



CITY OF PHILADELPHIA

BOARD OF LICENSE AND INSPECTION
Municipal Services Building, 11th floor
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102-1687

February 21, 2007

Joseph H. Evers, Prothonotary
Room 280, City Hall
Philadelphia, PA 19107

0710-7 PROTHY

Re: MANAYUNK NEIGHBORHOOD COUNCIL, INC. AND KEVIN SMITH

Appellant(s)

SEPTEMBER TERM 2006 – No. 1384

vs

BOARD OF LICENSE AND INSPECTION REVIEW and
PHILADELPHIA POLICE DEPARTMENT

Appellees

Dear Mr. Evers:

As required by Philadelphia Common Pleas Court Rule 146, enclosed please find the record on appeal regarding the above appellant in the above captioned matter.

Very truly yours,

Administrator

BOARD OF LICENSE AND INSPECTION REVIEW

FILED
PRO PROTHY
MAR 07 2007
R. WEISS

cc: Clerk of Motion Court
encl.(s)

MANAYUNK NEIGHBORHOOD COUNCIL, INC. AND KEVIN SMITH

COURT OF COMMON PLEAS

Appellant

CIVIL TRIAL DIVISION

vs

BOARD OF LICENSE AND INSPECTION REVIEW and
PHILADELPHIA POLICE DEPARTMENT

Appellees

SEPTEMBER TERM 2006

No. 1384

PRAECIPE TO RECORD FILE

To The Prothonotary Of The Said Court:

Kindly accept for filing the record of the Board of License and Inspection Review in the above captioned matter, which is being filed with your office in accordance with Local Rule 146.

BY:

Claire S. Gatzmer
Board of License and Inspection Review

ATTEST:

Claire S. Gatzmer
Administrator,
Board of License and Inspection Review

DATE: 3/7/07

MANAYUNK NEIGHBORHOOD COUNCIL, INC. AND KEVIN SMITH

COURT OF COMMON PLEAS

Appellant(s)

CIVIL TRIAL DIVISION

Vs.

BOARD OF LICENSE AND INSPECTION REVIEW and
PHILADELPHIA POLICE DEPARTMENT

Appellees

SEPTEMBER TERM 2006, NO. 1384

CERTIFICATION OF RECORD

To The Court of Common Pleas:

This will certify that the attached constitutes the official record of proceedings before the Board of License and Inspection Review for the City of Philadelphia, containing its Findings of Fact and Conclusions of Law.

BY: _____

Clare S. Galynne
Board of License and Inspection Review

ATTEST:

Clare S. Galynne

Administrator,
Board of License and Inspection Review

DATE: _____

3/7/07

MANAYUNK NEIGHBORHOOD COUNCIL, INC. AND KEVIN SMITH

COURT OF COMMON PLEAS

Appellant(s)

CIVIL TRIAL DIVISION

vs.

BOARD OF LICENSE AND INSPECTION REVIEW and
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Appellees

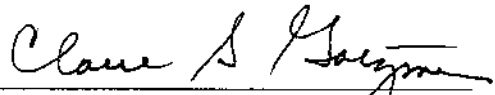
SEPTEMBER TERM 2006, NO. 1384

PRAECIPE OF NOTIFICATION

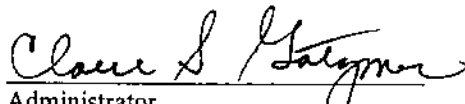
To The Clerk of Motion Court:

This is to inform you that the Board of License and Inspection Review of the City of Philadelphia has filed its completed record for the purpose of the above captioned appeal with the Prothonotary of the Court of Common Pleas on the above stamped date.

