

**THE MINUTES OF THE 597TH STATED MEETING OF THE
PHILADELPHIA HISTORICAL COMMISSION**

**FRIDAY, 11 MAY 2012
ROOM 18-029, 1515 ARCH STREET
SAM SHERMAN, CHAIR**

PRESENT

Sam Sherman, Chair
Dominique Hawkins
JoAnn Jones, Office of Housing & Community Development
Rosalie Leonard, Office of City Council President
Sara Merriman, Commerce Department
John Mattioni, Esq.
Pat O'Donnell, Department of Licenses & Inspections
Joseph Palantino, Department of Public Property
David Schaaf, Philadelphia City Planning Commission
Joan Schlotterbeck, Department of Public Property
Robert Thomas, AIA
Betty Turner

Jonathan Farnham, Executive Director
Randal Baron, Historic Preservation Planner III
Jorge Danta, Historic Preservation Planner II
Rebecca Sell, Historic Preservation Planner II

ALSO PRESENT

Meg Sowell, Real Estate Strategies
Stephen Kazanjian, Real Estate Strategies
Paul Sehnert, University of Pennsylvania
Esaul Sanchez, University of Pennsylvania
David Hollenberg, University of Pennsylvania
Jonathan Weiss, Equinox
Pete Staz, Equinox
Sam Olshin, Atkin Olshin Schade Architects
Paul Avazier, Atkin Olshin Schade Architects
Jim Hoolehan, Blue Rock Construction, Inc.
Marlene Goeke, BCA
John Dowlin, Save Our Sites
Marty Cabry, City Council
Matthew Wickland
Mike Black-Smith
Brian Scanlan
Mary Goldman
Bettsy McCoubrey
Chas Larson
Ashley Hahn, PlanPhilly
Jane Golas, PlanPhilly
Christopher Scarlett
Thomas Lloyd
Karen Allen

Alejandro Senderowicz
Mathew Grubel
Aaron Wunsch, University of Pennsylvania
John Gallery, Preservation Alliance
Marianna Thomas, Woodland Terrace Homeowners Association
Mary Daniels, Woodland Terrace Homeowners Association
Magali Larson, Woodland Terrace Homeowners Association
Mark Wagenveld, Spruce Hill Community Association
Guy Laron
Richard Tyler
Paul Boni, Esq., Boni Law
John Mondlak, Commerce Department
Suzanna Barucco, EBK & Partners
Neil Sklaroff, Esq. Ballard Spahr
Judith Sullivan, Dean, Philadelphia Cathedral
Dave Yeager, Radnor Property Group
Michael Ytterberg, BLT Architects
John Bremner, INTECH
Mark Coggin, Thornton Tomasetti
George Thomas, CivicVisions
Gie Liem
Mark Thompson, Mark B. Thompson Architects
Renee Giustino, Mark B. Thompson Architects
Perry Pepper, College of Physicians
Robert Pisano
Cuog Tran, Tran's Fast Track Service

CALL TO ORDER

Mr. Sherman called the meeting to order at 9:05 a.m. Commissioners, Hawkins, Jones, Leonard, Merriman, Mattioni, O'Donnell, Schaaf, Schlotterbeck, Thomas, and Turner joined him. Mr. Palantino, the Department of Public Property designee, replaced Ms. Schlotterbeck, the Commissioner of the Department of Public Property, during the meeting.

MINUTES OF THE 596TH STATED MEETING OF THE PHILADELPHIA HISTORICAL COMMISSION

ACTION: Ms. Merriman moved to adopt the minutes of the 596th Stated Meeting of the Philadelphia Historical Commission, held 13 April 2012. Ms. Leonard seconded the motion, which passed unanimously.

CONTINUANCE REQUEST

ADDRESS: 108 CHRISTIAN ST

Project: Legalize decks, alter front stoop, replace basement windows

Type of Review Requested: Final Approval

Owner: Bill and Gail Tomassini

Applicant: Liz Zimmers, Zimmers Associates

History: 1835

Individual Designation: 6/24/1958, 5/31/1966

District Designation: None

Staff Contact: Rebecca Sell, rebecca.sell@phila.gov, 215-686-7660

ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval of front stair alterations, basement windows, and rear window, with the staff to review details; denial of the legalization of the decks, landings, and stairs, pursuant to Standard 9 and the Roofs Guideline.

OVERVIEW: This application proposes to legalize a series of decks, landings, and stairs installed on the pitch of the roof and down the rear elevation of this building. The railings are vinyl; the decking is Trex. A single-leaf door was installed in a cut-down window opening at the third story. The alterations were performed without the approval of the Historical Commission or a permit from the Department of Licenses & Inspections. A building permit is required for a deck whether the property is designated as historic or not.

This application proposes to install a window at the first story on the rear of this building. No information has been provided about its material or construction.

On the façade, the application proposes to remove brick from a non-historic stair and install an iron railing. The basement windows are also proposed to be replaced in-kind.

DISCUSSION: Mr. Farnham explained that the applicants are requesting an addition continuance of one month as they seek resolutions to the illegal condition.

ACTION: Ms. Hawkins moved to continue the application for one month, to the June 2012 meeting of the Historical Commission. Ms. Leonard seconded the motion, which passed unanimously.

THE REPORT OF THE ARCHITECTURAL COMMITTEE, 24 APRIL 2012

Dominique Hawkins, Chair

THE REPORT OF THE COMMITTEE ON FINANCIAL HARDSHIP FOR 400 S. 40TH ST, 24 APRIL 2012

Sam Sherman, Chair

ADDRESS: 15-19 S 22ND ST

Project: Construct terrace, convert windows to doors, replace roofing and mechanical systems

Review Requested: Final Approval

Owner: The College of Physicians

Applicant: Antonia Oberthaler, The College of Physicians

History: 1912 College of Physicians; Cope & Stewardson Architects

Individual Designation: None

District Designation: Significant, Rittenhouse Fidler Residential Historic District 12/8/1995

Preservation Easement: No

Staff Contact: Randal Baron, randal.baron @phila.gov, 215-686-7660

ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend denial, pursuant to Standards 2, 9, and 10.

OVERVIEW: The application proposes alterations to the south façade of the College of Physicians building. The south façade is obliquely visible from 22nd Street. It proposes the construction of a raised brick terrace on the south façade that would extend out into a garden. As initially proposed, five window openings would have been cut down to create door openings onto the terrace. In the revised application, three window openings would be converted to door openings. Doors would be installed in the enlarged openings. The existing transom configurations would be retained. Views of basement windows would be obscured. Steps would lead down into the garden. The garden paving and features would be altered.

When the College of Physicians building was constructed in 1907, the College did not own the lot on which the garden is now located. It purchased the lot and demolished the livery stable which stood on it in 1910. About 1914, the College planted an informal garden on the site. In 1937, it constructed the front formal portion of the garden with brick paths and a central sundial. The rear portion of the garden was added in 1953, but then reconfigured when the book stack addition was constructed at the rear of the garden in 1956. The garden was reconfigured again in 1961, 1976, and 1991.

The work to the roof would not be visible from the street. Small air conditioning units in the garden would be replaced with a 13-foot-tall cooling tower on the roof. The cooling tower would be visible from the streets behind the building, but not from the front of the building.

In addition to its local designation, the building is a National Historic Landmark.

DISCUSSION: Mr. Baron presented the application to the Commission. Architects Mark Thompson and Rene Giustino represented the application.

Mr. Thompson discussed the neighborhood and its many buildings designed by prominent architects. He stated that they propose to rehabilitate the overgrown garden. They will remove mechanical equipment from the garden and relocate it on the roof. It would be minimally visible from the rear, but not from the front. Three windows would be converted to doors to access a new terrace that would lead to the garden. He showed photographs and plans. He pointed out the centripetal and centrifugal spaces in the garden area. Ms. Merriman asked why they chose to pave the entire rear garden and not reserve some space for greenery. Mr. Thompson

explained that the garden is designed to accommodate the number of people housed in the adjacent interior space. The area surrounded the paved area will be planted. He stated that the current plantings overwhelm the site. Ms. Merriman opined that the revision from five new doors to three is a positive change. Ms. Hawkins stated that she is concerned by the increased width of the terrace. Mr. Thompson stated that he increased the width by about two feet. Ms. Hawkins stated that she is concerned that the garden is becoming a paved event space. Mr. Thompson stated that the College does not intend to have this space permanently tented. He also stated that the city needs such a space. Mr. Schaaf stated that he approved of the latest revisions to the paving of the garden space. Ms. Jones asked about the plantings. Mr. Thompson provided additional details about the garden. Mr. Thomas stated that he approves of the garden design. Mr. Thomas noted that the design being shown on the boards has changed slightly from the design in the drawings the Commissioners received. Mr. Thompson agreed that there had been additional revisions and noted that he has revised drawings for the Commissioners. Ms. Hawkins stated that the Architectural Committee did not see plans for a large paved area. She stated that she is very troubled by the revision. Mr. Thompson stated that they could introduce additional greenery.

Brian Scanlon, a neighbor, introduced himself. He asked about the colors of the proposed paving. Mr. Thompson stated that the paving material would be brick and bluestone.

Perry Pepper, a trustee of the College of Physicians, explained that this project is very important to the College. He stated that direct access to the garden is essential. He stated that the changes would occur at an underutilized, non-historic section of the garden.

Mr. Thomas stated that the furnishing of the garden area is important. He stated that the change to the garden is essential to ensure the future of the institution.

Mr. Thompson stated that they are making the garden usable by moving the large mechanical from it to the roof. He offered to continue to develop the garden plan and resubmit it for additional review.

ACTION: Ms. Hawkins moved to approve all aspects of the revised application presented to the Commission at its 11 May 2012 meeting except the addition of the terrace and the alteration of the garden, which would be remanded back to the Architectural Committee. Mr. Jones seconded the motion, which passed unanimously.

ADDRESS: 2001 MOUNT VERNON ST

Project: Construct roof deck

Review Requested: Final Approval

Owner: Robert Vahey

Applicant: Cuog Tran, Tran's Fast Track Service

History: 1859

Individual Designation: 11/6/75

District Designation: Spring Garden Historic District, Contributing 10/11/2000

Preservation Easement: No

Staff Contact: Randal Baron, randal.baron @phila.gov, 215-686-7660

ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend denial, pursuant to Standard 9 and the Roof Guidelines.

OVERVIEW: This application proposes to replace a roof deck with a larger roof deck at the third-floor rear of this corner building. The new roof deck would cantilever out beyond the end of the building, making it highly conspicuous from N.20th Street and altering the historic spatial relationships of the rear ell, which runs along the street. The existing deck does not extend beyond the edges of the rear ell. Reducing the length of the deck and eliminating the cantilever would result in a deck that satisfies the Standards.

DISCUSSION: Mr. Baron presented the application to the Commission. Expediter Cuog Tran and Robert Pisano represented the application.

Mr. Pisano stated that he represents the owner, who wants to build a deck at the third-floor rear. The occupants find it inconvenient to use the rear yard and would like to build a deck. He stated that the deck would cantilever five feet out beyond the end of the roof. He contended that the deck would be too small for a table and chairs without the cantilever. He claimed that the deck would not be conspicuous. Mr. Tran stated that trees would block the view of the deck. You would need "X-Ray vision" to see the deck. He showed photographs that he had taken earlier in the day. Mr. Pisano stated that you could not see the deck for nine months of the year, owing to the trees. Mr. Tran claimed that other nearby properties have more conspicuous decks. Mr. Sherman stated that the other decks were in place before the district was designated. Ms. Hawkins stated that the Architectural Committee applied the Standards and Guidelines. She stated that the deck should not extend beyond the edges of the rear ell. She stated that the Committee recommended denial because it would be conspicuous. She also noted that the structure was not depicted in the plans and may, in fact, make the deck more conspicuous and inappropriate. Mr. Pisano stated that they would work with an engineer, who would design the structure for the deck. Ms. Hawkins stated that the Committee and the Commission must review the structural plans for the deck, not from a structural or safety perspective, but from a visual and architectural perspective. The structure would sit on the parapet, making the deck more conspicuous than it is depicted in the plans. Mr. Tran again stated that the deck would not be visible from the street. The Commissioners noted that this is a corner building and the deck would be very close to the sidewalk. Ms. Hawkins stated that trees change with the seasons and eventually die. Mr. Tran acknowledged the objection to the cantilever, but asked why the Committee objected to its design. Ms. Hawkins responded that the cantilever is part of its design. Mr. Pisano stated that a denial would constitute a hardship because a smaller deck would not be large enough for chairs and a table. He objected making the occupants run up and down the stairs to the yard. Mr. Thomas agreed that the deck was inappropriate, owing to the cantilever. Mr. Thomas added that a black metal railing would be less visible. Mr. Thomas suggested that the deck could be redesigned to be more appropriate. The steps could be

relocated or redesigned. The steps could be located inside the building. The Commissioners agreed that no cantilever was acceptable.

ACTION: Mr. Merriman moved to adopt the recommendation of the Architectural Committee and deny the application, pursuant to Standard 9 and the Roof Guidelines. Ms. Hawkins seconded the motion, which passed unanimously.

ADDRESS: 400 S 40TH ST

Project: Demolish building, construct five-story residential building

Review Requested: Final Approval

Owner: OAP, Inc.

Applicant: Jonathan Weiss, Azalea Garden Partners, LP

History: 1853; John P. Levy House; Colonial Revival alterations and additions for David P.

Leas, 1902; additions for convalescent home, 1964, 1975

Individual Designation: 11/1/1973

District Designation: None

Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660

COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION: The Committee on Financial Hardship voted to recommend:

1. that the Commission find that the applicant has demonstrated that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed;
2. that the Commission find that the building's required retention would result in a financial hardship for the property owner; and
3. that the Commission approve the demolition, pursuant to Section 14-2007(7)(j) of the historic preservation ordinance.

ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted unanimously to recommend approval in concept, pursuant to Standard 9.

OVERVIEW: This application proposes the complete demolition of the historic house with non-historic additions at 400 S. 40th Street and the construction of a five-story residential building in its place. The application claims that the altered house cannot be used for any purpose for which it is or may be reasonably adapted and that its required retention would impose a financial hardship on the owner. The property is individually designated; it is not within a historic district. The house is currently vacant and in poor condition.

Thomas and James T. Allen, plasterers, constructed the historic house in the Italianate style in 1853 or 1854 for John P. Levy, a partner in the Neafie & Levy Ship & Engine Building Company. James T. Allen is known to have commissioned famed architect Samuel Sloan to design speculative Italianate and Gothic style houses for the area around 40th (then called Till) and Pine Streets in early 1854. Sloan may have designed this house. David P. Leas, a partner in Leas & McVitty, a leather tannery, substantially altered and expanded the house in the Colonial Revival style in 1902. Architects Keen & Mead probably prepared the plans for the Leas rehabilitation and expansion. The house to the south along 40th Street was demolished about 1907; part of its lot was incorporated into the 400 S. 40th Street lot. Twins were constructed on the remainder along Baltimore Avenue. The Italianate-Colonial Revival house at 400 S. 40th Street was converted into a convalescent home in 1942, but still retained its 1902 appearance. In 1964 and 1975, the house was significantly altered and almost entirely encased in a series of unsympathetic concrete block additions. Although the Historical Commission designated the

property on 1 November 1973, it appears that it did not review the 1975 additions and alterations.

In 2003, OAP, Inc., a non-profit entity controlled by the University of Pennsylvania, purchased the property for \$1,685,000. Since the purchase, the University has explored various options for redeveloping the property. The Historical Commission was involved in two of the redevelopment schemes. In July 2007, a developer working with the property owner petitioned the Commission to rescind the individual designation of the property so that he could demolish the building and erect a hotel building. The developer claimed that the building was so altered at the time of designation that the Commission, which appeared to be unaware of the alterations, erred when designating it. The Commission denied the rescission request and suggested that the applicant develop a scheme for his hotel project that would allow for the retention and restoration of the historic house. In 2008, the applicant followed the Commission's advice and developed a scheme for a 10-story hotel building with a connector to the restored house. The Commission approved that proposal in December 2008, but the project was not undertaken owing to community opposition.

Owing to community opposition to the hotel project, the property owner sought alternative developments for the property. In October 2011, the Commission approved in concept a proposal from the current applicant to restore the house to its 1902 appearance and construct a 7-story, L-shaped apartment building in the side and rear yards. That project was likewise not undertaken owing to community opposition.

The community has indicated that it might support a five-story development at the site. The property owner contends with this application that the redevelopment of the site with the rehabilitation of the historic building and construction of anything less than a seven-story building would not be financially feasible.

Section 14-2007(7)(j) of the historic preservation ordinance stipulates that:

No permit shall be issued for the demolition of an historic building ... unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building ... cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that [the] building ... cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed.

Therefore, to comply with the ordinance, the Commission may approve this demolition request only if it first finds that the existing building cannot be used for any purpose for which it is or may be reasonably adapted; in other words, it may approve if it finds that the forced retention of the building would deny the owner of any reasonable economic value and thereby cause a financial hardship. The historic preservation ordinance allows for demolitions in cases of so-called financial hardship to comply with the Fifth Amendment of the US Constitution, which mandates that private property shall not be taken for public use without just compensation. A taking can occur when the government seizes or occupies a property without just compensation, or, more abstractly, when it regulates it without just compensation in such a way that the property loses any reasonable economic value. If the Historical Commission were to require the retention of an historic building that had no feasible or reasonable reuse, and thereby force the value of the property to \$0 or almost \$0, without just compensation, it would be in violation of the Fifth Amendment of the US Constitution. Section 14-2007(7)(j) of the historic preservation ordinance

provides a path for the Commission to avoid the constitutional issue. In fact, if the Commission finds that its regulation removes any reasonable economic value from a property, it must either grant an approval to return some reasonable value to the property (i.e. approve the demolition) or justly compensate the property owner for the taking.

