourage the preservation of buildings and places of historic, architectural, and community value. She said she was concerned about drainage and stormwater runoff to neighboring properties. She also noted that the retaining wall would not relate to the characteristics of the street.

Property Owner's Response

Attorney Bernie Pelech representing the applicant for 100 Pinehurst Road stated that the Committee members had copies of the Demolition Ordinance that guided their action. He emphasized two words from the Ordinance, 'relevance' and 'significant', and quoted the following excerpt from the Ordinance: 'The Demolition Review Committee will hear all public testimony on the building's significance.' He noted that it said nothing about testimony relating to a building that was to be constructed, and that the Committee had to determine whether the existing building at 100 Pinehurst Road was significant. He noted that the word 'significant' was not defined anywhere in the Ordinance but said it meant 'sufficiently great or important to be worthy of attention.' He said the Committee had to demonstrate that, and he asked what measuring sticks determined it. He referred to the phrasing in Section 14.201 of the Ordinance 'to encourage preservation of buildings of historic, architectural, and community value'. He noted that the existing home was not on any Historic Registers; was not in the Historic District; that nothing historic, like a treaty, happened there; and that nobody important, like a governor, had ever lived there. He said it was not architecturally significant like a Frank Lloyd Wright house, and that there were hundreds of similar Capes in Portsmouth. As for community value, Attorney Pelech gave a brief history of the property, noting that the lot was purchased in 1936 and the house built in 1945. He said that no individuals of public note lived in the house that would

make it a significant building historically, culturally, or architecturally, and that whatever would be built there would not be relevant. He said the Committee was charged to listen to evidence regarding the existing building's significance and that he had not heard any such evidence. He submitted that there was no reason for the building to be preserved and said the project met all the zoning requirements.

Public Comment

Reagan Ruedig of 70 Highland Street stated that she was a member of the Historic District Commission (HDC) and a historic preservation consultant. She said she was dismayed by the demolition proposal because the home was one of the few mid-century Tudor-type homes and had integrity, including original siding and windows and an arched doorway. She noted that the house was purchased by a Mr. Larrabee, who was a State senator and Secretary of the NH Judicial Council. She said Pinehurst Road was part of a subdivision of mostly modest families. She noted that Americans placed a high value on property rights, even if it harmed neighboring properties, and that the HDC's ability to regulate could cover only so much territory. She recommended that the Committee offer time for the homeowners to meet with their neighbors and community to discuss incorporating historical components of the house into the proposed home without demolishing the house entirely and replacing it with something out of context.

Michael Magnant of 140 Pinehurst Road said he and his wife had lived there for 30 years. He said that he defined community value differently from Attorney Pelech. He pointed out that there were 13 houses on Pinehurst Road that were over 50 years old and that most of them had been rehabilitated respectfully as to the character of the neighborhood. He said that he and other neighbors felt that the stormwater runoff from the proposed project would make the situation worse. He said an ordinance stated that fill brought into a neighborhood could not alter existing patterns of natural waterflow onto adjacent properties. He asked the Committee to come up with a viable solution.

John Evans of One Lookout Lane said he was a member of the Harvard Faculty Department of Environmental Health and that the recent clearcutting of the area had changed the nature of the neighborhood. He recommended that efforts be made to ensure that disasters of that kind didn't occur again by broadening the purview of the Conservation Committee, forming neighborhood organizations, and creating land trusts. He asked that the Committee deny the permit for the large house that would be out of character with the rest of the neighborhood.

Kyle Loten of 247 Dennett Street said he agreed with Attorney Pelech that the Committee's purpose was to determine the meaning of the word 'significant' and how it applied to the property. He said the Committee would set a dangerous precedent if they started opening up the determination of that word to the public.