BY:


Board of License and Inspection Review

ATTEST:


Administrator,
Board of License and Inspection Review

DATE:

3/7/07

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL - DIVISION

Manayunk Neighborhood Council, Inc.	:	
and	:	
Kevin Smith	:	
Appellant(s)	:	
	:	September Term 2006
v.	:	
	:	No. 1384
City of Philadelphia	:	
Board of Building Standards	:	
Appellee(s)	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE
CITY OF PHILADELPHIA BOARD OF BUILDING STANDARDS

This appeal is taken from a Decision of the City of Philadelphia Board of Building Standards (the "Board") at Board Case No. 0701-06. On July 20, 2006, a public hearing was held by the Board to which, on August 15, 2006, it affirmed, the June 9, 2006 Philadelphia Historical Commission's (Historical Commission) decision regarding the property known as 3 Rector Street, Philadelphia, PA ("Subject Property"). In affirming the Historical Commission's decision to allow a five story addition atop the Subject Property and other alterations, the Board makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. On April 11, 2005, Applicant submitted a proposal for the demolition of the existing structure and the construction of a new four (4) story, 16 unit multi-family dwelling, with limited office space on the Subject Property. (See Application for Building Permit No.: 17230 dated April 11, 2005)
2. On April 26, 2005, a public meeting was held wherein the Architectural Committee (Committee) of the Philadelphia Historical Commission reviewed the Application and agreed upon a recommendation to the Historical Commission. (See letter from the Historical Commission dated May 6, 2005)
3. On May 13, 2005 a public meeting was held, pursuant to which, on June 10, 2005 the Philadelphia Historical Commission (Historical Commission) voted to deny the Application to demolish the existing structure at the Subject Property. (See letter from Historical Commission dated June 14, 2005)
4. On July 21, 2005 the Board of Building Standards (Board) upheld the Historical Commission's denial of a permit to demolish the existing structure located on the Subject Property. (See letter from the Philadelphia Department of Licenses and Inspections dated August 19, 2005)
5. On January 31, 2006, a public meeting was held wherein the Architectural Committee of the Philadelphia Historical Commission reviewed a concept plan to modify the exterior and add a four-story addition on top of the existing structure and recommended the proposal be denied. (See letter from the Historical Commission dated May 6, 2005)
6. On February 10, 2006 a public meeting was held, pursuant to which the Philadelphia Historical Commission voted to approve a concept plan to modify the exterior and add a four-story addition on top of the existing structure. (See letter from the Historical Commission dated February 24, 2006)
7. On May 30, 2006, a public meeting was held wherein the Architectural Committee of the Philadelphia Historical Commission reviewed a modified Application which proposed exterior alterations and a five-story addition to the top of the existing structure and recommended that the proposal be denied. (See letter from the Historical Commission dated May 6, 2005)
8. On June 9, 2006 a public meeting was held, at which Councilman Michael Nutter participated in support of the project and during which extensive debate was conducted on the merits of the proposal. Following the Hearing, the Historical Commission voted 9-0 to approve the modified Application for exterior alterations and a five-story addition to

the top of the existing structure at the Subject Property. (See letter from Historical Commission dated June 21, 2006)

9. On July 20, 2006 a public hearing was held by the Board where it upheld the Historical Commission's approval of the exterior alterations and five-story addition to the top of the existing structure located on the Subject Property. (See letter from the Philadelphia Department of Licenses and Inspections dated August 15, 2006)

10. A partial recording of the July 20, 2006 Board Hearing was made. A court reporter was not present and a written transcript of the hearing was not produced. (Refer to Audio cassette of July 20, 2006 Board of Building Standards Hearing)

11. Per the recorded testimony the issue concerning the Appellants is whether pursuant to the Manayunk portion of the Property Maintenance Code the Historical Commission has the authority to over rule the recommendation of the Historical Commission Staff, in this case the Architectural Committee. (Remarks by Counsel on behalf of the Historical Commission)

12. As recorded, Counsel for the Historical Commission stated that the Property Maintenance Code clearly provides for the Historical Commission's oversight of its own staff and that the Commission may follow, reverse, modify, or vacate any recommendations of its staff in the same manner as any board or commission under the Administrative Code. In this context the section of the Property Maintenance Code (PMC) which references Manayunk does not create a separate set of rules of administrative procedure. It merely designates that area of Philadelphia as one which is proactively under the general PMC permitting process. (Remarks by Counsel on behalf of the Historical Commission; *see also* Phila. Code §14-2007 and Title 4 §704.2)

13. Procedurally the BBS is the appropriate Administrative body to hear appeals from Historical Commission decisions under the PMC. (Remarks by Counsel on behalf of the Historical Commission; *see also* Phila. Code Title 4 §704.2)

