

**MINUTES
DEMOLITION REVIEW COMMITTEE
PORTSMOUTH, NH**

400 LITTLE HARBOR ROAD (A.K.A. CAREY COTTAGE)

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

6:00 p.m. Committee discussion on the Demolition Ordinance

6:30 P.M.

May 23, 2019

MEMBERS PRESENT: Elizabeth Moreau, Chair; Jon Wyckoff, Historic District Commission Representative; Barbara Ward, Portsmouth Historical Society Representative; Nicholas Cracknell, Planning Director Designee; Robert Marsilia, Chief Building Inspector (via call-in)

MEMBERS ABSENT: None

ALSO PRESENT: City Attorney Robert Sullivan

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6:00 P.M. MEETING TO DISCUSS: 400 Little Harbor Road (a.k.a. Carey Cottage)

Note: Chief Building Inspector Robert Marsilia was absent from the pre-meeting but phoned in for the regular meeting.

The Committee discussed whether any changes should be made to the Demolition Ordinance. Ms. Ward said there was much public interest in demolition applications for significant buildings. She questioned whether the 90-day review period was sufficient and asked if the enabling State legislature would allow the city to extend it. Attorney Sullivan said it was a City Council policy decision versus the enabling legislation. Ms. Ward pointed out that the City Council had weighed in on the matter. She said the City and its citizens had a significant stake in any building taken off the tax rolls by a non-profit organization. With respect to non-profit organizations, Attorney Sullivan said the City was compelled to give that grant by State law. Mr. Cracknell agreed that 90 days was insufficient, as more than half of that time period was used to post the sign, post the notice, and hold the meeting. Ms. Ward said the timeframe also affected the citizens who were concerned that the amount of time wasn't enough to find alternatives to demolition. She noted that the Forest Society said they were in the middle of reviewing two serious proposals for the use of the Carey Cottage that could take a while. She suggested that the City Council consider extending the review period and research how and if other cities managed to extend their timeframes for demolition requests.

Chair Moreau asked Attorney Sullivan whether the Committee had the ability under State legislation to decide a degree of significance and extend the period by 30 days. Attorney Sullivan

agreed that such an approach might work. However, he recommended that the Committee limit their detail analysis to the demolition review ordinance and then express their concern to the City Council in a broader way. Mr. Cracknell said if the Committee wrote the evaluation criteria differently, especially for a project that was a significant so-called “focal” building, they could invoke as much time afforded under the maximum time of the ordinance; at this point 90 days. Ms. Ward suggested asking the City Council to allow the Committee flexibility to extend the time in order to come up with alternatives to demolition. Attorney Sullivan noted that property rights were imbedded in the Constitution and protected by the courts, so the Committee would extend the deadline at their peril, but he thought it might be more productive to begin the public review process earlier so that they weren’t halfway through the 90-day period when they started. Mr. Cracknell said the Committee might consider holding a hearing by default 14 days after the notice was filed. They discussed whether they could treat structures over 100 years old differently and potentially have a longer review period for such buildings. Ms. Ward said the current ordinance stated that 90 days applied only to structures that were less than 100 years old or less than 500 square feet of demolition. Chair Moreau said the intent was clear that it was 90 days for both demolition tracks. Attorney Sullivan said the option was to determine whether to delay the issuance of the demolition permit up to the maximum time allowed by the Ordinance, which was 90 days. Ms. Ward again suggested asking the City Council to reconsider the 90-day limit to allow enough time to think of alternatives.

Chair Moreau asked Mr. Cracknell to draft possible changes to the ordinance and send them to the Committee to review, after which the Committee would work with the Legal department.

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Chair Moreau called the regular meeting to order.

I. APPROVAL OF MINUTES

May 07, 2019 – 400 Little Harbor Road (a.k.a. Carey Cottage)

*It was moved, seconded, and passed unanimously to **approve** the May 7, 2019 meeting minutes.*

II. DISCUSSION OF ALTERNATIVES TO DEMOLITION INCLUDING THE ISSUES, CONSTRAINTS, AND OPPORTUNITIES FOR REDEVELOPMENT

Mr. Wyckoff noted that the Herald printed a positive letter from Portsmouth resident Paige Trace suggesting that the City Council consider whether the Carey Cottage could become a center for the arts in Portsmouth. He said he thought it was a good idea.