Some background on the hardship clause is elucidating. In 1975, the Fifth Circuit of the US Court of Appeals decided *Maher vs. City of New Orleans*, a case that established the language later used in the hardship provision in Philadelphia's historic preservation ordinance. In *Maher vs. City of New Orleans*, a property owner filed suit, claiming that a New Orleans law designating the Vieux Carré historic district was unconstitutional because it resulted in an uncompensated taking of the property. The court determined that there was no uncompensated taking because the owner had not demonstrated that the sale of the property was impracticable, that commercial rent could not provide a reasonable rate of return, and that other potential uses of the property were foreclosed. The following year, 1976, the Pennsylvania Commonwealth Court applied the Maher criteria in its decision of the *First Presbyterian Church of York vs. York City Council*, bringing that hardship criteria into Pennsylvania common law. In that case, the property owner appealed a decision to deny a building permit application to demolish a building, claiming that the denial resulted in a taking without just compensation. On review, the appellate court affirmed the Court of Common Pleas using the Maher criteria, ruling that the owner had failed to show that the sale of the property was impracticable, that commercial rent could not provide a reasonable rate of return, and that other potential uses of the property were foreclosed, and had therefore failed to show that the denial constituted a taking without just compensation.

The United States Supreme Court confirmed the conclusions of the lower courts when it decided *Penn Central vs. City of New York* in 1978. In *Penn Central*, the US Supreme Court upheld New York City Landmarks Preservation Commission's denial of two Penn Central proposals to build on Grand Central Terminal. Penn Central alleged that New York City's preservation law was unconstitutional because the denials deprived the owner of its full use of the property and thereby resulted in a taking. Rejecting Penn Central's claim, the Court found that government regulation to preserve historic resources is a valid exercise of police power, and a substantial economic burden caused by preservation is constitutional as long as the property retains reasonable value. Significantly, the Supreme Court determined that, although the denials prevented Penn Central from extracting the maximum profit from the station property, the denials did not prevent Penn Central from meeting its investment-backed expectations for the property. In other words, as long as Penn Central could generate returns from the property that equaled its expectations when it first developed the property as a railroad station, no taking had occurred. This decision affirmed the legal basis for preservation agencies to deny demolitions outright in certain cases. To avoid a taking, a preservation agency need not necessarily allow for the highest and best use of a historically-designated property, but only a use that provides a reasonable rate of return, commensurate with investment-backed expectations.

The Maher criteria were incorporated verbatim into the Philadelphia historic preservation ordinance in 1985. Prior to 1985, the Historical Commission did not have the legal authority to deny demolition applications, but only to delay demolitions. With the new authority to deny demolitions in 1985 came new responsibility. To avoid the takings claim and the concomitant constitutional challenge, the Commission's hardship process must be reasonable and must allow for the demolition of a historic building, regardless of its significance, when the denial of the demolition permit would deprive the owner of any reasonable economic value. Unreasonably requiring the retention of a historic building, for example, because of its

outstanding architectural significance, would constitute a taking without just compensation, thereby violating the owner's constitutional rights and placing the preservation ordinance in legal jeopardy. The task facing the Historical Commission and its advisory committees with this application is to determine whether the denial of the application and required retention of this building would deprive the owner of any reasonable economic value.

In its application, the property owner and its developer partner claim that the forced retention of this historic building would result in a financial hardship. The applicant has provided documentation to support that claim. The Historical Commission has retained a consultant, Real Estate Strategies, Inc., to evaluate the financial and real estate aspects of the application. The consultant's report is included with the application materials.

If the Commission finds that the building cannot be used for any purpose for which it is or may be reasonably adapted and approves the complete demolition, it must then consider whether the proposed construction meets the various review criteria and standards.

DISCUSSION: Mr. Thomas recused because he is consulting with the developers on a different project.

Mr. Farnham presented the application to the Commission. Architects Sam Olshin and Paul Avazier, David Hollenberg, Paul Sehnert, and Esaul Sanchez of the University of Pennsylvania, and developers Jonathan Weiss and Pete Staz represented the application. Meg Sowell and Stephen Kazanjian of Real Estate Strategies, Inc., the Historical Commission's independent consultants, attended the meeting to answer questions on their independent financial assessment of the application.

Mr. Farnham began the discussion with a review of the financial hardship provision in the preservation ordinance. He stated that many observers of the Commission fail to understand the critical purpose of the hardship provision, which allows the Historical Commission to act constitutionally. He stated that the Commission must deny demolition applications in cases when the denial does not result in a taking without just compensation in the constitutional sense. He stated that the hardship provision gives the Commission a mechanism to determine whether a denial of a demolition application would constitute a taking without just compensation and therefore be unconstitutional. He suggested that the Commission review the issue of demolition, hardship, and takings from a historical perspective.

Mr. Farnham presented a Powerpoint presentation to accompany his review of the hardship provision. He stated that, from its establishment in 1955 to the implementation of the current preservation ordinance in 1985, the Philadelphia Historical Commission, like most municipal preservation agencies, was authorized to postpone but not prevent demolitions. Until the 1970s, the prevailing legal opinion held that the denial of a demolition would result in a so-called taking and thereby violate the Fifth Amendment of the U.S. Constitution, which mandates that: "private property [shall not] be taken for public use, without just compensation." A taking can occur when the government seizes or occupies a property without just compensation, or, more abstractly, when it regulates it in such a way that the property loses any reasonable economic value. A taking can occur if the Historical Commission regulates a property in such a way that it loses any reasonable economic value and does not compensate the property owner for the loss. The hardship provision in the preservation ordinance is meant to identify those situations when the requirement to retain a historic building causes the property to lose any reasonable economic value and that value could be recovered with the demolition of the building.

Mr. Farnham explained that, to avoid the takings problem, Philadelphia's original preservation ordinance of 1955 authorized the Historical Commission to delay but not deny demolitions. The ordinance mandated that the Commission shall, within sixty days after the date of the application, determine that:

1. There is no objection to the demolition or alteration of the building; or
2. The purposes [of the ordinance] may be best achieved by postponing the demolition or alteration for a designated period. No order postponing a proposed demolition shall be for a period in excess of six months.

Empowered to delay, but not deny, demolitions for up to six months, the Historical Commission witnessed the demolitions of more than 500 designated buildings between 1955 and 1985. However, the prevailing legal opinion on preservation regulation and takings changed in the 1970s.

Mr. Farnham reported that the change in legal opinion is evidenced by the *Maher vs. City of New Orleans* case, which the United States Court of Appeals decided in 1975. The court upheld the designation of the French Quarter in New Orleans as a historic district and the subsequent denial of an application to demolish a Victorian cottage in the district. The court found that plaintiff failed to demonstrate that the denial constituted a taking of private property for public use without just compensation. The court asserted that, to prove that a taking has occurred, the plaintiff must show that the denial so diminished the value of his property as to leave him with nothing. The court concluded that, to substantiate a claim of financial hardship, a property owner must demonstrate that:

1. the sale of the property is impracticable;
2. commercial rental cannot provide a reasonable rate of return; and,
3. other potential uses of the property are foreclosed.

In the *First Presbyterian Church of York v. City Council of the City of York*, decided in 1976, the Pennsylvania Commonwealth Court applied the Maher hardship standard and upheld York's denial of an application to demolish an historic Italianate villa. The court decided that the property owner had failed to show that the building could not be feasibly adaptively reused and concluded that York's actions were constitutional; they did not result in a taking.

With the York, Pennsylvania case, the Maher hardship standard was brought into Pennsylvania law. It requires that, to prove a hardship, the property owner must demonstrate that:

1. the sale of the property is impracticable;
2. commercial rent could not provide a reasonable rate of return; and,
3. other potential uses of the property are foreclosed.

Mr. Farnham related that the conclusions of the lower courts were confirmed by *Penn Central vs. City of New York*, which the United States Supreme Court decided in 1978. In *Penn Central*, the US Supreme Court upheld New York City Landmarks Preservation Commission's denial of two Penn Central proposals to build on Grand Central Terminal. Penn Central alleged that New York City's preservation law was unconstitutional because the denials deprived the owner of its full use of the property and thereby resulted in a taking. Rejecting Penn Central's claim, the Court found that government regulation to preserve historic resources is a valid exercise of police power, and a substantial economic burden caused by preservation is constitutional as long as the property retains reasonable value. This decision affirmed the legal basis for preservation agencies to deny demolitions outright in certain cases.

Mr. Farnham stated that, following these precedent-setting court decisions upholding the constitutionality of preservation regulation with the so-called hardship provision, municipalities across the country revised their preservation laws, authorizing preservation agencies to deny demolitions in instances when buildings could be feasibly reused and thereby retain reasonable economic value. Philadelphia rewrote its ordinance, adopting the Maher hardship test verbatim and authorizing the Commission in 1985 to deny demolitions outright unless the owner proves that the historic building cannot be reasonably reused. Section 14-2007(7)(j) of Philadelphia's historic preservation ordinance directs that:

No permit shall be issued for the demolition of an historic building ... unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building ... cannot be used for any purpose for which it is or may be reasonably adapted.

In order to show that building ... cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that:

1. the sale of the property is impracticable;
2. commercial rental cannot provide a reasonable rate of return; and,
3. other potential uses of the property are foreclosed.

With the new authority to deny, not merely delay, demolitions, the Historical Commission accepted a new responsibility. When reviewing demolition applications, the Historical Commission must determine whether the historic property can be reasonably reused. If the Commission finds that the property cannot be reasonably reused, in other words that its regulation removes all reasonable value from the property, the Commission must either justly compensate the owner or approve the demolition, restoring some reasonable value to the property, to comply with the Fifth Amendment of the U.S. Constitution.

Mr. Farnham added that relative historic significance is not a factor in hardship determinations. The ordinance prescribes the same hardship test for all buildings that are individually designated or contribute to a historic district. There is not a strict hardship test for important buildings and a less strict test for lesser buildings. Independence Hall and a contributing row house would undergo the same hardship test. He also explained that to establish a claim of hardship, the ordinance requires proof that no reasonable owner, not merely the current owner, could feasibly undertake an adaptive reuse. In other words, to establish a claim of hardship, the ordinance requires proof that the property itself, not any particular owner, suffers from an insurmountable deficiency such as poor condition, configuration, or location that renders any adaptive reuse infeasible. The financial circumstances of the current property owner, i.e. the person applying for the demolition permit, are essentially irrelevant. The Historical Commission has a separate hardship process, called unnecessary hardship, for persons and organizations facing financial difficulties.

Mr. Farnham reported that the Committee on Financial Hardship voted to recommend:

1. that the Commission find that the applicant has demonstrated that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed;
2. that the Commission find that the building's required retention would result in a financial hardship for the property owner; and,
3. that the Commission approve the demolition, pursuant to Section 14-2007(7)(j) of the historic preservation ordinance.

Mr. Farnham reported that the Architectural Committee limited its review to the architectural aspects of the new construction and voted unanimously to recommend approval in concept, pursuant to Standard 9.

Paul Boni introduced himself as an attorney representing some neighbors and stated that he would like to make some comments. Mr. Sherman informed Mr. Boni that he would have an opportunity to make comments after the applicants had presented their case to the Commission.

Messrs. Hollenberg, Sehnert, Weiss, and Staz introduced themselves to the Commission. Mr. Hollenberg stated that they are requesting the Commission's approval of their application for complete demolition of the building at 400 S. 40th Street because the building cannot be reasonably adaptively reused. He stated that his team understands the gravity of their request and they do not make it lightly. He stated that, in the nearly 10 years that the University has owned the property, it has attempted four campaigns to preserve and reuse the building. None have been successful. He stated that they do not file application with enthusiasm, but have been left with no options. He stated that the property was blighted when acquired by the University. It had been used as a nursing home, which was failing and was troubling for the University and the neighborhood. He stated that the University purchased the property to redevelop it from a community detriment to an asset.

Mr. Hollenberg stated that the University has undertaken four campaigns to attempt reuse of the property. First, immediately after acquisition, an architecture firm was retained to determine if the property could be reused for residential purposes in its existing configuration, with the 1960s and 1970s additions, or in a restored version. That study showed that neither version of the project was feasible.

Next, the University attempted to place an academic facility in the building. He noted that the University is structured such that the dean or administrative head overseeing the department or center is responsible for providing the funds for a construction project to house that department or center. Mr. Hollenberg stated that they marketed the property within the University to those looking for new facilities, but all potential users rejected it owing to the "daunting" costs of rehabilitation. Also, the distance from the main part of campus dissuaded some who considered it. Also, the University is primarily expanding to the east, not the west. As a result, none of the internal initiatives to reuse the property bore fruit.

Mr. Hollenberg explained that, after no institutional use could be found, they issued a Request for Proposals (RFP) soliciting ideas for reusing the property in 2006. He stated that the RFP did not take a position on the retention or demolition of the building, but simply requested proposals for the reuse of the property. He stated that they received a variety of responses to the RFP, which are summarized in the application. Three of the responses proposed demolishing the house and building new residential developments. The University selected a proposal for an extended-stay hotel, which would have retained and restored the historic house and constructed a new 11-story building attached to the house. The historic building would have contained eight or ten hotel rooms as well as the common spaces. The Historical Commission approved that proposal, but the neighbors vehemently objected to it. Eventually, the developer withdrew the proposal owing to the community objections. During the review of the proposal, the developer requested that the Commission rescind the historic designation of the property. The developer contended that the property must have been designated in error. First, the developer argued that the property had been so significantly altered before the designation that it retained no integrity; however, the Commission appeared to be unaware of the alterations when it designated the property. Second, the Commission failed to review the plans for the subsequent

alterations, which further eroded the integrity of the building, completely encasing it in non-historic additions. The developer sought the rescission of the designation owing to major errors on the Commission's part in the 1970s, but the Commission denied the rescission request in 2007.

Mr. Hollenberg stated that the University issued a second RFP, which again took no position on the preservation of the building. It asked for good ideas from the marketplace for development that would require the minimum of zoning variances. The property is zoned R5, which would allow townhouses up to 35 feet in height. About half of the responses proposed demolishing the historic building; the other half proposed retaining it. The University selected a proposal to retain and restore the historic building and construct a new building, both of which would be used for graduate student housing. Mr. Hollenberg stated that the University is in need of additional graduate student housing. The proposal included a seven-story, freestanding building as well as the restored historic building. The Commission approved that proposal. None of the neighbors supported the proposal at the Historical Commission's meetings. Many neighbors, including members of the preservation community, opposed the density and height of the proposed new building and advocated for the demolition of the historic building to allow for the construction of a shorter new building. The neighbors advocated for a building that would better fit the character of the area than would the proposed seven-story building.

Mr. Hollenberg reported that, after the neighbors objected strenuously to the proposed seven-story building, which would have allowed for the restoration of the historic building, the University determined that there was no feasible project that would include the restoration of the historic building and a new building that would also meet with the approval of the neighbors. He stated that the University is persuaded that no building shorter than seven stories will produce an adequate income to subsidize the restoration of the historic building. Anything less than seven stories will not generate the income to support the project. He stated that the University had proposed projects at 11 stories, nine stories, and seven stories that were financially feasible, but the neighbors had rejected all of them. Nothing below the seven-story "break point" works. That is the core of the financial hardship argument.

Mr. Hollenberg concluded that the University has worked very hard for 10 years to find a redevelopment solution that preserves the historic building, but has not been able to identify a project that is financially feasible and is supported by the community.

Mr. Weiss offered to guide the Commission through the financial analyses in the application. Summarizing, he explained that the reason that projects with new buildings below seven stories do not work is that as the new building gets smaller, the income from rents is reduced, but many costs, especially the cost to renovate the historic house, remain constant. The fixed costs for new building include the cost of the green roof, elevators, trash compactors, and foundation. Also, many of the operating expenses like equipment maintenance costs remain constant regardless of the height of the building. He stated that they can construct a financially feasible building of five stories, but they need a larger footprint than the lot with the historic building will allow. He concluded that seven stories with the historic building works financially; five stories with the historic building does not. He offered to answer the Commission's questions.

Mr. Sherman informed the audience that the Commission had retained an independent consulting firm to analyze the application. He invited the independent consultants to present their findings to the Commission. Meg Sowell and Stephen Kazanjian of Real Estate Strategies, Inc. introduced themselves. She stated that her firm does economic, financial, and market analysis of real estate projects throughout the mid Atlantic region. Ms. Sowell stated that they

briefed the Committee on Financial Hardship. She stated that her charge was to investigate the property independently to determine if it could be reasonably reused as a stand-alone building or with an addition and to scrutinize the financial analyses in the application to determine if they were accurate and complete. She stated that they independently verified all of the assumptions in their own analyses as well as the applicant's analyses. For example, they fully investigated the market for historic preservation tax credits to determine how much they are worth and how much equity could be raised from them. Similarly, they compared the construction cost estimates in the application to numbers that they obtained from reliable, independent contractors working in the area. She reported that they independently verified the numbers that were used to generate the financial forecasts. She summarized that they determined that the historic structure would be so expensive to renovate that they concluded that it would not be possible to adaptively reuse it in a way that would produce a reasonable financial return. She explained that they had originally overestimated the historic tax credit, but had revised their report to accurately reflect the credit. She stated that the supplement dated 3 May 2012 included that revision. She stated that the implication of this lower, accurate tax credit is that the potential projects that save the house are even less feasible than initially projected.

Ms. Sowell stated that they considered rental apartment projects first. In the first scenario, they tested whether one could rehabilitate the historic house and construct a five-story building that would be financially feasible. She reminded the Commission that the University had stated that the break point was seven stories. In the second scenario, they tested whether the demolition of the historic structure and construction of a five-story building would be a financially feasible project. Ms. Sowell stated that to test these scenarios, they needed to know what rents could be garnered with the proposed buildings at this location. She stated that they did not simply accept claims about potential rents, but searched out comparable rental buildings in the area and evaluated their rent structures to confirm that their rental income estimates were accurate. She stated that they identified three apartment buildings as closely comparable to one that might be created at the site in question. Those comparable buildings were the Hub, Chestnut Hall, and Pine Arms. She stated that Pine Arms is diagonally across the street from the site in question. She stated that they then used the rents in pro-forma analyses to determine if the rents would support profitable projects or if the rents would need to be increased above market value to make the projects profitable. She stated that they considered whether the projects would generate market-rate returns on investment. She pointed to a table in her report and stated that the effect of saving the historic building means that the rents would need to be pushed 21.5% above market rate to make the renovation project with five-story new construction feasible. She stated that they therefore concluded that the project that saves the historic building and includes a new five-story building is not financially feasible. She stated that they then ran their analysis on the new five-story building without the historic house, which is currently proposed by the developer, and, as the developer has claimed, that project is financially feasible. She stated that the project is feasible because, without the historic house, the construction costs are lowered and more units are created. The independent consultants concluded that there was no feasible rental apartment project that includes the retention of the historic house and a new building of five stories or less. They also concluded that the demolition of the historic house and the construction of a five-story rental apartment building would produce a financially feasible project.