14. Counsel for the Historical Commission stated that, Appellants' are not properly before the BBS in this matter. Only a party directly aggrieved by a decision of the BBS under the PMC may appeal that decision. This is a technical standards matter. Appellants' are not directly impacted by this decision. Their complaint is not ripe. The appropriate forum to challenge the actual implementation of Appellee's proposal is at the Zoning Board of Adjustment when zoning approval is sought and or to the Board of License and Inspection Review if and when permits to continue the project are issued by the Department. (Remarks by Counsel on behalf of the Historical Commission; *see also* Phila. Code Title 4 §A-801 and §A-802.2.1)

15. In addition to the arguments and evidence presented by Appellee, a letter from Councilman Michael Nutter's Office was submitted in support of the Historical Commission's approval of the proposed conversion of the Subject Property into a five-

story residential unit. (See letter from Councilman Michael Nutter's Office dated July 20, 2006)

16. Per the recorded testimony, the Appellants contend that during the June 9, 2006 public hearing held by the Commission that the Application was not fully reviewed in detail and that some items, such as building materials and building mass were not discussed. (Remarks by Appellants)

17. Appellants testified that the Commission's determination was not what the staff had recommended and overrode the staff recommendation. (Remarks by Appellants)

18. Appellants testified that the concept approval only contained a four (4) story structure and that the final approved proposal contains a five (5) story structure. (Remarks by Appellants)

19. Finally Appellants contend that the Commission is bound by the staff (Architectural Committee) determination in this matter and that it is prevented from overruling or modifying the staff determination. (Remarks by Appellants)

Conclusions of Law

1. Pursuant to Title 4 §A-801.1 of the Philadelphia Code, any person directly aggrieved by an action of the Department of License and Inspection (Department), in general, shall have the right to appeal to the Board of License and Inspection Review (Board of Review) except in situations arising under the Property Maintenance Code. Appeals under the Property Maintenance Code (PMC) shall be made to the appropriate technical board as further described in Title 4 §A-802.1 of the Philadelphia Code.

2. Title 4 §A-802.1 of the Philadelphia Code states that issues arising under the PMC are appealable to the Board of Building Standards.

3. Title 4 §703.1.2 of the Philadelphia Code, which creates the Manayunk Historic District, is considered part of the PMC.

4. Title 4 §704.2.2 of the Philadelphia Code, indicates that initial review and approval of permits under this section of the PMC is to be directed to the Historical Commission and its staff.

5. As a default provision, Title 4 §A-803.1 of the Philadelphia Code states that any person who may be aggrieved by an action of the Department that is not listed for appeal with a technical board under Title 4 §A-801.1 or who may be aggrieved in general by an action of the Department, except in Zoning matters, shall have the right to appeal to the Board of Review.

6. Title 4 §A-801.4 of the Philadelphia Code states that pursuant to a public hearing technical boards may grant or deny in whole, in part or with conditions the appeal of a prior recommendation.

7. It is well settled that the courts defer to an administrative agency's interpretation of its own regulations unless that interpretation is unreasonable. Lyng v. Payne, 476 U.S. 926, 939 (1986); Pelton v. Dept. of Pub. Welfare, 514 Pa 323, 329-30, 523 A.2d 1104 (1987).

8. After a review of the record and in consideration of the evidence presented, the Board of Building Standards finds that the Appellant has not met the burden to show that the Historical Commission erred in either its authority to issue a determination or in the actual determination made in this matter. Appellant's contention that only the Historical Commission's staff may issue approvals and that such staff determinations are final is unreasonable and untenable. Such an interpretation of the Property Maintenance Code effectively strips the applicant of all rights of appeal as well as eviscerates both the Department of Licenses and Inspections' and the Historical Commission's control and oversight of its own personnel and department. In addition, Appellant's case is not ripe, further rendering this matter moot. Appellant has not been directly aggrieved by the Historical Commission's determination and needs to wait for the actual issuance of a permit in this matter. Therefore the determination of the City is affirmed and this Appeal is denied.

Respectfully Submitted,



Claire S. Gatzmer, Administrator
Board of License & Inspection Review

Vote of the Board

Wayne Miller

Historical Commission Affirmed.

Ted Agoos

Historical Commission Affirmed.

Valerie Bergman

Historical Commission Affirmed.