III. RESPONSE FROM THE APPLICANT

Jack Savage was present on behalf of the Forest Society and stated that he was more optimistic than before because negotiations for selling the property had advanced and they had ample time until the end of the 90-day period to see if it would work. Chair Moreau noted that a non-profit sharing idea had been brought forward and hopefully would be considered by the Forest Society. Mr. Savage said there had to be an entity with 1) a track record, 2) the funds, and 3) an

appropriate proposed use that would be acceptable to the Trustee. He said a non-profit office or programming use might work, depending on whether the leasing organization could meet those criteria. Chair Moreau said a people wanted to hear the position on use. Mr. Savage said the potential buyer wasn't inclined to discuss the proposed uses at this time.

IV. PUBLIC COMMENT

Kevin Schmidt of 41 Harborview Drive, Rye asked why the building couldn't be left alone to decay. Chair Moreau said it would eventually demolish itself if it wasn't renovated.

Andrea Ardito of Northwest Street said she hoped that people could donate their time and talents to save the building. She said the 90-day timetable made it impossible to do anything.

Ben Shopick of 86 Emery Street said he felt good about seeing everyone come together to save the Carey Cottage and looked forward to working with the Forest Society to find a solution.

Elissa Young of 226 Bartlett Street said New Castle enlisted the Department of Transportation to renovate a building. (Chair Moreau said the Committee had no power to force the applicant to do something different if alternatives weren't decided within the 90-day period.)

James Lurgio of Northbridge, MA said he had been following the petition on Instagram. He pointed out that the Newport Mansions were failing at one point but were now owned by the Preservation Society. He said Carey Cottage could be used as an inn, restaurant, or museum.

Esther Kennedy of 41 Pickering Avenue asked that the Forest Society allow more time. She said she could see the building as the 'Button Factory on the water', or as conference rooms or music camps, or could be utilized by surrounding towns to provide more financial support. She said the City Council should make an offer to the Forest Society.

Emma Rive-Nelson of 87 Richards Avenue said she had been running the 'Save Carey Cottage' Instagram feed and had received about 16,000 'likes'. She said they needed more time.

Reagan Ruedig of 70 Highland Street said she hoped that the Forest Society would hold off after receiving their demolition permit because there were a huge desire to work with them, but if the building was demolished, she hoped that salvage work could be done as well as a thorough historic documentation following the National Park Service's criteria.

Tracy Kozak of 28 Walden Street said she represented the New Hampshire Preservation Alliance, who was working on finding collaborations and solutions on how to save Carey Cottage but needed more time. She read excerpts from their letters to the Committee, noting that they opposed the demolition and urged alternatives and gave examples of collaborations that included the Conservation Commission in Windham that restored homes through long-term leases, provided funding, and found the people to occupy and maintain them; and a curatorship program that leased historic properties within public lands to private entities who managed the funding and found the right people. She said the Preservation Alliance had other tools, like long-term leases, preservation easements, subsidiaries, tax incentives, and grants.

David Choate said he was on the NH Preservation Alliance Board and asked why the State couldn't take over Carey Cottage and maintain it for the Forest Society until a legitimate plan was put forth. He said the Forest Society rejected their offer, and he urged them to reconsider if the two potential buyers didn't work out. (Mr. Savage said he had not rejected the offer and that Alliance didn't return his calls).

Harold Whitehouse asked that the 90-day period be extended so that the process could be slowed down to see if money could be raised by the citizens. He said the cottage had to be saved because Portsmouth had lost too many historic buildings over the years.

Etoile Holzapfel of New Castle stated that the Friends of the Wentworth found a new owner to restore the Wentworth hotel when it was threatened with demolition.

Sheridan Lloyd of 45 Cliff Road asked that the Forest Society withdraw their demolition permit application to allow everyone to work together to achieve a positive result.

Paige Trace of 27 Hancock Street said her letter to the Herald editor was one solution of many. She asked that the applicant pull back the permit and allow the citizens and the City Council time to do something. She said people had no right to demolish it simply because it was in the way.

Richard Nylander of 17 Franklin Street suggested having an open house at Carey Cottage.

Peter Whelan of 100 Gates Street suggested that Portsmouth's upcoming 400th Anniversary use Carey Cottage as a cause and make it a central part of the anniversary.

Tim Myles of 385 Little Harbor Road said the Carey Cottage Trustee should be present at the meetings. He asked whether the Forest Society had considered moving the building. He thought it was a travesty that the Carey Cottage was being considered for demolition.