Ms. Sowell stated that after completing the apartment reuse study, they considered a residential condominium reuse. She noted that the University undertook an attractive condominium project at 42nd and Pine Streets, two blocks to the west of the site in question. She stated that after considering the market and the costs, they determined that there was not a feasible condominium project at the subject property at 40th and Pine Streets. She stated that the rehabilitation costs for the historic house were a factor. She also noted that a condominium

project would require the transfer of the land from the University to the condominium owners; therefore, the University would require some compensation for its investment in the land.

Ms. Sowell then explained that they investigated the possibility of using the historic house for affordable housing. She stated that they looked carefully at an affordable housing project that would use the same bedroom configuration as the proposed five-story graduate student housing plan, but included affordable housing tax credits. She noted that the tax credits would help fund the project, but that the credits would also place some restrictions on the rents and therefore the income. She directed the Commission to a table in her report that summarized the analysis. The table shows the rents assumed, which are based on 50% of the Pennsylvania Housing Finance Agency Area Median Income. She noted that rents at 60% are allowed, but some must be set at 20%; therefore 50% makes a good estimate or proxy. She stated that the neighborhood is not very conducive to affordable housing. It is a student rental neighborhood. The units are small, best fitting the needs of senior housing, not families. She stated that when they ran the analysis for affordable housing, with all of its subsidies, they that the project had a funding gap of \$980,000, meaning that an affordable housing project is not feasible; it is not a reasonable alternative.

Ms. Sowell stated that they then considered whether a commercial rental project would be feasible. She stated that University City commercial rents are about \$17 or \$18 per square foot. With such rents, no project that involves the adaptive reuse of the house is feasible.

Ms. Sowell stated that they concluded there is no way to adaptively reuse this property in a way that would produce market-rate rents or reasonable rates of return. She stated that they concluded that there is no financially feasible way to reuse this property. She stated that, subsequent to coming to that conclusion, she was provided with a letter authored by the Preservation Alliance that offered a critique of the first version of their report. She stated that the Alliance letter asked why they had not considered the possibility of reusing the building without constructing any new building. She stated that they had considered that scenario, but had not documented it in their initial report. Therefore, they documented their analyses of a stand-alone rehabilitation of the house in their 10 May 2012 memorandum to the Commission. First, they considered the case in which the house would be sold to a developer and renovated for apartments. They assumed that the University would recover its purchase price, but lose its 10 years of carrying costs. They assumed that the non-historic additions would be removed and the house restored. The house would be converted to 10 apartment units. Ms. Sowell stated that they ran a financial analysis on such a project and concluded that there would be less than a 1% return on equity to the investor. She stated that that was an unacceptable rate of return by anyone's measure. There would be no reason to take the real estate risk for a return like that. They then considered a second scenario, in which the University would lease the building at a rate of \$20,000 per year to a developer, thereby removing the acquisition price from the equation. Ms. Sowell stated that the same 10-unit apartment project would produce a return on investment of 1.91%, which is still a very low rate. Ms. Sowell stated that they investigated the 11% return-on-equity rate that the University used in its application and found that it is consistent with the expectations of equity firms operating in the market. She stated that the 11% rate is the expected rate for a local firm she worked with on a Philadelphia project.

Ms. Sowell stated that they then considered conversion of the building to an office building. She stated that office buildings have a gross space and a net leasable space, which excludes stairs, corridors, and other common areas. She stated that buildings that are converted to office space rather than constructed as office space tend to be inefficient. She stated that in this case they used an efficiency factor of 75%, meaning that 75% of the total gross space could be leased.

New office construction is typically 80% to 90% efficient. She stated that they used the top of the market rent of \$18 per square foot. She explained that lenders will lend at an 80% loan-to-value ratio on apartment buildings, but no more than a 70% loan-to-value ratio on office structures. The number could, in fact, be lower, but they selected 70% to be aggressive. Analyzing the office building project, they determined that it would have return-on-equity rate of 2.8%, which is very well below a rate that any investor would accept.

Ms. Sowell stated that they considered every possible conversion for this property. She stated that they investigated a restaurant use. They spoke to a restaurant consultant about a potential restaurant project at the site. Ms. Sowell noted that the conversion costs for a restaurant are high because of the equipment and systems that must be installed. She stated that the restaurant consultant stated that the conversion of the existing building would cost \$250 per square foot. She stated that the financial analysis should that a restaurant project was infeasible, even if you assume very high rents. She stated that "the numbers were just awful."

Mr. Sherman asked if anyone in the audience wanted to comment. Mark Wagenveld, the current vice president and the immediate past president of the Spruce Hill Community Association, stated that his Association is committed to historic preservation. He reported that the Association's zoning committee has been "wrestling" with this property for five or six years. At the committee's recommendation, the Association's board of directors voted in February 2012 not to oppose the demolition of the house or the removal of the property from the Philadelphia Register of Historic Places. He stated that 19 of the board's 24 members were present for the vote. He stated that they believe that any project that would make the restoration of the feasible would require a new building so large that the neighbors would oppose it. He stated that the Association has decided that it is time to move forward with the redevelopment of this property.

Guy Laron introduced himself as a developer and landlord in the University area. He stated that he is a graduate of the University of Pennsylvania. He stated that he owns an adjacent property. He stated that he hopes that this property is developed soon and in a responsible manner. He stated that the University has been a good neighbor. He stated that he opposes this application. He stated that he would show the Commission 10 examples of redevelopment and one recent purchase in the neighborhood. He stated that the houses, some historic, others not, have been rehabilitated and operate profitably. None of the owners have built new buildings to amortize the cost of the rehabilitation. He said that he would discuss how the consultant's numbers differ from the "real" numbers. Mr. Laron stated that Vuong Le purchased the twin at 4101 Pine Street for approximately \$146 per square foot and renovated it for \$75 per square foot. Mr. Laron claimed that Mr. Le is obtaining about a 6% return on his investment. He also noted that the house was once occupied by painter Hermann Herzog. He presented a letter from Mr. Le and showed photographs of the twin. Mr. Laron then spoke about 4100-08 Pine Street, a single-family home. It is designated as historic. He stated that it was purchased by Chris O'Donnell and his sister. It is 6,500 square feet. It was purchased for \$720,000 and renovated for \$50 per square foot and the owners will spend another \$25 per square foot on it. It was purchased for about \$100 per square foot and renovated for less than \$100 per square foot and is used as a home for two families. He provided a letter from Mr. O'Donnell and showed some photographs of the building. Mr. Sherman noted that the building is designated as historic and was renovated without the Commission's approval or permits. He stated that the Commission has requested that the Department of Licenses & Inspections cite the property owner for the illegal work. Mr. Sherman stated that the construction costs Mr. Laron had quoted were much lower than those he encountered in his business as a real estate developer. Mr. Sherman suggested that Mr. Laron should be clear about the conditions under which the construction was conducted. Mr. Laron introduced 431-33 S. 43rd Street, which was purchased for condominium conversion. The

University contributed an empty lot. The buildings are not historic. They were shells and were reconfigured with new construction. The condominiums “essentially” sold for \$250 per square foot. The purchase price of the houses was approximately \$100 per square foot. Mr. Laron estimated that the construction costs were about \$100 per square foot. He showed a photograph of the front porches and a copy of an online real estate advertisement for one of the units. He explained that the parking spaces were sold for \$25,000 each. Mr. Laron introduced a project located at 4233-35 Spruce Street [actually 4333 Spruce Street]. He said that it was a drug bar with cheap rental apartments above. He renovated it. It is 6,000 square feet. He stated that it is now Local 44, a bar which he suggested everyone should patronize. He stated that he converted two apartments into an up-scale beer store, a bottle shop. He stated that he purchased the building for \$160 per square foot and renovated it for \$60 per square foot. He stated that the commercial tenant undertook the fit-out; he did not. He showed a photograph of the building. He apologized for not having more information about it. Mr. Laron next discussed a joint venture between the University of Pennsylvania and Campus Apartments, in which a building designated as historic was converted to condominiums. He did not provide an address. He stated that he did not know “what Penn asked in return for the contribution of this building, this historic building,” but the condominium units sold for \$295 to \$300 per square foot. He stated that, assuming Campus Apartments paid the University something for the property and made a profit, the construction costs must have been below \$300 per square foot. Mr. Laron stated that he purchased a six-unit building across the street from the one he just discussed. He paid \$434,000 for it, or about \$100 per square foot. He “finished” it for about \$75 per square foot. He stated that he rents for about the same amounts quoted by the Commission’s consultant. He stated that he gets about a 6% return without building a 50,000 square foot building behind it. Mr. Laron stated that Campus Apartments converted a building at 43rd and Spruce Streets to condominiums. He stated that the sale prices at that building are in the low \$300 per-square-foot range. The sales prices are about \$350 per square foot. He showed a photograph of the building and held up a listing of the condominium sales. Mr. Laron stated that non-profits have recently purchased two properties near the 40th and Pine location. They are typical of projects in the area. In the first case, the University hospital system demolished a mansion and built a 10,000 square foot hotel to house people involved in organ transplants. The rooms rent for \$60 per night to relatives of transplant patients. It is not a historic building or a renovation, but it shows what can be built on the sites of demolished mansions. It was built for \$500 per square foot and shows what can be done when there is no expectation of a return on investment. Mr. Laron stated that there are many options for 400 S. 40th Street if one is not looking for a return of the investment. In the second case, Mr. Laron stated that a rabbi constructed the Lubavitch House on the 4100-block of Spruce Street [actually 4000-block of Spruce]. He held up a copy of an article on Lubavitch House that was published in a student newspaper and stated that the rabbi is renovating the house for \$500 per square foot. He stated that this is another example of what can be done when there is no profit motive. The property was purchased for \$100 per square foot and the “all-in” costs are \$500 per square foot. Mr. Laron spoke about a building at 4116 Spruce Street. An investor wanted to build up his portfolio. He stated that this property returns 4% “cash on cash,” more than the 1% he was making in the money market. The investor paid \$900,000 for the building. Mr. Laron held up a copy of an online real estate listing for the property.

Mr. Laron stated that the University is not a developer; it is in the academic business. It cannot develop properties like private developers can. “Their entire method of doing business ... enters another sphere.” The Commission’s independent consultant has done all of her analysis based on “this Penn world.” He stated that nothing works in the consultant’s world, but everything works in the real world. He stated that his examples come from the real world. The first feature of her analysis that needs to be examined is the system of ownership. Mr. Laron stated that the

developers he has discussed put down 20% when purchasing a property, borrow 75%, and keep all the cash flow. In the University's system, three entities are involved. First, the University wants to retain control of the property and reclaim it after 45 years. They want it to provide discounted housing for graduate students. The second entity, Mr. Weiss, wants to develop it for a fee. He wants 20% of the cash flow, a management fee, and none of his own money in the deal. The third entity is those that provide the equity, who want an 11% return on their investment. Mr. Laron then contested the construction costs included in Exhibit 7 of the application. He said that the pro forma was developed by the University. The consultant reused it. Under this analysis, the University tried to determine if they can renovate the house only. The University purchased the house at about \$100 per square foot. The University purchased a 17,000 square foot building, but does it calculations on the 8,500 square foot historic portion of the building. Mr. Laron observed that the pro forma specifies a construction cost of \$200 per square foot. Someone estimated that it would cost that amount to renovate this historic house, he said. To that, the University added development costs and fees and other costs like architecture and engineer, he explained. Mr. Laron stated that, when he and Mr. Le renovate at less than \$100 per square foot, they include all of these costs. Mr. Laron stated that, when all of the costs are added in, the total cost is almost \$240 per square foot. When you cut and paste this into the other scenarios, even the projects that worked will no longer work, he said. Mr. Laron stated that he has one other issue with the consultant's report. She uses a 5% interest rate. He referred to a building he owns at 43rd and Spruce and stated that he is refinancing with Chase. He stated that he has an interest rate of 3.9% for five years or 4.6% for seven years. He held up a document. He stated that if you use a 4% number instead of the 5% number, the cash flow on \$10 million would shift from \$250,000 to \$350,000. He stated that 5.7% rises to almost 7%. It would still not provide the 11% rate of return. He stated that he had other complaints about the analysis. Mr. Laron stated that he would agree with the consultant's rent numbers, but not with the University's corporate structure, the renovation costs, or the financing. Mr. Laron stated that he did his own analysis and determined that the project would be feasible if one could renovate the house for \$168 per square foot. The consultant only looked at rents. Mr. Laron stated that the consultant provided three alternatives in the attachments to her supplement. In both the "sell historic" and "lease historic" alternatives, the consultant uses the \$240 per square foot renovation cost for her analysis. The proposals do not work, he claimed. Mike Levin would have purchased the building because he does not operate in the \$240 range, he reported. Mr. Laron stated that they also dismissed the condominium sales, but the site is one and one half blocks from where condominiums were sold for \$300 and \$350 per square foot. Mr. Laron stated that the consultant used the \$240 per square foot renovation cost for the office analysis. He stated that he would "concede" that cost because office renovation is a "really valid alternative." He objected, however, to the consultant's use of a 75% efficiency factor to calculate net rentable space. He contended that the entire space could be rented to one tenant. If you rent the hallways, the return is 6%. He stated that the \$18 per square foot office rental rate was not accurate. He stated that he rents retail space at 43rd and Spruce at \$30 per square foot. He mentioned a 7,000 square foot space at 40th and Walnut, for which he had a quote of \$30 per square foot. He stated that a school pays Mr. Weiss \$50 per square foot for rent at 40th and Chestnut. He asked what the return would be if the University rented 10,000 square feet at 40th and Pine for \$50 per square foot. He stated that the Restaurant School bought several properties nearby. Mr. Laron apologized for all of the numbers and then stated that using the whole building at \$18 per square foot, it is 6%; using the whole building at \$30 per square foot, it is 14%; using the whole building at \$18 per square foot, at \$200 instead of \$240, it is almost 12%; using the whole building at \$30 per square foot at \$200, it is almost 30%. Ms. Merriman asked him to define "the whole building." Mr. Laron stated that the consultant analyzed an 8,500 square-foot building with 6,500 usable square feet. His analysis assumes demolishing the non-historic additions and renting to a single user. He stated that the lot is

18,000 square feet. He added that one could pave the lot for 30 parking spaces, each worth \$25,000, and make an additional \$750,000. He apologized for all of the numbers and stated that he only had a few more. He stated that the University paid \$1.7 million for the property and is willing to get a 1% return for 40 years. If the University put in another \$2 million, it could get a 20% return. Why not do that?, he asked. It would make the neighbors happy, he claimed. He concluded that the basis for all of the numbers is the \$240 per square foot renovation cost, which is not backed up by an engineer's report or a contractor's estimate. If this building can be demolished, then any building can be demolished.

Mr. Mattioni asked Mr. Laron if he has offered to buy this building. Mr. Laron stated that he has not offered to buy it, but believes that "he could do it." He stated that he has been "very delicate" about offering to buy it because he wants to have some input into what gets done. "If I am on the list of people who have submitted something, it undermines what I'm doing. ... I'd be happy to do it. I'd be happy to consult with Penn for free. ... Look, if you want me to do it, I'll do it. I think it is profitable, but I prefer to stay in the back and help," he said.

Mr. Sherman asked the applicant and consultant to respond to Mr. Laron's claims. Mr. Boni stated that he would provide copies of Mr. Laron's documents to the Commission. Mr. Laron asked if he could make statements about two more issues. Mr. Laron claimed that one of the developers who responded to the University offered to renovate the house at \$94 per square foot. Mr. Schaaf asked if that was for the entire building, or solely the historic portion of it. Mr. Laron responded that it was for a 17,000 square foot building, which included some of the non-historic additions. Another proposal suggested \$30 per square foot rental rate for the first floor for retail use.

Referring to Mr. Laron's testimony, Mr. Farnham read from Section 4.6.b of the Commission's Rules & Regulations:

Parties to a matter before the Commission shall submit in writing seven (7) calendar days in advance of a Commission meeting any proposed substantial testimony, including any supporting documentation, reports and studies, to be offered at a public meeting of the Commission. ... This rule is designed to afford the Commission members and staff sufficient time to receive, read, and assess substantial testimony before a meeting or hearing. It shall not be interpreted to preclude full public participation or submission of comments at a meeting or hearing.

Mr. Farnham stated that he found Mr. Laron's testimony very difficult to assess as it was presented. He noted that the application materials and consultant's report have been available for a significant period of time, allowing for study and assessment. He stated that Mr. Laron's testimony offered no opportunity to review its assumptions and determine whether his claims about the various projects were accurate.

Ms. Schlotterbeck stated that, based on her experience as the City's Commissioner of the Department of Public Property, the claims Mr. Laron made about renovation costs for this building are not realistic. She stated that he is comparing "apples to oranges." She stated that one cannot compare a single-family renovation to an institutional renovation. She stated that the University is subject requirements that are similar to those that she has confronted when renovating for the City. She stated that Mr. Laron has not provided enough information to allow for assessments of his claims. For example: Are his renovation cost numbers based on union or non-union labor? Ms. Schlotterbeck stated that, based on her experience, the Commission's independent consultant's square-foot costs to renovate are reasonable. She stated that Mr. Laron's numbers are "incredibly low."