David Mulhern of 60 Pinehurst Road stated that the touchstone of an object's measurement was what a reasonable person would perceive under the circumstances. He said the presentations' video showing the architectural continuity illustrated why the

existing structure had architectural significance, continuity, and cohesion with surrounding structures. He said the only person speaking in favor of the demolition was someone who didn't live in the neighborhood and had no sense of its characteristics. He said he disagreed with Attorney Pelech's urging that there be a radical bifurcation between the demolition and the structure. He said that once the existing home was gone, it would be gone, and that there would be resulting damage to the cohesion and characteristics of the neighborhood. He also said he didn't think the abutters understood that a total demolition was proposed and instead thought that the existing structure would be incorporated into the new one. He said he opposed the demolition and that the existing home should be considered a significant structure.

Reagan Ruedig said she was a preservation consultant who surveyed properties to assess their historic significance. She said the existing home had integrity and local significance of someone who once lived there, and she felt that it could be eligible for the National Register and would be contributing to the Historic District or, at the very least, that Pinehurst Road would be contributing to the Historic District.

The public comment session was closed.

Chair Moreau advised the Committee that their job was to look at the significant architectural and historic aspects of the building and what path it would go down, based on whether it was significant relating to demolition.

Ms. Ward said the notices indicated partial demolition of the structure but that it looked like there would be nothing left of the structure. She asked what exactly was proposed to be demolished. Mr. Marselia said it was the entire structure down to the first-floor deck, and that the foundation of the existing home and the first-floor frame would remain. He confirmed that everything of architectural significance would be destroyed.

Ms. Ward moved to find that the existing home was significant, and Mr. Wyckoff seconded.

Ms. Ward said she agreed that it would be a mistake to think that only people with national significance were important, noting that the enslaved people who lived in the Moffett-Ladd House were as important. She said that it wasn't only part of the character of Portsmouth that was rapidly being lost but that the home was a vernacular type of house that still had integrity yet was disappearing. She said the house was part of a neighborhood and had enormous community value that would not be maintained if every small lot was covered with huge homes. She agreed that it was a good idea to speak to the home's owner about recognizing the significance of the home's historical elements as well as the possibility that the house could be eligible for the National Register.

Mr. Wyckoff said the home met the three criteria because it was historically significant due to Mr. Larabee who was a senator and NH Judicial Committee member; it was architecturally significant because it was a good representation of the Tudor style; and it obviously had community value. He said the Committee was a forum but had no power to

stop the proposed building like the HDC would because it was not in the State law. He referred to an instance when a homeowner demolished his home and was then not welcomed in the neighborhood, so he leased out the new house. Mr. Wyckoff said there was no lawn and that the foundation stuck up three feet into the air, but that the neighbors couldn't object because there was no forum for complaining about a new house that wasn't complete. He said he hoped everyone could get together and come to a resolution if the existing home was found to be significant.

Mr. Marselia agreed that the concerns about the retaining wall and stormwater runoff were significant. He said the issues had been discussed with the Department of Public Works and would be part of the Planning Board review.

Mr. Cracknell said he was sympathetic to the impacts of the loss of a structure that may be marginally significant to some. He said the rhythm of the streetscape and the quality of the neighborhood were compelling arguments to stretch the boundaries of what community value might mean. He said the testimony provided by the applicant, appellants, and community members led him to believe that it was worthwhile to get together one more time. He said it appeared that the Ordinance didn't delay the demolition a significant amount of time, so the Committee should see whether the applicant would reconsider the size, scale, volume, and characteristics of the demolition. Ms. Ward said the Portsmouth Advocates would be willing to document the house.

Chair Moreau said she felt that the characteristics of the home should be documented or remain because they were unique. She said she trusted the Building Department and felt that the site issues, like drainage and stormwater runoff, would be fully reviewed and resolved to everyone's satisfaction.

The motion passed by unanimous vote.

Chair Moreau stated that the Committee would hold a meeting with the owner to discuss alternatives to demolition, and if no alternatives were identified or agreed to, the applicant would submit drawings of the building as determined by the Committee and agree that the building would be documented and that architectural features of the building would be salvaged. Attorney Sullivan stated that the notice issue would be discussed after the meeting and that the Committee would try to schedule a meeting with the property owner. It was decided that the next meeting would take place on Monday, September 17, at 9 a.m.

The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

Joann Breault
Planning Department Recording Secretary