Maryellen Burke of 13 Porpoise Way said she worked for the Northern Forest Center, whose mission was to protect the northern forests and their communities. She said they renovated old houses by including investors who loaned money for renovations and were paid a modest interest rate when the properties were rented. She said there similar innovative examples for the Forest Society to use instead of outdated reasons of why it couldn't happen for Carey Cottage.

Corinne Morris of 89 Cliff Road said she lived near Carey Cottage and that there was no need to rush to demolish the historic building. She said it didn't require four million dollars to remain standing and couldn't understand the need to destroy it.

Ms. Oakes of 315 Little Harbor Road said everything was vague because the Trustee wasn't present and the Forest Society couldn't say who the potential buyers were.

Susan Bank of 380 Little Harbor Road said she still didn't understand the Society's criteria for an acceptable tenant because she had heard that it could be for profit or couldn't be. She agreed that Portsmouth's 400th Anniversary could focus on the Carey Cottage.

Peter Michaud, the secretary of Portsmouth Advocates, said the Historic Preservation Society could list Carey Cottage to the National Register, which would place no restrictions on the property and would open it up to local grants and other funding opportunities.

Roslyn Weems of 53 Austin Street said her 1804 house's ballroom was built for the Russian Delegation Ball. She said Creek Farm was important and that she wanted to see it saved.

Paul O'Connor of 40 Bracket Road suggested that the Portsmouth Naval Shipyard be partnered with to create a section in their museum to commemorate the Peace Treaty.

Lee Roberts of 66 State Street said the citizens had the responsibility to ensure the restoration of Carey Cottage and retain its significant history for the future.

No one else rose to speak, and Chair Moreau allowed second-time speakers to come forward.

SECOND TIME SPEAKERS

Andrea Ardito agreed that it wouldn't cost four million dollars to renovate Carey Cottage and that there were ways to move around the parameters.

Tracy Kozak read a letter from the National Trust for Historic Preservation, who coordinated public interest and resources to preserve and save old buildings. She said they had a long legacy of engagement and were working on the Northern Pass, and that they helped save Strawberry Banke and other historic sites. She said they urged the Society to consider alternatives to demolition and offered their help in finding non-profit organizations, but they needed more time.

Elissa Young said that a lot of buildings were lost over the years because it was easier to tear them down. She said there were ways to find the money for renovation.

Paige Trace said she was amazed with the great ideas people had come up with but thought it was frustrating that they didn't have all the pieces of the puzzle. She said there was a lack of transparency as to what could and couldn't be done legally. She suggested a trust or a 99-year lease, or a center for the arts which would be a great present for Portsmouth's 400th Anniversary.

Sheridan Lloyd noted that the property had been already preserved by a conservation easement and that it could be a win-win situation if the property were taken over by eminent domain and the restrictions were eliminated. She said it could be used as a museum or community center.

Mimi Park of South Street asked for proof that the restoration would cost 3-5 million dollars.

Ben Shopick compared what it was like to make a film with the enthusiasm of the citizens who wanted to save Carey Cottage.

No one else rose to speak, and Chair Moreau allowed third-time speakers to come forward.

THIRD TIME SPEAKERS

Kerry Vautrot, the Chair of Portsmouth Advocates, the Historic Preservation Advocacy Arm of the Portsmouth Historical Society, presented information on: the restrictions of the Creek Farm property and how they affected potential re-use, the deed, successful examples of conservation and preservation interests, potential options for re-use, and potential funding opportunities to assist in rehabilitating Carey Cottage. The following points were made:

- There are zero restrictions in the documents that preclude the re-use of Carey Cottage, and demolition of Creek Farm would be contrary to the Noels' and the Trust's intent that the property be preserved for the general use of and enjoyment by the public.
- Nothing in the documents defines that the use must be non-profit, harmonious with the Forest Society's mission, non-residential, or non-commercial.
- Based on available information, it was found that the cost to bring the entire building back into re-use would be substantially less than the 3-5 million dollars identified and that estimates suggested a cost of \$1.3-\$1.5 million.
- The Forest Society has previous experience in funding restoration of buildings using historic preservation grants, like the Sawshed building at The Rocks in Bethlehem.
- Examples of successful partnerships to preserve historic places include the Lakes Region Conservation Trust, the Trustees of Reservations, and the Society-owned Monson Center.
- Examples of underutilized historic buildings that were creatively re-used include Strawberry Banke's Heritage House Program, and the Daniel Webster Farm in Franklin.
- Potential re-use strategies include an education center for the Society, a long-term residential lease, an artist live/work space, and a transfer of the property.
- The Society should target historic preservation investors, land trust conservation preservation partners, public-private initiative investors, and arts and crafts movement allies by using international marketing efforts and utilizing paid and earned media and targeted mailing lists.
- Available funding opportunities include grants such as funding from the NH Preservation Alliance, the NH Land and Community Heritage and Investment Program, and the 1772 Foundation as well as tax credits like the Federal Rehabilitation Tax Credit program.