Mr. Sehnert, the University's real estate finance expert, countered Mr. Laron's claim that there was no basis for the University's renovation cost estimates and stated that the University had submitted detailed, line-item construction estimates to renovate of the historic house to the Commission. Blue Rock Construction, which is part of the current development team, has generated a detailed, 17-page estimate cost estimate. The University has also provided an estimate by W.S. Cumby. Other estimates construction companies such as Intech present detailed evidence that the construction costs are between \$200 and \$225 to renovate the historic building. Mr. Sehnert stated that these are hard cost estimates that do not include acquisition and other costs. He stated that the cost estimates concur with the numbers used by the Commission's independent consultant. He offered to review the cost estimates line by line with the Commission. He also offered to have the Blue Rock representative, who was in attendance, testify on his construction cost estimate. He concluded that the construction costs of \$200 to \$225 to renovate the historic building are reasonable.

Mr. Sehnert noted that Mr. Laron presented evidence regarding the condominium conversion at 4200 Pine Street and stated that he was the University's representative on that project. He stated that those condominium units are luxury units. He stated that Campus Apartments, the partner, used its own construction firm and took the risks on the project. The construction costs on that project were \$300 per square foot. He pointed out that differences between that property and the one at 400 S. 40th Street are dramatic. He stated that the 4200 Pine Street property is a Horace Trumbauer mansion that had been owned by the American College of Physicians. The University purchased it in the 1980s. It was in "exquisite and wonderful condition" with operating elevators. It had been maintained meticulously by two blue-chip institutions until the day that it was converted for condominiums. It has great grounds and parking on site. On the other hand, the subject property at 40th and Pine was vacant and "in shambles" when the University acquired it. It is in poor condition and is very different from the Horace Trumbauer designed mansion. The two properties are not comparable. Mr. Sehnert added that the University accepted a land price of \$575,000 for the Trumbauer mansion as the proceeds of the condominium sales. He stated that it was not the University's intent to make so little on the project, but, as the developer, it took the risk and must accept the outcome. Mr. Sehnert concluded that the condominium project is in no way comparable to the project under review.

Mr. Sehnert stated that Mr. Laron had been pulling rabbits out of his hat. Mr. Sehnert provided a document to the Commission, which Mr. Laron had submitted to the Zoning Board of Adjustment. Mr. Sehnert stated that Mr. Laron addressed the Zoning Board on 7 October 2008 and claimed that he could have undertaken a project at the 400 S. 40th Street site. At that time, Mr. Laron concluded that \$200 per square foot was the correct renovation cost, which is documented in his letter to the Zoning Board. Mr. Sehnert stated that the document is a matter of public record. He pointed out the contradictions in Mr. Laron's statements regarding this property. In 2008, Mr. Laron had developed a financial analysis of the rehabilitation of this property that set the renovation costs at \$200 per square foot; he now insists that \$75 to \$100 per square foot is the correct cost. Mr. Laron is contradicting himself, he asserted. Mr. Sehnert stated that the University had solicited proposals for the site from Mr. Laron, but he did not respond. Mr. Sehnert also addressed Mr. Laron's claim that a developer had submitted a proposal to the University for the site that estimated the renovation costs at \$94 per square foot. Mr. Sehnert stated that they did receive such a proposal, but deemed the proposal non-responsive to the RFP. He stated that the proposal consisted of a half-page of numbers and a sketch. It proposed a "paint-up, fix-up of the existing nursing home" for rental. He stated that the University determined that the former nursing-home rooms could not be marketed for rental. He concluded that \$94 per square foot proposal was not viable.

Mr. Sehnert objected to Mr. Laron's comments on the analysis at Tab 7. He stated that the Commission's independent consultant reviewed the assumptions and numbers in that analysis. Ms. Sowell, the Commission's independent consultant, stated that she questioned and verified every aspect of the application material. She stated that she verified the construction cost estimates with a contractor who works in Philadelphia, the BFW Group LLC, a construction company. She stated that the principal with whom they consulted at the BFW Group was formerly the director of the Partnership CDC, which develops housing in West Philadelphia. Ms. Sowell stated that she asked the construction company president if he thought that the \$200 per square foot renovation cost was accurate, given his experience in West Philadelphia. She stated that he responded that \$200 was a reasonable number for a non-union job. He explained that a union job would cost \$225 to \$230 per square foot for the "gut renovation" that the building requires. Ms. Sowell stated that she can believe that individuals can do renovations for less, but the University cannot proceed like individuals. She stated that the University must proceed as a responsible landlord. Ms. Sowell explained that she and her partner checked and double-checked every figure. She stated that she has confidence in every number. Regarding the commercial rental rates, she stated that they conferred with Corporate Realty Partners & Co., Inc., a commercial real estate company in the city specializing in office and retail. She stated that that company quoted them \$17 to \$18 for office rentals in University City and \$25 for retail use. She stated that they identified several scenarios for mixed-use projects, but the building has several drawbacks. It does not have an elevator. It is three stories with a very wide staircase. The third-floor level is designed to be a bedroom level with lower ceilings; it would have very limited appeal in the office market. First-floor retail would make access to the upper floors difficult. She concluded that they did not "rubber stamp" anything. She stated that all of the numbers are documented and reasonable. She stated that the University of Pennsylvania cannot be compared to a single-family home rehabilitator who would occupy the property or rent on a small scale.

Aaron Wunsch introduced himself as a teacher of architectural history and historic preservation at the University of Pennsylvania. He stated that his testimony would be short and devoid of numbers. He stated that, if the Commission approves this application, it will send a message that one may purchase a designated property, submit a proposal for a project that does not work financially, and then proceed to demolish the building. He stated that the University may have made a bad decision when it purchased the property, but the Commission should not protect property owners from bad investments. He stated that the University has not made a "bona fide" attempt to sell the property. It has not attempted to convert it to office or residential space without a "gut renovation." He stated that he has not heard a good explanation of the University's reasons for abandoning earlier tower schemes. He stated that the city's most affluent institution is requesting that it be treated as one of the neediest. He asked the Commission to act with common sense.

Mary Daniels, a long-term resident of Woodland Terrace, introduced herself. She reminded the Commission of the resolution of the Woodland Terrace Homeowners' Association to oppose this project. She also reminded the Commission of the letters from individuals on Woodland Terrace who oppose this project. She summarized the resolution. She stated that the Association opposes the demolition and construction. She stated that the house was designed by Samuel Sloan. She stated that the application does not appear to meet the requirements for hardship, but stated that she would leave that argument to the economic experts. She stated that the house has cultural and historical value. She asserted that the new construction would be too dense. She stated that there should be negotiations between the neighbors and the University

directed at problem solving. She stated that she moved to the area in 1959 to be near the University.

Alejandro Senderowicz introduced himself to the Commission. He stated that he has lived in West Philadelphia for many years and has served on various civic and community organizations. He stated that it seemed to him that “the taking was done at the time of the nomination of this structure as a historical structure.” He stated that, since this was done in the 1970s, then the taking had no bearing on the University. He stated that the designation of the property forced the value of the property to \$0, but it was not owned by the University at the time. The University paid \$1.7 million for a building that had no economic value; “they made a bad deal.” The building had constraints on it and the University should not have assumed that the constraint would be removed. He stated that he sat of the Spruce Hill Zoning Committee for years. Property owners would claim that they faced financial hardships and would ask the Committee to support their variance requests to allow them to rent apartments. He stated that the Committee denied those variance requests. He stated that the University “made a bad deal and the person who did that should be fired.” He stated that the Commission should not rescue the University from a bad business deal.

John Gallery of the Preservation Alliance addressed the Commission. Mr. Gallery asked: Is there a sale or lease of the property that is practicable? He stated that the answer to that question is yes. He stated that the current applicants submitted an application for the construction of a seven-story building and the restoration of the house, which the Commission has approved. The project was viable. Nothing has changed. It is still viable. He asked: Is a reasonable rate of return possible? He responded yes to that question. He asserted that the document at Tab 17 shows that there would be an 11% return with that project. Mr. Gallery asked: Are other uses foreclosed? He stated that the answer is no. The seven-story plan shows that the historic house could be reused. He stated that the seven-story project passes all three tests. It is not a matter of interpretation. To find that there is a financial hardship would be an error. The facts are clear and the Commission should not make that error. Mr. Gallery concluded that the cost of renovation per square foot is irrelevant. The application should be denied because the applicants have proposed a feasible project. Mr. Farnham addressed Mr. Gallery’s assertion that the application must be denied because a reuse is viable with the construction of a seven-story building. He again quoted the section of demolition from the historic preservation ordinance:

No permit shall be issued for the demolition of an historic building ... unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building ... cannot be used for any purpose for which it is or may be reasonably adapted.

He suggested that the Commission question Mr. Gallery’s line of reasoning and consider whether the construction of a seven-story, 70,000 square-foot building is a “reasonable adaptation” of the historic building. He asked the Commission members whether the construction of a building many times larger than the historic building was an adaptation of the historic building or something else. He noted that the University had, at one time, proposed erecting the new building, but questioned whether the Commission could compel a property owner to erect such a building to subsidize the rehabilitation of an historic building. He concluded that the Commissioners should focus on the standard, whether or not the historic building can be “reasonably adapted” for reuse. Mr. Gallery responded that the Commission has already approved the project with the seven-story building. Therefore, the Commission has already decided that “it is a reasonable thing to do in terms of preservation of this building.”

Richard Tyler stated that he is a neighbor and claimed that he lives about three blocks from 400 S. 40th Street. He read the following statement:

I should like to speak to two issues before the Commission: first the submission to justify the demolition of 400 South 40th Street on the basis of financial hardship pursuant to Sections 7(f) and (j) of the ordinance and, secondly, the interpretation of Section 7(k)(4) of the ordinance and the criteria applied to consideration of the proposed work at the site.

The University has submitted to the Historical Commission many pages to justify the demolition of 400 South 40th Street pursuant to the financial hardship provisions of the City's Historic Preservation Ordinance at Section 14-2007(7)(f) and (j) and the Commission's Rules and Regulations at Section 9. Despite its many, many pages, the application falls short. For example, it lacks the ten year pro forma and other information that the Commission may request at Sections 9.2 and 9.4 of the Rules. More egregiously and mysteriously the applicant slights Section 10 of the Rules, Financial Hardship and Non-Profit Organizations, particularly at Section 10.2.c, especially 10.2.c. 3-9. At 10.2.c.5, this Section provides for "the impact of the reuse of the existing building on the organization," or at c.6 "the impact of the reuse of the existing building on the organization's program, function or mission," and at c.7 "the additional costs, if any, attributable to the building of performing the organization's service or function within the context of costs incurred by comparable organizations, particularly in Philadelphia," or at c.8 "grants received or applied for to maintain or improve the property," and at c.9 "the organization's budget for the current and immediately past fiscal year." At a minimum, this Commission should exercise its right under Section 10.2.c of the Regulations to request information about this non-profit.

In view of the deficiencies or incompleteness of this application, the assumed due diligence knowledge of the building's listing on the Philadelphia Register and its R5A zoning and the concerns of the neighborhood, I urge this Commission to deny the application.

I should also like to address the interpretation of Section (7)(k)(4) of the Historic Preservation Ordinance and the criteria applied to the assessment of the work submitted for 400 South 40th Street. This section mandates that the Commission consider "The compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape" The Commission, its committees and staff were and are apparently mistakenly under the impression that this applied legally only to local historic districts. At the 14 October 2011 meeting of the Commission, however, the City's attorney observed that absent a formal written opinion of the City Solicitor the Commission "has the discretion to interpret its ordinance as it sees fit." No such written opinion of the City Solicitor exists.

The administrative and legislative history of the Commission and the plain language of the Historic Preservation Ordinance - "historic district or" - clearly warrant the application of this section to 400 South 40th Street. Indeed, if it was meant to apply only to historic districts, there would be no reason to include the "or" term. Section (7)(k)(4) would simply end with the words "historic district."

In 1955 - ten years before New York and eleven years before the National Historic Preservation Act - the City established the Philadelphia Historical Commission. Among

the first commissions in the country with a citywide jurisdiction, it could designate only buildings. As the theory and practice of historic preservation evolved to include districts, the Commission responded by listing individually every building in a given area such as Society Hill, Old City, Spring Garden, Woodland Terrace and the 4000 block of Pine Street. This yielded, in effect, historic districts. Indeed, we called them "de facto districts."

In 1984, the City recognized that many changes had occurred in historic preservation since 1955 and enacted the present ordinance. It authorized the designation of buildings, structures, sites, objects and districts. At Section 7(k) it also applied criteria for the consideration of work. At (k)(4) it applied these criteria to districts. And with the conjunction "or" at (k)(4) in plain English these criteria extend beyond districts per se to include "the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape"

I think that I can speak with some authority to the context and objectives of the 1984 ordinance, for along with the Commission's solicitor, an attorney on Councilman John Street's staff, a member of the Commission staff and I drafted it. Moreover, a Commission staff member and I wrote the original Rules and Regulations.

In the setting of Pine Street, the Woodlands, Woodland Terrace, a National Register historic district and the extraordinarily close adherence of the Zoning Code in this neighborhood, the present proposal must be rejected.

Mr. Tyler submitted a copy of his written remarks to the Commission.

Mathew Grubel introduced himself to the Commission. He also claimed that he lives about three blocks from 400 S. 40th Street. He stated that it is impossible for a consultant to create all of the theoretical scenarios for potential use, especially creative ones. He stated that it is not the consultant's job to create all of those scenarios. He cited Section 9.4 of the Rules & Regulations, observing that "The applicant has an affirmative obligation in good faith to attempt the sale of the property." He claimed that the Commission had stated in the Church of the Assumption case that "the owner must expose the property to the real estate market in a broad manner for a sufficient length of time with reasonable terms and conditions." In addition, "The Commission must scrutinize the marketing of the property to determine whether it reasonably allowed for a sale or rental to occur." He stated that the current application does not demonstrate that the property was offered for sale in a broad manner. It was not listed publicly. There were no "For Sale" signs on the property. Mr. Grubel stated that, as far as he knew, it was not included on any listing services. He stated that a long-term lease is not a sale. The property was not offered in a broad manner. Mr. Grubel claimed that the Request for Proposals in 2006 only invited qualified developers to submit proposals. He stated that he has not seen a list of the developers solicited nor the responses. He stated that one response for 15 units was deemed unacceptable by the University, but may be accepted by another owner. He asked why it was not pursued. Mr. Hollenberg informed the Commission that the proposal referred to by Mr. Grubel was rejected because it would have required the demolition of the historic building. Mr. Grubel said: "OK." He stated that the proposal chosen by the University for the extended-stay hotel was revised to preserve the building. Mr. Grubel discussed the second Request for Proposals to redevelop the site. He claimed that it gave developers two weeks to respond. He stated that he did not see a list of the respondents or their responses, but only a chart summarizing the responses. He concluded, saying that the terms of the lease were very constrained.

Attorney Paul Boni stated that he represents Guy Laron, Matt Grubel, Mary Daniels, Peter Manoogian, Mary Goldman, Magali Larsen, Charles Larsen, Greg Oliveri, Woodland Terrace Homeowners' Association, Katrina Conard, and Maryann Krumlavich. He stated that the regulations provide as follows to pass the test for financial hardship. "The applicant has an affirmative obligation in good faith to attempt the sale of the property, to seek tenants for it, and to explore potential reuses." Mr. Boni asserted that the applicant never attempted a sale of this property. The applicant offered a 45-year lease for the property. Under state and local tax law, a long-term lease is taxed as a sale. Mr. Boni asserted that a long-term lease is not a sale, but is only taxed like a sale. Mr. Boni stated: "If Warren Buffet pays the same tax as his secretary that does not mean that Warren Buffet is his secretary." The transfer tax law is intended to capture more tax. If leases were not taxed, some would find ways to avoid the tax, he contended. A lease is not an affirmative and good faith attempt to sell the property, he claimed. Mr. Boni instructed the Commission that, if it equated a lease to a sale, its approval of this application would not withstand the scrutiny of the courts. The University has not offered the property for sale because it wants to control the property. Mr. Boni stated that the property is residential; it is zoned R5; it is a house. It is and can be used as residential. The University does not want to use it for residential purposes; the University wants to use it as graduate student housing because that would add value to the University and the graduate programs. The University has not satisfied its affirmative obligation in good faith to attempt the sale. Mr. Boni claimed that the Historical Commission interpreted that obligation in the Church of the Assumption case to mean that the property must be exposed to the real estate market "in a broad manner for a sufficient length of time with reasonable terms and conditions." We do not know if the marketing was broad, he said. It was not marketed for a sufficient length of time, Mr. Boni asserted. The 2010 RFP may have required developers to indicate interest within two weeks. He directed the Commission to Tab 12, page 4 in the application, which stated that developers had two weeks to indicate their interest in the project to receive the detailed information about the project. The respondents had two weeks to register their intent to submit a proposal, he observed. The University may have let respondents submit after the two-week deadline, but that was not indicated in the solicitation. Mr. Boni again referred the Commission to the Church of the Assumption case and stated that the property must be marketed with "reasonable terms and conditions." He stated that he "has no idea" of the terms and conditions of the 2006 RFP. He corrected that statement, saying that he does know that the developer could not purchase the property fee simple, but could lease it for 45 years, after which it would revert to the University. He called that a "heavy duty" term and condition. Mr. Boni stated that the University claims that it did not limit the response time to two weeks, but allowed eight weeks. He contended that that was "per se" insufficient time. Mr. Boni claimed that the University is a non-profit institution, but is requiring a for-profit return in this case. Profit is not the goal of this institution. He stated that Guidestar, which tracks non-profits, describes OAP's mission as one to create a more livable atmosphere for students, faculty, employees, and residents of the university City/West Philadelphia community. It does not say that OAP seeks a profit. The University gets value from this property if it can cause it to be developed in a way that helps the University. Graduate housing is a value to the University. Mr. Boni asked: What other properties does the University own and what are the rates of return on those properties? What is the rate of return on the library? How much are the fees for an overdue book? What are they getting for their parks? What are they getting for their ball fields? What are they getting for Houston Hall? What are they getting for any of these buildings? Does that meet the 11% standard? Mr. Boni stated that the Commission can ask the applicant for more information about its mission, its finances, and whether redeveloping this building without a reasonable rate of return would impact the University's mission. Mr. Boni contended that the University could rehabilitate this property without a reasonable return and still continue to be a world-class institution. Mr. Boni stated that

the applicants admit in Appendix 7 that it has a 2.9% cap rate. But there are some problems. There are too many fingers in the pot. There are too many layers of companies trying to draw profits. A single entity could keep all of the profit, he asserted. There is a tremendous amount of open space in the back, he observed. You could increase the profits by building a two or three-story annex. That would increase your return. The calculations are faulty because they bake into the cake the \$1.7 million cost of the property. If the property had negative value today, it had negative value nine years ago, Mr. Boni contended. No claim has been made that the property has lost value. The same conditions existed nine years ago. There was a functioning, albeit blighted, business at the property. Yet the University paid \$1.7 million for it. Why?, he asked. Because it has value, he replied. The University did not want it to slip back into the former use and they wanted to use it. The University threw money at the property and baked it into the cake and now uses it as the reason why they cannot make a profit, he stated. That defies common sense and defies the law of takings, he argued. The law of takings includes something called investment-backed expectations. What is the reasonable expectation of the person at the time they purchased the property? The University knew it was designated and should not have assumed that it could not demolish the house. The \$1.7 million cannot be included in the calculations. It cannot be a taking. Mr. Boni asserted that the University has two choices. It has said that it will not develop west of 40th Street. This property is west of 40th Street. The University should divest itself of the property. It should sell it for a loss. That is not a taking. It is a recession. Many people have suffered real estate losses recently. Sometimes you win; sometimes you lose, Mr. Boni observed. It was a horrible business decision, he claimed. The University should sell the property or develop it itself, without two other layers of entities between the University and the profit. Mr. Boni concluded that the University should develop it as it has developed everything else at its campus, based on what is good for the University, not on a profit motive.

Mr. Farnham objected to Mr. Boni's claim that the Historical Commission had interpreted its ordinance and Rules & Regulations regarding hardship to mean that the property must be exposed to the real estate market "in a broad manner for a sufficient length of time with reasonable terms and conditions." Mr. Farnham stated that he wrote those words as part of the staff's advice to the Commission in the Church of the Assumption case. He stated that that advice related to the facts and circumstances specific to that case. The Commission itself never made any such interpretation as Mr. Boni claimed. That interpretation was the opinion of one staff member, not the Commission.

Mr. Farnham also questioned Mr. Boni's interpretation of the Rules & Regulations regarding hardship. He noted, as had Mr. Boni, that Section 9.4 of the Rules state that "The applicant has an affirmative obligation in good faith to attempt the sale of the property, to seek tenants for it, and to explore potential reuses for it." He also noted that the Section 10.1 of the Rules, which relates to non-profits and hardship specifically, states that:

The Commission recognizes that the provisions of Section 14-2007 of the Philadelphia Code and other sections of these Rules & Regulations may not all have applicability to a property owned and used by a non-profit organization. No single set of measures can encompass the highly variegated types and contexts of buildings held by non-profit organizations.

Mr. Farnham opined that one rule appears to set a very strict standard, while another related specifically to non-profits seems to provide more flexibility for non-profits. He stated that he is not arguing for or against the merits of the application under review, but contending that the Commission has some discretion in this matter. Mr. Farnham stated that the Commission should primarily consider the hardship language in the ordinance, in light of the flexibility in the

Rules & Regulations. The ordinance states that “the owner must demonstrate that the sale of the property is impracticable.” He suggested that the Commission determine whether it has been demonstrated that a sale would be “impracticable.”

Mr. Mattioni recalled that the Commission has considered this property at least twice in the past during hard-fought and contested reviews. He stated that the University presented projects that would have preserved the historic building. He stated that it is unfortunate that the University is no longer pursuing those projects, but is now considering demolishing the historic building. He stated that he has not yet heard an adequate explanation of why the earlier project is not still viable. Mr. Sherman asked Mr. Farnham to recount the Commission’s involvement with this property. Mr. Farnham provided a summary of the Commission’s involvement with this property. In 2007, developer Tom Lussenhop, who the University had selected to develop an extended-stay hotel at the site, petitioned the Commission to rescind the designation of the property with the claim that the Commission had designated it in error. Mr. Lussenhop contended that the Commission was unaware of the major additions and alterations to the building when it designated it in 1973. Mr. Lussenhop also claimed that the Commission had failed to review other major additions and alterations undertaken soon after the designation. He asserted that, had the Commission been aware of the state of the building at the time it considered the designation, it would not have designated it owing to its lack of integrity. The Commission rejected the rescission request and suggested to the developer that he propose a project that included new construction and would allow for the retention and restoration of the historic house. The developer then proposed the 11-story extended-stay hotel and restoration of the historic house. After that project failed owing to community opposition, the current applicant proposed a seven-story building and the restoration of the house. Some neighbors also objected to that project.

FAILED MOTION: Mr. Mattioni moved to deny the application. Ms. Jones seconded the motion, which failed by a vote of 3 to 6. Mses. Hawkins, Leonard, Merriman, and Schlotterbeck and Messrs. O’Donnell and Schaaf dissented. Mr. Sherman abstained.

Ms. Merriman stated that she would move to adopt the recommendation of the Committee on Financial Hardship and approve the demolition. Mr. Farnham asked Ms. Merriman if she was proposing that the Commission find that the building at 400 S. 40th Street cannot be used for any purpose for which it is or may be reasonably adapted. She stated that she was proposing that the Commission find that it cannot be used for any purpose for which it is or may be reasonably adapted. Mr. Farnham asked Ms. Merriman if she was proposing that the Commission find that the applicant has demonstrated that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed. She stated that she was proposing to find that the applicant has demonstrated that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed. Mr. Farnham asked Ms. Merriman if she was proposing that the applicant had met the requirements put forth in the ordinance and Rules & Regulations to demonstrate that the building’s required retention would result in a financial hardship for the property owner. She stated that she was proposing that the applicant had met the requirements put forth in the ordinance and Rules & Regulations to demonstrate that the building’s required retention would result in a financial hardship for the property owner.

ACTION: Ms. Merriman moved to adopt the recommendation of the Committee on Financial Hardship that building cannot be used for any purpose for which it is or may be reasonably adapted and:

1. to find that the applicant has demonstrated that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed;
2. to find that the building's required retention would result in a financial hardship for the property owner; and,
3. to approve the demolition, pursuant to Section 14-2007(7)(j) of the historic preservation ordinance, provided no demolition is undertaken until all prerequisite approvals for the building permit are obtained and the building permit has been issued for the new construction.

Mr. Schaaf seconded the motion, which passed by a vote of 7 to 2. Ms. Jones and Mr. Mattioni dissented. Ms. Turner abstained.

Mr. Boni asked if the motion included the condition that all other permit approvals must be obtained before the demolition is undertaken. Mr. Sherman responded that the motion included such a condition.

The Commission moved to the review of the architectural aspects of the application. Mr. Farnham reminded the Commission that the Architectural Committee had recommended approval in concept, pursuant to Standard 9.

Mr. Olshin, the architect, presented the design for the new construction to the Commission. He displayed a Powerpoint presentation to illustrate his discussion. He explained that the proposed building is a five-story, 66,000 square foot residential building with 122 units and 126 beds. The footprint would be about 14,000 square feet. He stated that they drew design elements from buildings in the neighborhood. He showed images of the neighborhood and setting. He displayed a 1960s plan of the building, which showed some but not all of the non-historic additions. He noted the locations of the later, 1970s additions. He noted that the property has three curb cuts. He displayed an aerial view of the house and pointed out the non-historic additions. He noted that his firm was the architect of the Penn Alexander School, which is nearby. During the design of that building, they investigated the architectural context. He showed slides of the various design inspirations that they drew from the neighborhood. He said that the hairpin fencing, stucco, brick, and slate were all drawn from the neighborhood. He showed a plan with the existing and proposed footprints depicted. The footprints are very similar. He pointed out drop-off areas around the building as well as the trash pick-up. He noted that they are adding as much green as possible to the grounds. He stated that they have added bays and other features to break down the massing. They have retained a landscape architect to design the green space. He showed floor plans of the typical floors. Most of the units will be 450 to 500 square feet, which appeals to graduate students. There will be two banks of elevators. There will be a conference room on every floor. There is a small gym and storage area in the basement. The terraces reduce the apparent height. A green roof will be included to manage storm water. Some pergola structures will also mitigate the mass. The building will have a stucco façade with a rusticated base. The bays will have flat panels. The sills and divided lights will add variety. The building will have small balconies. It will have the character of the neighborhood. The main entry will face Pine Street. Mr. Olshin showed that the building will align with the building to the west along Pine Street. He showed various renderings demonstrating that it will be compatible with the streetscape. He stated that the divisions on the facades relate to the buildings around this one. He stated that the building will be a comfortable neighbor. He discussed the landscaping. He stated that the façade colors were drawn from the neighborhood. He showed the view from the trolley stop, which demonstrated that the building will be compatible with the neighborhood. He stated that the window opening sizes were drawn from buildings in the neighborhood. The brick matches adjacent brick. He stated that the widths

of the two wings projecting from the main façade were picked up from the widths of nearby houses. He stated that the rhythm of the building is compatible with the rhythms in the neighborhood. He stated that they received constructive comments from the Architectural Committee and they are looking to implement them. He reminded the Commission that they are seeking approval in concept.

Ms. Hawkins stated that the Architectural Committee felt that this building “sat well on its site.” She stated that having the end wings mirror the widths of the nearby houses was very positive. She stated that the variations of materials, projections of the bays, banding, stepping down of the terraces, and other features were all well conceived and created a building that would be compatible with the neighborhood. She suggested that, perhaps, the east and west sides of the building could be detailed slightly differently. She stated that the Architectural Committee concluded that the proposed building would be compatible with the buildings of the neighborhood, especially the small apartment buildings. She reiterated that it sits well on the street, meaning that it is compatible with its neighboring structures, the surroundings and the streetscape. Ms. Merriman agreed with Ms. Hawkins assessment that the building was appropriate with its site and surroundings in height, scale, massing, and design.

Mr. Sherman asked the audience for comments. Karen Allen introduced herself. She stated that she lives in University City, but not in the immediate area of this project. She stated that she would occasionally see the new building from the SEPTA trolley depot. She asked how many people would live in the building. Mr. Olshin replied that the building would accommodate 126 persons. She asked how many of the 126 would have cars. Mr. Sherman advised her that parking and traffic issues would be better addressed during the zoning reviews of the project. She stated that her other question related to the density of occupants, which is also a zoning matter. She therefore excused herself.

Mathew Grubel, who addressed the Commission earlier in the meeting, stated that he has a Masters’ degree in historic preservation from the University of Pennsylvania and authored a website on the history of West Philadelphia’s built environment. He stated that every person that turns the corner onto the 4000-block of Pine Street cannot help but recognize this neighborhood’s connections from the 1850s to the present. The yards, the sizes and scales of the houses, the porches, and the trees all tell the story. As it stands now, one does not need to be an expert to discern this. Historically, this neighborhood is one of Philadelphia’s most historical suburban creations. Researchers and historians have used this neighborhood to study early suburban development. Few exist anywhere else. It is inappropriate to view this property in isolation. The ordinance is very clear about the definition of a building, which is a building or complex of buildings and site. The property ought to be considered as a whole. The major importance of the property’s significance derives from the relationship of the building to its site. Therefore, any new building should respect the historical context and patterns. The proposed building does not. This building does not allude to the earlier setting and spatial relations of the property. It is worth noting that the property is zoned R5A. The zoning is a reflection of the historical building and design practices. The patterns have been successful and people continue to call it home due to the environment, Mr. Grubel stated. The Commission should consider the greater context including the multiple National Register districts and nearby locally-designated properties. This property’s significance is about greater historical trends, he claimed. You can dispute who designed it, but it is part of that story and that is the part we would like to retain. From the 1850s onward, speculative developers created unified streetscapes whenever possible, always with a suburban feel. The details varied over time, but the setbacks, gardens, yards, and porches were readily recognizable of the properties within this neighborhood. These are the characteristics that continue to make it desirable to live here, he explained. In closing,

Mr. Grubel stated that the significance about 40th and Pine is not just about the significance of its details, which we are assuming will be demolished, but its sense of place and we would like to see somehow that any new construction that goes there conveys that.

Mr. Tyler asked if the Commission would incorporate his earlier discussion of Section (7)(k)(4) of the Rules into the current discussion. Mr. Sherman stated that they would incorporate it. It reads:

I should also like to address the interpretation of Section (7)(k)(4) of the Historic Preservation Ordinance and the criteria applied to the assessment of the work submitted for 400 South 40th Street. This section mandates that the Commission consider "The compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape" The Commission, its committees and staff were and are apparently mistakenly under the impression that this applied legally only to local historic districts. At the 14 October 2011 meeting of the Commission, however, the City's attorney observed that absent a formal written opinion of the City Solicitor the Commission "has the discretion to interpret its ordinance as it sees fit." No such written opinion of the City Solicitor exists.

The administrative and legislative history of the Commission and the plain language of the Historic Preservation Ordinance - "historic district or" - clearly warrant the application of this section to 400 South 40th Street. Indeed, if it was meant to apply only to historic districts, there would be no reason to include the "or" term. Section (7)(k)(4) would simply end with the words "historic district."

In 1955 - ten years before New York and eleven years before the National Historic Preservation Act - the City established the Philadelphia Historical Commission. Among the first commissions in the country with a citywide jurisdiction, it could designate only buildings. As the theory and practice of historic preservation evolved to include districts, the Commission responded by listing individually every building in a given area such as Society Hill, Old City, Spring Garden, Woodland Terrace and the 4000 block of Pine Street. This yielded, in effect, historic districts. Indeed, we called them "de facto districts."

In 1984, the City recognized that many changes had occurred in historic preservation since 1955 and enacted the present ordinance. It authorized the designation of buildings, structures, sites, objects and districts. At Section 7(k) it also applied criteria for the consideration of work. At (k)(4) it applied these criteria to districts. And with the conjunction "or" at (k)(4) in plain English these criteria extend beyond districts per se to include "the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape"

I think that I can speak with some authority to the context and objectives of the 1984 ordinance, for along with the Commission's solicitor, an attorney on Councilman John Street's staff, a member of the Commission staff and I drafted it. Moreover, a Commission staff member and I wrote the original Rules and Regulations.

In the setting of Pine Street, the Woodlands, Woodland Terrace, a National Register historic district and the extraordinarily close adherence of the Zoning Code in this neighborhood, the present proposal must be rejected.

Mr. Schaaf disagreed with Mr. Tyler's claim that the building was not compatible with its context. Mr. Schaaf stated that the height of the proposed building is consistent with the buildings of the neighborhood. The side yards are consistent with those of the neighborhood. The projections of the building onto Pine Street are consistent with the rhythms of the neighboring buildings. The proposed building would be surrounded by gardens and open space, like the other buildings of the neighborhood. This building is compatible with its neighboring structures, surroundings, and streetscape. The architect has created a building that complements the neighborhood in an exemplary way. Other Commission members agreed.

Mary Daniels of the Woodland Terrace Homeowners' Association presented the portions of the Association's resolution on the project that relate to the design of the new building. She questioned which aspects of the resolution relate to preservation and which to zoning. She stated that the proposed building would not be set back enough from 40th Street and would therefore detract from the "walkability" of the street. She asked the Commission if that was a zoning question. Mr. Sherman thanked Ms. Daniels for her testimony. She stated that she wanted answers to her questions. Mr. Sherman reminded her that the applicant is seeking approval in concept. The Commission would review the design at a later point for final approval. She insisted that the Commission tell her whether the height, setbacks, and density were subject to the preservation review, or only the zoning review. Ms. Hawkins replied that density, in terms of the number of beds, was a purely zoning question, but the overall size and massing of the building, which is driven by density, is a question for the Commission.

Paul Boni, an attorney representing a group of residents of West Philadelphia, again addressed the Commission. He stated that the earlier versions of this project were abandoned because of community opposition and zoning concerns. He stated that the current proposal is also subject to community opposition and zoning concerns. He observed that the proposed developments for this site are caught in a cycle of proposal, opposition, and abandonment. He asked why the Commission would approve this project if it too would eventually be abandoned. Mr. Sherman responded that the Commission plays a specific role in the development review process and cannot base its decisions on the potential actions of another review agency. Mr. Boni stated that he was merely observing that "at one point in the meeting today that argument carried weight and now it's irrelevant." Mr. Schaaf disagreed with Mr. Boni's assessment. Mr. Farnham also disagreed with Mr. Boni and stated that the Commission approved the demolition of the existing building because it determined that the building could not be used for any purpose for which it is or may be reasonably adapted. The Commission did not approve the demolition because of some potential opposition to the potential zoning variances for the proposed seven-story building.

MOTION: Ms. Hawkins moved to adopt the recommendation of the Architectural Committee and approve the construction of the five-story residential building in concept, pursuant to Standard 9. Mr. Schaaf seconded the motion.

Ms. Leonard asked for an explanation of the motion. She asked if the concept proposed for approval included the height and massing. Ms. Hawkins stated that she considered it to include the footprint, height, massing, setbacks, and general design approach of the proposed building. She stated that design details would be subject to change. Mr. Farnham noted that the Architectural Committee's recommendation proposed approval pursuant to Standard 9. He noted that Standard 9 stipulates that new construction should be compatible with not only the site itself but also the environment. He stated that the Architectural Committee found that the proposed building was compatible with the neighborhood. He stated that, if the Commission adopts this motion, it too will be finding that the proposed building is compatible with the

neighborhood, making Dr. Tyler's claim that the Commission was wrongly interpreting Section (7)(k)(.4) moot. Mr. Farnham asked Ms. Hawkins if she was asserting that the proposed building is compatible with the neighborhood and thereby in accord with Dr. Tyler's reading of that section of the ordinance. She stated that she found that the building is compatible with its surroundings and did comply with that review criteria.