Ms. Vautrot asked the Society to consider the alternatives and take a harder look at their criteria for re-use. She said there was nothing in the binding documents from the deeds, agreements, or Trust that required such stringent re-use criteria. She asked them to publicize reasonable estimates for basic costs to renovate Creek Farm by addressing deferred maintenance and making the interior serviceable. She asked that they pause their rush for demolition for one year so that potential tenants could do their due diligence and historic preservation counterparts could help find the right tenant. She said the Portsmouth Advocates understood that, unless the Forest Society withdrew their permit application, the Committee would have to apply conditions to the future demolition permit. She said, however, that the Portsmouth Advocates would continue working to keep the door open for potential re-uses as well as offer their technical assistance to the Forest Society and their prospective tenants in their commitment to save Creek Farm.

No one else from the public rose to speak.

Mr. Savage stated that he heard some good ideas but reiterated that the solution required the three criteria of entity, funding, and use. He said they had some interested parties and that they weren't at the point where someone had asked them to move the building. He said they did not intend to remove the music conservatory.

Ms. Ward said there was more time before the 90 days ran out and asked why the people who could make a decision were not present at the meeting. Mr. Savage noted that one of their trustees spoke at the previous meeting and that there were 18 trustees who were aware of the conversations. Ms. Ward asked if the Society objected to exploring some of the alternatives offered. Mr. Savage said the Society had been exploring them and were very comfortable with the process they were engaged in with the two parties and were treating it as a private real estate transaction. He also noted that it wasn't difficult to call him to talk about ideas for Carey Cottage and the potential for funds, use, and track record. He felt that there was ample time to work things out with the two interested parties before the building might be demolished. He emphasized that the Society had never said the deadline was July 3. He said they were there for a demolition permit, which had been helpful in motivating people to come up with potential alternatives, but that it wasn't beneficial to delay the issuance of the permit itself.

Mr. Wyckoff said the building was not going to come down on July 3. He said the hearing was to gather all the ideas and he hoped that the Forest Society, in addition to negotiating with the two entities, would consider the Portsmouth Advocates' marketing suggestion. He didn't think that the local real estate agents hired by the Forest Society had spent sufficient time in advertising Carey Cottage as available, noting that he never saw any advertisements. He suggested using an international agency. He said that non-profits were valuable and thought the Forest Society was one of the 'good guys', but he didn't think they would be welcomed in Portsmouth anymore if they pulled the trigger on demolishing Carey Cottage. He also noted that few people knew that they could visit the site, and he felt that the property wasn't being used the way it was stated in the deed. He said he hoped the Forest Society could successfully negotiate. Mr. Savage said he had worked in the area during the last few years and had seen an increase in usage at the site but thought the Society could improve on how to welcome the public.

Ms. Ward asked if the Society had considered using Carey Cottage for themselves. Mr. Savage said it was more than they needed. Mr. Cracknell agreed that the process was working somewhat, but there were still questions about the mechanics and parameters for someone to go in and re-use the building. He said the Committee and community supported the Society's efforts to find an entity to re-use and restore the Carey Cottage and that they would continue to offer alternatives. Mr. Marsilia said he was available to offer his expertise to the Society in making suggestions about preservation and cost retainers.

Chair Moreau closed the public comment.

V. DISCUSSION AND DECISION OF THE COMMITTEE

*Ms. Ward moved to **delay** the issuance of the demolition permit for as long as possible. Mr. Wyckoff seconded for purposes of discussion.*

Mr. Cracknell asked to amend the motion by voting to delay the issuance of the demolition permit for up to the maximum time period allowed under the ordinance (which is July 3rd) and consider three potential conditions as follows: 1) that the Forest Society supply the Committee with written notice on the status of their efforts at the end of the delay period so they had a

record as to whether they could preserve the structure, and 2) that the Society provide written notice to the Committee if a demolition permit is issued, and 3) fully document the Carey-Cottage with a HABS survey prior to demolition and submit such report to the City and the Committee for their records.