ACTION: Ms. Hawkins and Mr. Schaaf's motion to adopt the recommendation of the Architectural Committee and approve the construction of the five-story residential building in concept, pursuant to Standard 9, passed unanimously. Mr. Mattioni abstained.

ADDRESS: 13-19 S 38TH ST AND 3723 AND 3725 CHESTNUT ST

Project: Demolish two buildings, construct mixed-use tower

Review Requested: Final Approval and In Concept

Owner: Episcopal Church of the Saviour, Cathedral Property Holding, Rector Church Wardens

Applicant: Neil Sklaroff, Ballard Spahr LLP

History:

13-19 S. 38th Street: 1855, Church of the Saviour; Samuel Sloan, architect; enlarged and altered by Charles M. Burns, architect, 1889; rebuilt after fire by Charles M. Burns, architect, 1902-1906

3723 Chestnut Street: 1902-1906, Charles M. Burns, architect

3725 Chestnut Street: mid nineteenth century; refaced 1902-1906, Charles M. Burns architect

Individual Designation: 5/7/1981

District Designation: None

Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660

OVERVIEW: The Episcopal Cathedral in partnership with the Radnor Property Group proposes to demolish two buildings at 3723 and 3725 Chestnut Street, known together as the Parish House of the Episcopal Cathedral, and construct a mixed-use tower on the site of the two buildings and an adjacent vacant lot. The application claims that the demolition is necessary in the public interest.

The tower would be constructed on three lots, 3723 and 3725 Chestnut Street, which are designated as historic, and 3727-29 Chestnut Street, which is vacant and not designated. The tower would connect to the Episcopal Cathedral, which is located at 13-19 S. 38th Street and is designated as historic. The tower would house spaces dedicated to the cathedral as well as retail and residential spaces and would include underground parking. A church office building would be constructed to the east of the cathedral on a lot at 3717-19 Chestnut Street, which is not designated. The lot is now occupied by a non-historic apartment building, which would be demolished. The new office building would include underground parking and would provide loading dock facilities for the tower. Like the tower, it would connect to the cathedral. The tower and office building would be separated by a small apartment building at 3721 Chestnut Street, which is not owned by the Episcopal Cathedral.

The Episcopal Cathedral, which was originally known as the Church of the Saviour, was constructed in 1855 by architect Samuel Sloan. The church was significantly altered and enlarged in 1889 by architect Charles M. Burns. After a devastating fire in 1902, the cathedral was rebuilt by Burns. At that time, Burns erected the building at 3723 and refaced the building at 3725 Chestnut to create a connected pair of townhouses that harmonized with the cathedral.

The Historical Commission individually designated as historic the cathedral at 13-19 S. 38th Street and two rowhouses that comprise the Parish House at 3723 and 3725 Chestnut Street on 7 May 1981.

The application requests final approval of the proposal to demolish two buildings at 3723 and 3725 Chestnut Street, the Parish House. The application requests approval in concept of the attachments to and alterations of the Cathedral. The application appears not to request the Commission's approval of the mixed-use tower or church office building, even though both the tower and office building would physically connect to the Cathedral and the tower would be built, in part, on two designated parcels.

Section 14-2007(7)(j) of the historic preservation ordinance directs that:

No permit shall be issued for the demolition of an historic building, structure, site or object, or of a building, structure, site or object located within an historic district which contributes, in the Commission's opinion, to the character of the district, unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted.

The application does not advance a financial hardship claim, but does advance a public interest claim to justify the demolition of the Parish House. The application contends that the cathedral building is historically and architecturally significant and merits preservation; it contends that the Cathedral operates in the public interest, providing significant spiritual, cultural, and social services to the community; it contends that the Cathedral does not currently produce sufficient income to support the preservation of the landmark building or the community programs; and it contends that the development of the new complex would not only provide essential facilities for the Cathedral but would also provide an ensured income stream to support the preservation and public programs. It therefore contends that the demolitions would be in the public interest. Finally, it contends that the demolitions rise to the level of *necessary* in the public interest because the proposed development scheme is the only feasible scheme that will provide the requisite income stream to support the continued activities in the public interest.

DISCUSSION: Mr. Farnham presented the application to the Commission. Judith Sullivan, the Dean of the Cathedral, attorney Neil Sklaroff, architect Michael Ytterberg, developer Dave Yeager, contractor John Bremner, engineer Mark Coggin, and preservation consultants Suzanna Barucco and George Thomas represented the application.

Mr. Sklaroff introduced the project to the Historical Commission. He contended that his application would demonstrate that the demolition of the Parish House was necessary in the public interest. He stated that the Episcopal Cathedral owns five tax parcels that make up this complex. The tax parcel at 13-19 S. 38th Street is the site of the Philadelphia Episcopal Cathedral building. The congregation has occupied the site for 157 years, but finds itself at a crossroads. It can no longer sustain the cathedral building, the institutional operations, and its outreach ministries to the needy and others in the nearby and regional community. The governing body has decided, in the absence of all other resources, to develop its real estate assets in a mixed-use project on properties adjacent to the cathedral. The project will generate resources with which the cathedral can address the challenges of the present and future. The project requires the removal of the parish house, which is located at the parcels at 3723 and 3725 Chestnut Street. The buildings are individually designated. He asked the Commission to approve their removal as necessary in the public interest. Mr. Sklaroff observed that necessary in the public interest is not defined in the ordinance and he noted that the Commission is rarely

asked to base a decision on such a finding. He asserted that his application team would demonstrate that the removal of those buildings is necessary in the public interest. He contended that the cathedral's efforts and activities are in the public interest for no fewer than three reasons. First, the applicants seek to maintain and preserve the cathedral building. He stated that the preservation is in the public interest because the preservation ordinance, an act of City Council, says that it is. Second, the applicants wish to preserve and enhance an important historic institution. The church makes an important contribution to the fabric of the city and especially the fabric of West Philadelphia. Also, the Pennsylvania constitution reserves special treatment for places of worship. It empowers the legislature with the authority to exempt such institutions from real estate taxes and the General Assembly has done so. In addition, for generations zoning regulations have made special exceptions for religious institutions, for example allowing them in residential areas. The housing of a place of worship is one that is favored in our law. And lastly, we know this because the US Congress has passed the Religious Land Use and Institutionalized Persons Act, which protects houses of worship from substantial burdens imposed by land use regulation. Third, the applicants wish to ensure the continuation and expansion of the cathedral ministry. The Pennsylvania constitution allows the legislature to exempt purely public charities from real estate taxation. Mr. Sklaroff contended that the cathedral's activities pass the purely public charities test. He stated that they will establish that the project requires the use of all of the non-sacred properties. He asked the Commission to approve the demolition as necessary in the public interest and to approve in concept the new construction as consistent with the Secretary of the Interior's Standards. He stated that his team appeared before the Architectural Committee and has since revised the design in response to the Committee comments. Mr. Sklaroff stated that the Commission's staff provided electronic copies of the revised design to the Commissioners last week. He distributed paper copies of the revised design to the Commissioners at the meeting. Mr. Sklaroff concluded, stating that there are hundreds of religious properties at risk in the city. Congregations are losing congregants, short of funds, and suffering from debt. This project will preserve the cathedral and its current use. Mr. Sklaroff advised the Commission that it has the discretion to approve this project and allow the cathedral to preserve itself and continue for another 157 years at this site.

Mr. Sklaroff introduced Ms. Sullivan, the Dean of the Cathedral. Ms. Sullivan stated that the Episcopalians have had an enduring presence in West Philadelphia and have occupied this site for 157 years, currently as the Episcopal Cathedral. The cathedral is the regional center for the Episcopal Church and is the seat of the bishop. The cathedral has responded to imperatives of Jesus Christ as it serves the community, especially those most in need. The congregation has been reduced in number, but the mission remains constant. The cathedral offers unconditional welcome to all who enter. It provides physical and spiritual sustenance. The cathedral has an extensive feeding program. The cathedral no longer has a working kitchen, but this project would provide one. The cathedral also seeks to develop the space to provide medical, legal, and employment services. The feeding programs are conducted in the sanctuary, indicating their religious significance. The cathedral provides material support to several shelters and children in the community. The cathedral supports the local Ronald McDonald House. The cathedral provides support for those suffering from addiction, abuse, and grief. Many in the area suffer from poverty and unemployment. All are treated with dignity. The cathedral often hosts interfaith events, for example events directed at gun violence and bigotry. It is the mother church for regional Episcopalians. The cathedral is the home for the Godly Place Center, which assists children. The cathedral feeds neighborhood school children. The project would include the rehabilitation of the undercroft area for use as a daycare, which the community needs, and to provide spaces for the community. The cathedral is a cultural center. It provides space for art exhibits, concerts, lectures, and other cultural events. It is the site of numerous fundraisers, for example for Philabundance. Numerous visitors come to the cathedral for its architectural,

artistic, and spiritual significance. Ms. Sullivan noted that the interior changes made by her predecessor were controversial, but contended that the interior has had profound significance in the international liturgical renewal movement, which explores new ways to make worship meaningful to modern lives.

Ms. Sullivan stated that the church is at a critical juncture. The congregation has shrunk from 1300 to 140. The neighborhood has changed from residential to institutional. The cathedral is one of the few churches still operating in University City. She stated that the cathedral is intent on remaining in the building and providing services to the community and congregation. The preservation of the cathedral building is also important. However, the congregation does not have the resources to ensure the preservation of the important building. She stated that very experienced advisors have concluded that "a capital campaign is not a feasible option." Currently, the congregation is able to dedicate \$30,000 annually for the maintenance of the entire campus. The cathedral does not have the funds to preserve and adaptively reuse all of its buildings. The cathedral spent significant funds to undertake maintenance work on the cathedral building 10 years ago, but does not have the funds to undertake additional work. The buildings are aging faster than the congregation can repair them. Ms. Sullivan explained that the cathedral has partnered with the Radnor Property Group, which has significant experience working with non-profits on their historic properties, to assist the cathedral to develop its land including the air rights over the cathedral. She stated that the congregation made its decisions about the redevelopment of the campus after exhaustive study and based on a respect for the cathedral building and theological consideration. The redevelopment requires the demolition of the brownstone buildings on Chestnut Street. She reiterated that they did not arrive at the decision to demolish the brownstones easily, but only after extensive, exhaustive study. The project will allow the congregation to achieve several goals including continuing its social ministries and providing a sacred space for worship for all people. The project respects the cathedral and maintains its light and air. The project will allow the complex to be ADA compliant. It will provide new gathering spaces, a working kitchen, and outdoor assembly and prayer spaces. She stated that programs that the new spaces will support cannot be performed elsewhere; they must be performed at the cathedral. The project will create essential spaces linked to the cathedral. She stated that the congregation is inexorably linked to the cathedral building. Episcopalians gather to give worship and prayer in the cathedral. It is the embodiment of their spiritual community and has an importance that is incomparable to the parish house buildings on Chestnut Street. She observed that many houses of worship in Philadelphia have been abandoned and are crumbling because of dwindling congregations. She asserted that her congregation will not allow that to happen to their beloved cathedral. She stated that this development project is the only way for the congregation to move forward and for the cathedral as a building and an institution to be preserved. She concluded that they do not request approval of the demolition lightly; they regret having to demolish the brownstones, but they have no other way to preserve the cathedral and the essential activities that it houses.

Mr. Farnham noted for the Commissioners that the staff was distributing four items to them to aid in their review. The staff was providing hard copies of communications from interested parties; he noted that the materials from the interested parties had already been emailed to the Commissioners. The staff was providing copies of the nomination and meeting minutes for the designation of the cathedral and parish house. The staff was providing additional architectural drawings of the proposal; he noted that drawings had already been emailed to the Commissioners. The staff was providing copies of a letter to the Commission from Deputy Mayor Alan Greenberger, which stated that the Administration had concluded that the project including the demolition was "necessary in the public interest."

Mr. Sklaroff noted for the Commission that all of his witnesses have included their curricula vitae in the applications materials to demonstrate that they are experts in their fields. Mr. Sklaroff introduced George Thomas to speak on the history of the cathedral complex.

Mr. Thomas stated that he moved to University City in 1966 as a graduate student in Art History at the University of Pennsylvania. He noted that he was a neighbor of this building for 25 years. He stated that he did measured drawings of the building and then the National Register nomination for the complex in the 1970s. He stated that he advised the congregation on preservation techniques for the buildings in the 1980s. He noted that he has been involved with the buildings for numerous reasons since that time. He stated that he has extensive knowledge about these buildings. He reported that he included the cathedral in a book that he wrote about the University's campus and surroundings. He stated that he will speak on the cathedral's significance architecturally and culturally to complement Dean Sullivan's reading of its spiritual significance. He stated that architect Charles Burns, who designed the buildings, broke from the mainstream of late nineteenth-century Philadelphia architecture, which was connected to Philadelphia's manufacturing and engineering strengths, and designed buildings that well represented the religious and spiritual values of their congregations. Burns was the master of creating handcrafted spaces for worship. Burns mastered every detail, every inch of his designs. He was dedicated to creating "worshipful objects." Burns is known for creating churches that were intended to be perfect. He was one of the best architects of this type in the country in the late nineteenth century. Burns was a master of the northern Italian Romanesque style. Mr. Thomas explained that the cathedral building tells us much about West Philadelphia in the late nineteenth century. At that time, the area was a suburban residential area for many wealthy people, including Anthony J. Drexel, who funded the construction and reconstruction of the church. When the church was rebuilt from a much smaller church in the 1880s, Drexel insisted that the interior space of the older sanctuary be preserved because of its significance. Burns built the 1880s church around the space occupied by the earlier church. In 1902, the first Burns church was destroyed by fire; the front façade and tower survived. Burns rebuilt the church, again in his exquisite style. He stated that the cathedral conveys the character of a great church. Mr. Thomas acknowledged that the interior of the church was substantially altered about 10 years ago and noted that that alteration had been controversial. He observed that he had opposed the alteration at the time, but now understands it. He stated that the alteration, which removed much of the late Victorian interior features, has created a church with the sense of space of the great Roman church of Santa Sabina. He stated that the interior has become a model for new church interiors. He observed that the interior of St. Peter's, a 1760s church on Pine Street, was painted stone grey by architect T.U. Walter in the 1830s to make it look Gothic. The church was then given a Victorian make-over by Frank Furness in the later part of the nineteenth century and then restored to its eighteenth-century appearance in the 1950s by George Roberts, who added elements that had not previously existed. Churches change because modes of worship change.

Mr. Thomas reported that he had been asked to review the proposed project in light of the Secretary of the Interior's Standards. He stated that, in terms of the church building, the project meets all of the Standards including the most important, Standard 1, which recommends that a building maintain its original use. He stated that the project meets all other Standards. All character-defining features will be retained. He acknowledged that the proposal for the parish house demolition does not satisfy the Standards. He cautioned the Commission, however, that, if the project does not move forward, the cathedral building and institution will not survive. He stated that, in light of the history and significance of the site, the project will preserve the most important and valuable feature, the cathedral. Mr. Sklaroff asked Mr. Thomas about the vestibule on the south side of the cathedral, which would be removed for this project. Mr.

Thomas stated that the vestibule was added after the 1902 to 1905 reconstruction of the cathedral. Maps show that it was not part of the original building. Mr. Thomas explained that he inspected the vestibule and found that it was constructed of a different brownstone than the rest of the building, which was not cut or carved with the expertise that is evident in the rest of the church. He concluded that it is a later, inferior addition that can be removed without violating the Standards.

Mr. Sklaroff introduced Mr. Coggin, a structural engineer who evaluated the cathedral. Mr. Coggin stated that he has reviewed dozens of churches and innumerable masonry structures in this career. Mr. Coggin reported that he personally inspected the church as well reviewed his report and photographs of the church from 2003 and other engineering reports from 2004 and 2007. He stated that he consulted with the contractors who did the rehabilitation work in 2002. He stated that \$1.1 million of the \$2.5 million that was spent in 2002 was dedicated to structural work. In 2002, 80% of the floor joists were failing and required repair. The girders were strengthened and the foundation was underpinned. In addition to the structural work, \$800,000 was spent on mechanical and electrical systems. Mr. Coggin explained that the cathedral is constructed of rubble stone with a brownstone cladding. It is held together with a soft, lime-based mortar, not a hard, cement-based mortar. The interior of the tower was faced with stucco, but it has all fallen off owing to moisture working its way through the tower. Mr. Coggin stated that he was alarmed in 2002 by the condition of the stone on the bell tower. The stone was delaminating. He recommended removing stone that threatened the public. The tower also exhibited significant cracks. Significant mortar was missing. The cracks were indicative of movement in the tower. He stated that he recommended crack monitoring at the time. He explained that, after issuing his report, he was not retained to oversee any of the recommended work.

Mr. Coggin reported that, in 2004, another engineer was commissioned to evaluate the conditions. He reported that that engineer's recommendations mirrored his own. That engineer found loose and missing stone and mortar and other problems that allowed and were exacerbated by water infiltration. The engineer also noted significant cracking and fracturing of the stone and brick like he had found, and warned of the condition of the tower. The engineer concluded in 2004 that the building posed a risk to the public and recommended that the cathedral should develop a long-term plan for restoration. The engineer installed 16 crack monitors, which he read more than 234 times over five months, and determined that there was no potential for an imminent collapse of the tower. However, the engineer advised that the church undertake important repairs to ensure the long life of the cathedral building and the safety of the public. In 2007, the cathedral retained another engineer. Mr. Coggin reported that that engineer produced findings that mirrored his own as well as the other engineer's 2004 findings. Mr. Coggin summarized his most recent review of the cathedral in 2012. He stated that the masonry exhibits additional cracks, which evidence ongoing movement. He stated that he also observed inappropriate repairs as well as repairs that had already deteriorated. He observed inappropriate cement-based mortar that has caused more cracking in the brownstone.

Mr. Coggin stated that the masonry of the parish house also exhibits structural defects including cracking and corrosion of metal anchors. He stated that the house has a significant design flaw. The brownstone is placed directly against the backing structure, allowing no room for thermal movement. Therefore, the brownstone cladding is suffering.

Ms. Hawkins asked Mr. Coggin to talk about the annual maintenance budgets for the cathedral and parish house. Mr. Coggin responded that he is a structural engineer who was commissioned to evaluate the current conditions of the buildings. He noted that he is not

involved in the budgeting for maintenance. He suggested that Ms. Sullivan, the Dean of the Cathedral, answer such questions. Mr. Coggin noted that Ms. Sullivan had testified that the annual maintenance budget was \$30,000. Ms. Hawkins asked him if, in his professional opinion, \$30,000 was enough to maintain this complex of buildings. Mr. Coggin responded that it is not enough. Mr. Coggin stated that he is recommending to the cathedral that it commission a thorough report detailing the conditions of the building and a plan for its long-term maintenance. Cracked stone should be replaced. The entire building should be repointed appropriately. Sections of the rubble-stone backing in the interior of the tower should be rebuilt. The tower may need a steel frame inserted into it. The basement needs to be repaired to prevent water infiltration. Repairs need to be made to the stained glass. Ms. Hawkins asked if the current application proposes any of that work. Mr. Sklaroff replied that it includes the work to the undercroft. He stated that the architect will discuss other aspects of the project related to the cathedral building.

Ms. Merriman stated that she does not see how a congregation of 140 can support an annual maintenance budget of \$30,000. She asked Mr. Sklaroff if anyone would be testifying on the workings of the budget. Ms. Sullivan stated that the 140 members contribute about 17% of the total budget of \$650,000. Mr. Schaaf asked if the Diocese of Pennsylvania contributes money for the maintenance. Ms. Sullivan replied that it does not.

Mr. Sklaroff introduced Mr. Bremner, senior vice president for preconstruction at Intech Construction. Mr. Bremner stated that it was his task to estimate the costs to rehabilitate the cathedral and parish house buildings. He stated that he based his estimates on the engineering reports on the structures, including those prepared by Mr. Coggin, on the architectural studies prepared by BLT Architects, and on his own observations on several visits to the property, and his expertise. He stated that he ventured up into the tower, but he did not remove any material to review the underlying conditions. Mr. Sklaroff interjected that Mr. Bremner will discuss the cost estimates for the cathedral primarily. He noted that the estimates include the parish house, but they are not making the claim that the parish house needs to be demolished because the cost to reuse it is too high. Mr. Bremner provided a detailed explanation of the cost estimates at Tab 11 in the application. He stated that the estimate assumed scaffolding the building for six months. He explained that a masonry contractor visited the site to assist with the masonry repair estimate. He described the components of the façade restoration that total \$1,320,000 in the first section of the first page of the estimates. He then explained the structural repairs that were specified by Mr. Coggin. He reported that the cost is in part related to the difficulty of installing a steel structure within the tower. There is no easy way to get the steel members into the tower. He explained the costs of each of the other sections of the structural repairs. For example, he stated that the chimney would require \$40,000 worth of repairs. He explained what is labeled "Interior Restoration" in the estimate. He stated that it is mostly dedicated to window repairs, including stained glass repairs. He noted that he had used an estimated number for the stained glass repairs while he awaited a more accurate number from a stained glass expert. He stated that the expert responded after he had submitted the estimate to the Commission and the expert's number was significantly higher than the number he had used. He said that the total for that section should be more like \$750,000 instead of his \$405,000. Mr. Bremner concluded that the estimate for the restoration work needed at the cathedral without soft costs is \$2,825,000. He stated that he would expect this number to go up once the scaffolding was in place and they could undertake a close inspection of the masonry façade. He added that this was his experience recently with two large buildings in Philadelphia, the Lafayette and Architects buildings.

Mr. Bremner discussed his estimate for rehabilitating the parish house for use as an office. He stated that it would cost about \$1,085,975 to stabilize the building. He asserted that it was a realistic number. He recently priced a similar building, which cost \$995,000 to stabilize the exterior. He explained that bringing the systems up to code and fitting out the building for office use with ADA access would cost over \$2,000,000 including a new stair and elevator tower. Therefore, the total cost to reuse the parish house would be \$3,273,000. He stated that that translated to \$200 per square foot, but \$260 per usable square foot because the attic area is inaccessible and the basement is unusable as office space. He concluded that, if one were to undertake the renovation of the parish house, one would be left with Class C or D office space at the cost of Class A office space.

Mr. Sklaroff introduced Mr. Ytterberg, the architect, who directed the Commissioners to the appropriate sections in the application. Mr. Ytterberg showed an aerial photograph of the cathedral and its surroundings. He stated that the neighborhood is now heterodox, not homogeneous as it was 100 years ago. He asserted that his proposed building would fit well within the context of the current neighborhood. He pointed out the 26-story buildings at the Superblock at the University, the 19-story University Square Apartments, the 17- to 22-story residences at the University, the various Science Center buildings, the 22-story Sheraton Hotel, and other large buildings. He showed an aerial photograph of the cathedral block and pointed out the various components of the cathedral's property. He pointed out the Karp property, which the cathedral could not acquire. He showed details of the cathedral's facades. He showed a photograph of the south façade and stated that its view from the public right-of-way would be maintained, albeit through glass. He showed where the new construction would engage with the cathedral, at a later brick addition at the rear. He reminded the Commission that they are seeking approval in concept for the new construction. He noted that they have refined the design based on comments at the Architectural Committee meeting. He stated that the tower would be 25 stories tall. He noted that both Chestnut and 38th Streets are very broad and can accommodate a tall building such as the one that is proposed. He added that the existing zoning at the site allows for a tall building, owing to the widths of the streets. Mr. Ytterberg stated that the new building will not be monolithic in massing or materials, but will be designed to accommodate the cathedral and surroundings. He noted that the façade adjacent to the church on 38th Street had been pushed back away from the sidewalk, as suggested by the Architectural Committee. He stated that the building along the cathedral will be glass, to allow views of the church. The base of the building along Chestnut Street will include more masonry to fit in with that area.

Mr. Ytterberg explained that the 25-story tower will house rental residential units, the revenue from which will be used to fund the cathedral. The corner space at the first floor will house a retail establishment. The cathedral facilities will be located to the north of the retail space. There will be a gathering space immediately inside the 38th Street entrance, which has been moved back from the sidewalk. He stated that a glazed spine will run along the south wall of the cathedral and provide ADA access to the various spaces. The south wall of the cathedral will be visible from within and outside of the cathedral. The transparency of the glass is also a symbol of the church and its welcoming nature. The church's vestibule, which projects off the south wall at 38th Street will be retained and fully exposed, as suggested by the Architectural Committee. Mr. Ytterberg displayed massing drawings that show the new building's relationship to its neighbors. He showed images of the proposed office building on the site where the non-historic apartment now stands. He noted that it has been set back from Chestnut Street, like its neighbor, International House, and others. He pointed out the open space in front of the office building, which provides space for gathering, prayer, and contemplation. Mr. Ytterberg pointed out the party wall at the Karp property, which faces west and will abut the new building. The

east wall of the Karp property is finished with windows. Mr. Ytterberg noted that the new construction is broken down into various volumes to reduce its mass. He pointed out historical precedents for the labyrinth in front of the office building. He noted that the cloister had been removed in response to the Architectural Committee's comments. He pointed out that there is a 13-foot grade differential across the site, which has added to the complexity of the design. Mr. Ytterberg described the parking. He explained that the basement of the cathedral would be renovated for use.

Mr. Ytterberg walked the Commission through the plans of the connection of the new building to the cathedral. He pointed out the connections to the basement and sanctuary. The entrance from the new glass spine to the sanctuary will be accomplished through an existing door opening. The new construction will primarily connect to the cathedral at the rear, at non-historic brick sections. The new church office building will connect to the cathedral in this area as well. The loading dock will be located on Ludlow Street. The parking entrance will be located on Chestnut Street. The light and sight lines to the cathedral will be maintained. The playground for the day care will be on the roof of the office building. The remainder of the roof will be a green roof.

At approximately 3:15 p.m., Ms. Schlotterbeck excused herself from the meeting and Mr. Palantino, her designee, took her seat.

Mr. Ytterberg explained that the new construction will touch the cathedral lightly at the metal flashing at the roofline of the south wall. A new gutter will be installed to accommodate both the south cathedral roof and the glass spine. The new construction will be self-supporting and will not rest on the cathedral at all. The connection to the brownstone section of the cathedral building will be made solely to render the glass spine watertight. All cuts in the cathedral exterior wall will take place at the non-historic rear addition. Also, the roofline of the non-historic addition will be altered, but the changes will not be visible. Mr. Ytterberg stated that the south wall of the cathedral will be restored.

Ms. Hawkins asked Mr. Ytterberg if the extent of the restoration currently proposed for the cathedral is the work to the south wall and south windows, where the glass spine would connect. Mr. Ytterberg responded that that was correct. Ms. Hawkins noted that Mr. Sklaroff had stated that remedial work would take place in basement as well. She asked Mr. Ytterberg to confirm that that work was included within this application. He stated that it was. Ms. Hawkins then stated that the work to the south wall should not be considered exterior restoration because, once that wall is enclosed with the glass spine, it will be an interior wall. She thereby concluded that this application proposes no exterior restoration to the cathedral. Mr. Ytterberg stated that this project is not intended to restore the cathedral, but is instead intended to create the funding stream that will ensure the continued existence of the cathedral. The preservation treatments to the cathedral building will be proposed once the funding stream is in place. He concluded that, once funds are available, then the cathedral will be restored.

Ms. Merriman asked Mr. Ytterberg if they considered alternative designs that might have preserved all or some of the brownstone buildings. Mr. Sklaroff stated that they considered numerous alternative designs for the tower. He stated that Mr. Yeager will discuss the alternatives and present the reasons that compelled them to conclude that the proposed design is the only feasible design and therefore is necessary in the public interest. Ms. Merriman asked the applicants to present those alternatives and then make their case for the necessity in the public interest. Mr. Sklaroff stated that the application is very complex and a full presentation is required for the Commission make a reasoned decision. He stated that he intended to have Ms.

Barucco testify next on the city planning aspects of the project; however, he stated that he would forego her testimony now and concentrate on those aspects of the application related directly to the public interest question.

Ms. Hawkins stated that the Architectural Committee, of which she is the chair, was concerned about the water, ice, and snow that may be subjected to the south roof of the church. Mr. Sklaroff responded that Mr. Ytterberg testified that the project has been designed to accommodate the water, ice, and snow loads. He stated that the new rainwater collectors would be liberally sized to accommodate the loads. Ms. Hawkins stated that she still has questions about that aspect of the design. Mr. Ytterberg stated again that his design team has confirmed that the rainwater system has been designed to more than handle the loads that will be encountered with this roof system.

Mr. Sklaroff introduced Mr. Yeager, the cathedral's development partner. Mr. Yeager stated that his firm specializes in partnerships with non-profits. He reported that his company has worked with Bucknell University, Franklin & Marshall College, Lafayette College, Lancaster General Hospital, and Misericordia University. He stated that they have undertaken many projects that have involved historic buildings as well as historic districts. Mr. Yeager stated that he and the cathedral have considered several alternatives. He stated that he has been working with the cathedral for nearly one and one-half years. He stated that the project that they have proposed today is the only economically viable and the only financeable project among those that they considered. He stated that the problems with the rejected projects were that they were not financially viable, they did not meet the architectural and aesthetic needs of the cathedral, and they did not meet the programmatic needs of the cathedral. He stated that the inefficient projects were not financeable. He stated that they needed to meet a building efficiency rating of 80% to 90%. He said that the proposed design rates at about 85%. The other, rejected designs were lower. He stated that the construction costs in some of the rejected scenarios were very high.

Mr. Yeager described the rejected design called Scheme 2 in the application, the very long narrow building along the east property line, which would have allowed for the retention of the parish house. He stated that this scheme was rejected for many reasons. It would have had very large blank walls at the east and west along the property lines. It would have been very inefficient. It was uninspiring from an architectural perspective and would have been unmarketable. It was very tall, about 29 stories, and had single-loaded corridors, and therefore would have been very expensive to build. The parking would have been forced to the open corner lot. The parking structure would have had a detrimental effect on the streetscape and the cathedral. He stated that it was rejected for other reasons as well.

Mr. Yeager described the rejected design called Scheme 6 in the application. In this scenario, they attempted to locate most of the facilities on the open corner lot and retain the parish house. He noted that the site is quite small, which resulted in numerous programmatic problems. For example, the loading entrance was forced to be located on 38th Street, adjacent to the cathedral. The loading ramp cut off the cathedral from the new building, precluding the possibility of new cathedral space in the tower. Also, because the site is so small, parking became impossible. The building would have to have been 32 floors to obtain the needed space, making it the tallest building in University City. The small floor plate led to significant inefficiencies and construction costs would have been 15% greater than the proposed design. The efficiency ratios for both Scheme 2 and 6 were below the 80% cut-off standard. Mr. Schaaf suggested constructing two new buildings, versions of Schemes 2 and 6, each half the height, on the east and west portions of the lot. Mr. Yeager stated that the costs of constructing two

inefficient buildings would be very high, making Mr. Schaaf's proposal infeasible. Mr. Yeager also explained that any tall building on the east portion of the lot, adjacent to International House, would face a major hurdle. He stated that such a building at the east would be opposed strenuously by the owners of International House because it would block light, air, and views from the common spaces in the building.

Mr. Yeager then turned to rejected Scheme 3, which would have saved the facades of the parish house. He stated that, of all the rejected schemes, this one has the greatest impact on the cathedral because the preserved facades would push the mass of the tower back toward the cathedral. He stated that the underpinning costs to save the facades of the parish house would be \$2 million. He also noted that the parking would have been reduced by 50% over the accepted scheme. Finally, the construction costs for this project would have been considerably higher than the proposed scheme.

Mr. Yeager explained that they investigated numerous other scenarios that proved infeasible. However, these three schemes, Schemes 2, 3, and 6, build to the east or west of the parish house, and save the facades only, represent the three basic possibilities. The other schemes were variations on these three basic models. He stated that he is convinced that they demonstrated that the proposed scheme is the only feasible scheme, when all variables are taken into account.

Mr. Thomas asked if there was a way to relocate the residential segment of this project to another site, for example across the street. He asked why all aspects of the project need to be located on this site. Mr. Thomas stated that there is a development parcel at 38th and Market. He asked why the developer did not consider locating the tower elsewhere to avoid demolishing the parish house. The cathedral offices and spaces need to be adjacent to the cathedral building, but the market-rate housing does not. Mr. Sklaroff responded that the cathedral's only asset to contribute to this project is its properties, which are worth much more as an assemblage than as individual properties. The cathedral is seeking to capitalize on its assets. He noted that the cathedral will continue to own the land and will eventually own the new building. He stated that the cathedral is not in the real estate development business, but is proposing this project to continue its ministries without negatively impacting the cathedral building or its mission. The cathedral cannot and would not purchase another property to develop. Mr. Sklaroff also noted that, owing to the widths of 38th and Chestnut Streets, this site can be successfully developed with a tall building, but other sites in the area cannot. The cathedral would like to take advantage of its zoning, R16 with bonuses, which allows very large buildings. Mr. Thomas stated that the cathedral should consider acquiring other property for the construction. Mr. Sklaroff observed that, if the cathedral had the assets to acquire other property, then it would not be proposing this project; it would instead be using those assets to rehabilitate the cathedral building and fund its activities. Mr. Sklaroff stated that the cathedral is seeking to leverage the one asset it has, its campus. The acquisition of additional properties is not an option. He also noted again that the assemblage of properties is much more valuable than the properties individually. It makes no sense to sell off part of the property because the cathedral cannot maximize its value in that way. The whole is worth much more than the sum of the parts. The value is in the assemblage, not in the pieces. Mr. Thomas again stated that the cathedral should acquire other properties for the development. Mr. Sklaroff again responded that acquiring other properties is not feasible. The cathedral does not have the capacity to purchase additional properties; it is not an alternative. Mr. Sklaroff concluded that Mr. Yeager has demonstrated that the cathedral has investigated all other potential development alternatives and has concluded that there are no other feasible alternatives.

Mr. Sklaroff stated that he would like to have Ms. Barucco testify next on the urbanistic aspects of the project. Ms. Merriman stated that she would prefer to confront the primary question on the table, whether this project is necessary in the public interest.

Ms. Hawkins stated that the Architectural Committee did not consider the public interest question, but concentrated on the architectural aspects of the project. She acknowledged that the cathedral has presented information regarding its many community services, but she wondered at what point such services cross the threshold and become in the public interest. She asked rhetorically whether all churches providing a soup kitchen and similar services are working in the public interest. She asked how the Commission could measure the public good provided by a congregation and determine whether it was in the public interest. Mr. Sklaroff observed that "necessary in the public interest" is not defined in the preservation ordinance. He opined that, because it is not defined, the Commission must, under a principle of land use law, define it liberally in favor of the property owner. He stated, however, that, in fact, there is a legal definition of a purely public charity. Such an organization is one that advances a public purpose and it donates and renders gratuitously a substantial portion of its services. It benefits a substantial, indefinite class of persons who are legitimate subjects of charity. He stated that the cathedral opens its doors to everyone and levies no charges for its services. A purely public charity relieves the government of some of its burdens. The feeding alone, which has great religious connotations and implications, is enough to qualify the cathedral as a purely public charity. It operates entirely free from the private profit motive. Mr. Sklaroff stated that there is a clear definition of working in the public interest in the Pennsylvania case law and the cathedral satisfies that definition. Mr. Sklaroff stated that an approval in this case would be totally consistent with other such Commission approvals. He added that so many churches are in financial trouble. This application addresses that problem for this congregation in a constructive manner. This congregation has been working in the public interest at this site for 157 years. Answering the question posed earlier by Ms. Hawkins, Mr. Sklaroff stated that the Commission can easily see that the cathedral is working in the public interest. This is not a boundary condition; the cathedral is well beyond the tipping point and is clearly operating in the public interest.