Ms. Ward agreed to amend her motion. She also requested the following conditions be added:

- 1) interpretive signage shall be placed on the property indicating Carey Cottage was once there;
- 2) the Forest Society shall consider leaving some of the foundation and retaining walls as evidence of the building and landscape to connect to the interpretative signage;
- 3) the Forest Society shall consult with the Portsmouth Advocates on architectural salvage;
- 4) the Forest Society shall hire a certified arborist to assess the impact of demolition on the Katsura tree; and
- 5) an archaeological study shall be done.

Mr. Wyckoff seconded.

Mr. Cracknell said the second amendment offered by Ms. Ward was that the foundation piece was a consideration rather than a requirement. He said the requirements should be focused on the interpretative signage, the certified arborist, and the archaeological study. He said the issue of leaving some or all of the building's foundation exposed as well as the option of consulting with the Portsmouth Advocates on architectural salvage efforts should be suggestions rather than requirements. Ms. Ward asked that the architectural salvage be a requirement.

Attorney Sullivan said the Committee could 1) approve the application as submitted, 2) approve any alternatives to the demolition plan that had been agreed to by the applicant, or 3) delay the issuance of the demolition permit for up to the maximum time period allowed by the ordinance, which was July 3. Chair Moreau said the Committee could delay the issuance but could ask the applicant whether they would be willing to do them and not require them.

Mr. Cracknell said the amendment that he proposed should use the word 'shall', not 'should consider' for many of the stipulated items as discussed. He said it wasn't an unreasonable request that the applicant provide written notice on the status of their preservation effort or that in the event that they failed to save the building, when the demolition permit has been issued. He said it was standard policy to do a formal building survey and document the building prior to demolition as well as the interpretative signage. He thought the building foundation piece should be optional for the applicant, and he was comfortable with suggesting the tree arborist given the prior testimony provided from the applicants. He thought the applicant would work with the Portsmouth Advocates but was less certain about the archaeological piece because the site was already significantly disturbed. However, he also reiterated that he didn't think everything being considered as a condition of approval should be simply a request. Chair Moreau said they could delay the issuance and that it wasn't unreasonable for the applicant to get back to them with the status or to ask the applicant to work with the Portsmouth Advocates for the survey and documentation.

Attorney Elizabeth Boeppel, counsel for the Forest Society, said she and Mr. Savage appreciated the suggestions but were not prepared to say if the Society would be willing to do the specific

items, although they had agreed that documentation would be required. She said they didn't know specifics, like whether portions of the foundation could be saved, and that they wanted time to explore it but didn't have the authority to agree to any conditions. She said they could ensure that Carey Cottage's history would be preserved if the demolition permit were granted.

Mr. Cracknell summarized that the applicant was prepared to document and do a survey of the building if it was demolished. He said the requirement for the Society to inform the Committee about the status of the preservation efforts seemed acceptable, and that some of the other items, like the foundation, the archaeological study, and the tree arborist were only suggestions to the applicant moving forward. Attorney Boepple stated that they were not agreeing to specific terms. She said the manner in which the documentation was done and who did it and whether it was interpretive signage and so on were details that they wanted time to work out with the appropriate people.

Ms. Ward stated that she was not in favor of approving the demolition permit and that the motion was only to delay the demolition and not to favor it.

VI. DECISION OF THE COMMITTEE

Chair Moreau stated that the motion was to delay the issuance of the demolition permit for as long as possible.

*The motion **passed** by unanimous vote.*

Chair Moreau summarized that the unanimous vote was to delay the issuance of the permit until July 3, the maximum allowed under the Ordinance, with the following requests:

- 1) At the end of the Demolition Delay Period, that the applicant provide written communications to the Committee with information on their preservation efforts; and
- 2) In the event the Carey-Cottage is demolished, that the applicant do a historical survey and documentation of the building.

VII. ADJOURNMENT

It was moved, seconded, and passed unanimously to **adjourn** the meeting at 8:55 P.M.

Respectfully submitted,

Joann Breault
Demolition Review Committee Secretary