Ms. Hawkins stated that the application purports that the funding stream created by the tower will be used to support the rehabilitation of the cathedral building, but the application includes no timeline or other assurances that that preservation work would be undertaken in a timely manner. She commented that there is no binding contract with the Commission that would ensure that the rehabilitation would take place after the tower is constructed. Mr. Sklaroff responded that the fate of the cathedral building is clear if this project is not approved. The congregation will not have the funds to maintain and restore the building and it will deteriorate. On the other hand, the cathedral has made a commitment to preserve its building if it is given the opportunity. Under state law, it is required to expend its assets in particular ways including preserving its physical plant. Moreover, it has a 157-year commitment to the property. There is no question that the congregation will rehabilitate its building if this project is allowed to move forward. Mr. Sklaroff noted that some have claimed that the Commission has had guarantees in past public interest cases, but they are wrong. The Commission has never required any sort of iron-clad guarantee that a project would be brought to fruition when it approved a demolition as necessary in the public interest. For example, when the demolition of Smith Hall was approved, the Commission was not provided with any guarantee that the University of Pennsylvania would construct the new laboratory, or that it would undertake important scientific work, or that that scientific work would enhance the reputation of the University, the ultimate goal of the project and the true public interest. The Commission simply took the University at its word that it would follow through on the project. Mr. Sklaroff also noted that an interested party had criticized the

cathedral project with the claim that the benefit was indirect, whereas the benefits in earlier public interest projects had been direct. He claimed that that was not the case. He stated that the demolition of the firehouse to make way for the Convention Center had been approved as necessary in the public interest. He commented that providing a place for dentists to meet is not necessary in the public interest, but constructing a complex that is an engine for the city's economy is in the public interest. The Convention Center's benefit is significant, but it is indirect. The benefit to the public interest is not that the dentists are convening and talking, but instead that they are coming to the city and spending money, creating jobs, promoting investment, and enhancing tourism. Like in the Convention Center and all other Commission public interest cases, the benefits will be indirect in the Episcopal Cathedral case. The cathedral will have access to funds and will use those funds to undertake important work in the public interest.

John Gallery of the Preservation Alliance introduced himself. He asked the chair whether she wanted comments on the public interest aspects of the application only at this juncture, or if she also wanted comments on the architectural aspects of the application at this time. Ms. Merriman suggested that Mr. Gallery limit himself to the public interest aspects of the application at this time. She informed him that he would have an opportunity to comment on the architectural aspects of the application at the appropriate time.

Mr. Gallery apologized for being rude and then asked if the replacement of Commissioner Schlotterbeck by an unknown person was consistent with the Commission's rules and procedures. Mr. Farnham responded that Commissioners and their designees have substituted for one another during very long Commission meetings in the past. Regarding Mr. Palantino, Mr. Farnham stated that he is not an unknown person, but is instead Ms. Schlotterbeck's bona fide designee who has routinely represented the Department of Public Property at Commission meetings. Mr. Schaaf added that Mr. Palantino represented the Department at the Commission's previous meeting.

Mr. Gallery noted that he was distributing three items to the Commissioners. The first is a chart "indicating some important issues." He pointed to the black boxes, from left to right. The applicant wants to demolish some historic buildings. The applicant will build an apartment building. That apartment building will generate profit. The profits will be used by the cathedral organization to undertake deferred maintenance, to provide religious services, and to continue to provide good works. The "stuff" in the last box is claimed to be in the public interest. He stated that this application is very different than anything the Commission has seen before. In the previous applications, it was always a project that was evaluated in the public interest. He now directed the Commissioners to the second line of boxes, which are in red. There is nothing in the application that indicates that it is financially feasible to build the tower. Mr. Gallery claimed that the developer had told him that he would need some public subsidy like New Market Tax Credits to make the deal feasible. He stated that he was not certain that the tower could be built. The second box is more important. Mr. Gallery asserted that there is nothing in the application or statements of the applicants that indicates that the tower will produce sufficient revenue to undertake the activities that are deemed to be in the public interest. In the application, it says that the cost of work to the cathedral is \$3.5 million. No figures are given for continuing religious services or social services. The cathedral needs to build the new office building to provide the services. Mr. Gallery postulated that the cost of the office building would be \$3.5 million. Mr. Gallery then postulated that the income stream needed to fund the religious and social services would be perhaps "a couple of million dollars." Therefore, the amount of income needed to accomplish the public interest must be \$10 to \$12 million at least. That is the reason why this building is so huge, he contended. There is nothing in the application that documents that this income will be available in any magnitude, not even the \$3.5 million for the

cathedral. There is nothing in the application that demonstrates that they will have the ability to do what they say they will do in the public interest. Mr. Gallery directed the Commissioners to the third box. There is no evidence that any profits are going to the cathedral. "How much of the overall profit is going to the developer? I don't know. How much of the overall profit is going to the cathedral? I don't know. You don't know. There is nothing in there that indicates that the cathedral will get a dime out of this." He asserted that there is no guarantee that the profits will be used to support work in the public interest. There are no plans for the rehabilitation of the cathedral. Mr. Gallery claimed that Mr. Sklaroff ostensibly answered questions about the cathedral's commitment in a letter dated 24 April 2012, but he made no commitments. Mr. Gallery read some of the answers and asserted that they offered no real commitments. Mr. Gallery contended that the cathedral had deferred maintenance to the cathedral building over the last 10 years. He concluded that the commitments offered regarding the undertaking of the work claimed to be in the public interest were empty. If the Commission were to approve the application, it would have no assurances that any of the public interests identified could or would be accomplished.

Mr. Gallery directed the Commission to the bottom box. He asked: "Is there any way you can protect yourself? In this case, I think that the answer is no." Mr. Gallery stated that the Commission has always conditioned approvals of demolitions that were necessary in the public interest to ensure that no demolitions occurred until the financing for the projects were in place. In those cases, the projects were the buildings. For example, the Commission conditioned the demolition of the firehouse on proof that the financing for the Convention Center had been obtained. He contended that the construction of the Convention Center building achieved the public interest associated with the building. He stated that the Commission should condition this demolition by requiring evidence of the financing for the tower before the parish house is demolished. But the tower does not satisfy the public interest, he claimed. The tower may not produce enough profits or the profits may not go to the cathedral. Or the cathedral may not undertake the promised social services. In the past, for example with the Convention Center, which was intended to have a broad economic impact on the city, the public interest was satisfied with the construction of the building itself. That is not the case with this project. The construction of the Convention Center building itself produced the public interest directly, he claimed. That is not the case in this instance, he asserted. The tower will produce profits that may or may not produce the projects in the public interest. Mr. Gallery concluded that it does not matter what "necessary" means or what "public interest" means because nothing can be delivered by this application. It should be rejected.

Mr. Gallery distributed the second of his three items to the Commission, a memorandum written by Leonard Reuter. He stated that he hopes that the Commission members have already read it. He stated that Mr. Reuter has experience with the Commission and similar applications. He stated that Mr. Reuter concluded that this application does not demonstrate that the demolition is necessary in the public interest. Mr. Reuter asserted that "The public interest exception was clearly intended to be an extraordinary remedy, something only warranted when there are no other alternatives and where the public interest is of an overwhelming nature." Mr. Gallery related that Mr. Reuter agreed that preservation of the cathedral is in the public interest, but contended that it would be incidental to the construction of the apartment building. Mr. Reuter concluded that the continuation of the ecclesiastical services of the church is not in the public interest. Mr. Reuter contended that the social services are not in the public interest; the services provided by the cathedral congregation are not unique and do not satisfy a need that can only be provided from this particular location. He concluded that the preservation of the Cathedral building might be considered to be in the public interest, but the application does not include any proposal for repairs to the cathedral building. Mr. Gallery related that Mr. Reuter then

considered whether the demolition is necessary. Necessary means that there are no reasonable alternatives, he claimed. Mr. Gallery contended that the architectural alternatives shown by Mr. Yeager were irrelevant. Mr. Gallery claimed that the question is whether there are alternative ways for the cathedral to generate the funds, not whether there are alternative ways to build the tower. Mr. Gallery stated that Mr. Reuter asks how the Commission can weigh one designated building against another. He argued that the Catholic Archdiocese could propose to demolish half of its designated buildings to raise funds to support the other half, if the Commission approved this application. Mr. Reuter concludes that the applicant has not demonstrated that the demolition is necessary. Mr. Gallery explained that Mr. Reuter then considered what he called the balancing test. Mr. Reuter claimed that the applicant must demonstrate that there are considerable benefits to the city in general that go beyond the impact of the project on the specific location. The project must be of an overwhelming nature. The applicant has not demonstrated that repair of the cathedral is of greater importance than preservation of the two other historic properties. Mr. Gallery again stated that the Commissioners have copies of and should have read Mr. Reuter's longer memorandum.

Mr. Gallery distributed the third of his items to the Commissioners, an outline of his memorandum to the Commission. He cautioned the Commissioners to look carefully at both sides of the outline, not simply the front of the page. Mr. Gallery claimed that the staff overview contends that the public interest test is the equivalent of a financial hardship test for non-profit or civic organizations. He asserted that there is nothing in the ordinance or Rules and Regulations or past practices supporting this interpretation. The financial hardship provision contains a special section for non-profits. Projects by private for-profit entities could be in the public interest. Mr. Gallery recounted that he asked Richard Tyler, the former director of the Commission, whether he agreed that for-profit entities could work in the public interest and he stated that he did agree. He concluded that the staff redefinition of the term was inappropriate and leads to recommendations that are inappropriate. Mr. Farnham explained that the staff-authored document referred to by Mr. Gallery is not the staff overview or recommendation to the Commission and was never provided by the staff to the Commission. It was an early draft of the overview that was abandoned. He noted that it was reproduced by the applicant, but it was not provided by the staff to the Commission. It cannot be considered a staff overview or recommendation to the Commission. The staff overview and recommendation to the Commission are included in the Architectural Committee meeting minutes, which the staff did provide to the Commission. The actual staff overview and recommendation do not include the line of reasoning to which Mr. Gallery objected.

Mr. Gallery noted that there is no definition of public interest in the ordinance. He stated, however, that one can look to earlier cases reviewed by the Commission for guidance. He asserted that public interest means "of broad social or economic significance contributing to the city's cultural, educational, and economic realms"; of vital interest to the public; benefits that are significant to the community. Public interest is something "compelling" in the public interest. Public interest is a much higher standard than public benefits or charitable activities. Thousands of organizations in the city undertake charitable activities, but they do not have broad social or economic impact. Necessary means that it is essential for the project to be located where the historic buildings are either for reasons of proximity or because it is the only feasible location. The apartment building is not in the public interest. The social services offered by the cathedral are not special or unique. Mr. Gallery stated that his Quaker Meeting provides the same services. The religious services are not in the public interest. Undertaking the deferred maintenance of the cathedral is the only possible public interest. Ten years ago, the cathedral had the opportunity to undertake the needed maintenance on the exterior, but it chose instead to alter the interior. Mr. Gallery noted that the cathedral purchased the apartment building at the

eastern edge of the site in 2011 for \$2.6 million. He asserted that they should have used the \$2.6 million to repair the tower instead of purchasing the building that provides nothing in return to the cathedral. Mr. Gallery asked why the cathedral should be allowed to demolish the buildings to produce revenue when it had the money to repair the cathedral, but spent it in other ways. Mr. Gallery stated that the cathedral could sell the apartment building and undertake a fundraising campaign. It could sell or lease the vacant lot for a smaller development that did not require demolition of historic buildings and could generate \$3.5 million. The cathedral has an endowment, which provides 71% of the operating costs. Mr. Gallery estimated the endowment to be \$20 million and suggested that the cathedral ask the Orphans Court for permission to use a portion of endowment. The cathedral has not considered any alternatives to raise the money it needs, he claimed.

Mr. Gallery turned his attention to the notion of weighing the relative significances of the cathedral and parish house against one another. He stated that there are several truly architecturally significant Episcopal churches in Philadelphia, but this is not one of them. It is no longer significant because the interior was altered about 10 years ago. At the time, architect Jim Kise stated about the interior alterations that "The actions, authorized by the church's governing body" constitute "an act of cultural vandalism unparalleled in Philadelphia since World War II." "It's appalling." George Thomas, an architectural historian who is a consultant on this project, agreed that the changes were "in this century unprecedented" and likened the dismantling to "the Taliban's destruction of ancient statues of Buddha in Afghanistan several months ago." Mr. Gallery contended that the cathedral is no longer architecturally significant, now that its historic interior has been destroyed. He cautioned the Commission against comparing the relative importance of the cathedral and parish house and claimed that the Commission has no criteria for judging relative historic significance. He contended that pitting one historic building on the Register against another is a poor and dangerous policy. In conclusion, Mr. Gallery stated that there is no evidence that there is a need for the apartment tower or that it will generate the amount of income implied, \$10 million to \$12 million; there is no evidence that the cathedral will get the profits from the apartment tower; and there is no guarantee that the profits will be used by the cathedral for the purposes stated or achieve the public interests implied, and no way to control the use of the funds.

Mr. Sklaroff responded to Mr. Gallery's testimony. He stated that "necessary in the public interest" is an undefined, broad term. The preservation ordinance is part of the zoning code, as was confirmed by the recent activities of the Zoning Code Commission and City Council. If the City Council had wanted to provide a narrower definition of "necessary in the public interest," it recently had the opportunity to redefine the term, but it chose not to add specificity to it. Mr. Sklaroff stated that one can consider the Commission's past practice in reviewing such applications, but that practice is limited to a few applications. Each application is unique and provides limited opportunities for extrapolating to the next unique application. Mr. Sklaroff disagreed with Mr. Reuter's analysis and stated that it is not based on any case law that is applicable in Pennsylvania. He stated that his own analysis, unlike Mr. Reuter's, is based on Pennsylvania and U.S. law. Mr. Sklaroff addressed Mr. Gallery's claims. Regarding his assertion that the cathedral should sell the apartment house it recently purchased for \$2.6 million, Mr. Sklaroff explained that selling it would not provide any funds for the rehabilitation of the cathedral building, as Mr. Gallery claimed. If the cathedral were to sell the \$2.6 million building for \$2.6 million, it would be left with nothing because it incurred \$2.6 million in debt to purchase the property. The property is worth much more to the cathedral as part of the assemblage of lots. Alone, it is only worth what the cathedral owes on it. Regarding the endowment, Mr. Sklaroff stated that it is very difficult to invade such a trust. He stated that a co-recipient has attempted to invade the trust several times and has been unsuccessful. Mr.

Sklaroff suggested that the cathedral will have no other option than Bingo if it cannot undertake this project. There are no other viable alternatives. This project will produce the funds that will allow the cathedral building and institution to endure. Mr. Sklaroff stated that the Commission has never required binding agreements or guarantees when it has approved other projects as necessary in the public interest. He reported that the cathedral is committed to undertaking all aspects of the project and the subsequent activities it has promised in this application. He stated that the Commission has the word of the cathedral and he noted that the Commission never asked for anything more from the Curtis Institute and other past public-interest applicants. Mr. Sklaroff stated that he would agree to the Commission conditioning of the demolition on the issuance of the new construction permit as well as a commitment from a lender for construction financing. He added that the best means of determining whether there is a market for this project is to see if it can be financed.

Mr. Sklaroff acknowledged that the application team was aware that Mr. Thomas had likened the alterations to the interior of the cathedral to the Taliban's destruction of the statues and had decided that it was not only appropriate but important to retain his services in light of those comments. Mr. Thomas stated that he was concerned as a neighbor with the changes to the interior 10 years ago. He noted that prominent church historian Roger Moss included the church in his book on important Philadelphia churches, which was published recently, despite the fact that the interior had been altered. Mr. Thomas contended that this church building represents the highest and best achievement of Philadelphia's High Victorian ecclesiastic architecture. Mr. Thomas stated that the interior changes are largely reversible. The paint was applied over the murals in such a way that it can be removed and the murals can be restored in the future. Mr. Thomas concluded that it is his continued and considered opinion that, of the many Victorian churches in this city, this is one of the great ones. And it is also a unique one, because it is so large and can serve as the cathedral. This is the one Episcopal church building in the area that can satisfy the needs of a cathedral. Therefore, it warrants special efforts to save it.

Ms. Sullivan stated that the church building is the cathedral for the Episcopal Diocese and houses the cathedra, the Bishop's chair. The Episcopal Church began in Philadelphia in 1789 and this project will contribute to its enduring presence in the city. The cathedral holds great importance for Episcopalians for the entire region. The cathedral provides the space for them to meet. Ms. Sullivan stated that the cathedral is visited by people from around the world. It has great significance for its role in worldwide liturgical movement.

Ms. Merriman asked if anyone in the audience had additional comments on the public interest aspect of the application. No one offered such comments. Ms. Merriman asked if any Commissioners had additional comments. No one offered such comments. Ms. Merriman asked for a motion.

FAILED MOTION: Ms. Hawkins moved to deny the application because the applicant has not demonstrated that the demolition of 3723 and 3725 Chestnut Street is necessary in the public interest. Ms. Turner seconded the motion, which failed by a vote of 4 to 4. Ms. Merriman and Messrs. O'Donnell, Palantino, and Schaaf dissented. Mr. Mattioni abstained.

Mr. Sklaroff offered to present additional materials at a later meeting.

ACTION: Mr. Schaaf moved to table the application for a period not to exceed six months. Ms. Leonard seconded the motion, which passed unanimously. Mr. Mattioni abstained.

ADJOURNMENT

ACTION: Mr. Mattioni moved to adjourn at 4:49 p.m. Ms. Leonard seconded the motion, which passed unanimously.

STANDARDS AND GUIDELINES CITED IN THE MINUTES

Standard 2: The historic character of a property will be retained and preserved. The removal of distinct materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new works shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Standard 10: New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Roofs Guideline: Recommended: Designing additions to roofs such as residential, office, or storage spaces; elevator housing; decks and terraces; or dormers or skylights when required by the new use so that they are inconspicuous from the public right-of-way and do not damage or obscure character-defining features.

Section 14-2007(7)(j) of the historic preservation ordinance:

No permit shall be issued for the demolition of an historic building, structure, site or object, or of a building, structure, site or object located within an historic district which contributes, in the Commission's opinion, to the character of the district, unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted.