

**LAW OFFICE OF HENRY L. SCHIRMER JR., ESQ.
315 NORTH MAIN STREET
TELFORD, PA 18969**

May 7, 2007

Office of Civil Administration,
Attn: Debbie Dailey,
Room 296, City Hall,

RE: Manayunk Neighborhood Council v. Board of Building Standards
Court of Common Pleas, Philadelphia County
September Term, 2006, Docket No 1384
Appellant's Brief

Dear Ms. Dailey

Please find enclosed the Appellant's Brief for Manayunk Neighborhood Council

et al. v. Board of Building Standards



Hal Schirmer Esq.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

FILED
MAY - 7 2007
Civil Administration

Henry L Schirmer Jr., Esq.
PA Id. No. 92090
315 North Main Street,
Telford, PA 18969

Attorney for Appellant,
Manayunk Neighborhood Council

MANAYUNK NEIGHBORHOOD	:	MISC- AGENCY APPEAL
COUNCIL INC.	:	
v.	:	SEPTEMBER TERM, 2006
BOARD OF BUILDING STANDARDS	:	
and	:	No. 01384
CITY OF PHILADELPHIA	:	

BRIEF OF MANAYUNK NEIGHBORHOOD COUNCIL
IN SUPPORT OF APPEAL

Appellant, by and through their undersigned Counsel, submit this Brief in Support of their Appeal.

I MATTER BEFORE THE COURT

This case presents an issue of first impression regarding the interpretation of substantive and procedural provisions of ordinances enacted by City Council to preserve the historic character of the Main Street Manayunk National Historic District. This case concerns a building proposal that seeks to partially demolish a building on the National Register and then construct a seven story tower in the heart of the Main Street Manayunk National Historic District. In 2006 the Department reviewed this building proposal, the Department denied the initial proposal, the proposal was appealed through Departmental Boards. The final adjudication of the Commissioner of L&I adopted the recommendation of the Board of Building Standards, which voted to affirm the decision of the Historical Commission to grant exceptions or variances for partial demolition and construction of a

seven story tower. Thus, the Department of I.&I has adopted the facts and reasoning of the Historical Commission as its decision, and the Appellants appeal from this decision.

RELEVANT LEGISLATIVE HISTORY

In 1982 Manayunk Neighborhood Council and other concerned residents nominated Main Street Manayunk to the National Register of Historic Places. In 1983 Councilwoman Anne Land and City Council supported the citizen's efforts to preserve Manayunk by amending several sections of the City Code to increase protections within the new Historic District; however while the City ordinances refer to the Manayunk Historic District, the City did not make Manayunk into a Philadelphia Historic District, and Manayunk is not under the jurisdiction of the Historical Commission. In 1984 City Council re-wrote the ordinance governing the Historical Commission; again, City Council did not place the Manayunk Historic District under the jurisdiction of the Historical Commission. In 1999 City Councilman Michael Nutter and City Council amended the City Code to set height limits in the Manayunk District, the 3 Rector Street property is subject to the general three story height limit.

THE PRIOR APPLICATION

In 2005 the Philadelphia Historical Commission was faced with a conflict regarding appeals from the Property Maintenance Code as applied in the Manayunk National Historic District. When City Council amended the Property Maintenance Code in 1983 it provided a clear substantive provision,

No permit shall be issued unless the proposed work has been approved by the Historical Commission staff as preserving the historical character of the district

P.M. Code 704.2.2, however City Council did not provide any guidance regarding appeal procedures. The Commission and the current Intervenor engaged in extensive discussion about the Philadelphia Code, the Property Maintenance Code, the Historical Commission regulations, and Councilman Nutter's 1999 height restrictions. See Minutes of the 514th Meeting of the Philadelphia Historical Commission, June 10, 2005, attached as Appellant's Exhibit 16. After much discussion, and two appeals, the 2005 application for complete demolition was withdrawn. The current application for partial demolition has proceeded through the Historical Commission based on the procedures outlined at the June 10, 2005 Historical Commission Meeting.

II STATEMENT OF THE QUESTIONS INVOLVED

- 1) Did the Department and Historical Commission fail to apply the Secretary of the Interior's Standards for Treatment and improperly allow a National Register Historic Building to be stripped of important architectural features?
SUGGESTED ANSWER – YES
- 2) Did the Historical Commission fail to apply the standards of the Property Maintenance Code and improperly allow work that does not preserve the historical character of the Manayunk district?
SUGGESTED ANSWER – YES
- 3) Did the Historical Commission improperly interpret the Property Maintenance Code § 704.2.2 "No permit shall be issued. ... [without staff approval]" to mean the exact opposite, "A permit may be issued ... [without staff approval]"; in disregard of the plain language of the ordinance?
SUGGESTED ANSWER – YES
- 4) Did the Historical Commission fail to apply the express standards of a three story height limit established by the 1999 Manayunk District ordinance by approving a seven story building?
SUGGESTED ANSWER – YES
- 5) Are the Departmental decisions supported by relevant findings of fact and conclusions of law.
SUGGESTED ANSWER – NO

III FACTS

THE CURRENT APPLICATION

In 2006, an application for partial demolition and construction of a five story addition was presented to the Department of L&I. The application is for property located within the Manayunk Historic District as described in P.M Code §703.1.2 and within the Manayunk Overlay, described in Zoning Code §14-1615(2)(a-b); therefore the demolition and construction application was referred to the Historical Commission Staff. The Historical Commission staff denied the application based on the standards set forth in P.M. Code 704.2.3 and 704.2.7. Section 704.2.2 of the Property Maintenance Code states that no permit may be issued without Staff approval. The application was next reviewed by the Architectural Committee, which also held that the application did not meet the standards set forth in P.M. Code 704.2.3 and 704.2.7.

The Philadelphia Historical Commission reviewed the application, made a motion to adopt the findings of the Staff and Architectural Committee, but suddenly and inexplicably reversed itself and instead voted to allow partial demolition and construction of a seven story building. The Historical Commission did not explain or discuss facts to establish that the decision met the provisions of P.M Code §704 et seq. The Historical Commission did not explain or discuss facts to establish that the decision met the standards of 36 C.F.R. §68.3. See Soc'y Hill Civic Ass'n v. Phila. Bd. of License & Inspection Review, 905 A.2d 579, n.4 (holding that the Historical Commission Staff, Architectural Committee and Commission are bound to apply the Secretary of the Interior's Standards for Treatment when reviewing applications.)

The Appellants appealed the decision of the Historical Commission to the Board of Building Standards, asserting that the Historical Commission erred in stripping the

historic building of its architectural features, that the a seven story addition is far out of scale for the building and the district, and that the approval improperly bypassed the Historical Commission Staff. See Appellant's July 5, 2006 Appeal, Exhibit 7 of Appellants Response to Motion to Quash.

The Board of Buildings Standards held a hearing and orally denied the appeal. By letter dated August 15, 2007, the Department provided a brief summary of facts, the recommendation of the board, and the decision of the Commissioner of L&I to adopt the recommendation of the Board of Building Standards.

The Appellants then appealed the decision of the Department/Board of Buildings Standards/Historical Commission to the Court of Common Pleas.

THE AGENCY'S FINDINGS OF FACT

As a threshold issue the August 15, 2006 adjudication letter from the Department of License & Inspection includes the findings of fact which Commissioner Solvibile based his decision upon. The Department letter states that:

- A) On July 20, 2006 Kevin Smith and Manayunk Neighborhood Council appeared before the Board of Building Standards
- B) At its June 9, 2006 meeting the Philadelphia Historical Commission voted to grant approval for a five story addition and exterior alterations to 3 Rector Street.
- C) Jonathan Farnham of the Historical Commission provided a timeline of the Historical Commission's actions regarding the building.
 - 1. On June 10, 2005 the full Commission voted to deny the demolition of the building;
 - 2. On February 10, 2006 the full Commission voted to adopt the proposal in concept for exterior alterations and a four-story addition atop of the building;
 - 3. On June 9, the full Commission voted to grant final approval for exterior alterations and a five story addition atop of the building. The staff and the Commission's Architectural Committee had previously recommended denial of the proposal. Mr. Farnham

stated that representatives from the community were present at the full Commission meeting.

- D) The Appellants argued that there were procedural errors because the final decision bypassed the Staff. The Appellants argued that the proposed design is out of scale. The Appellants argued that the materials used on the building are inappropriate. The Appellants argued that the plan lacks cornice details.
- E) John Hunter stated that the revised plan is a story taller than the conceptual approval.
- F) Hal Schirmer testified that PM 70[4]2.2 (sic) requires that no permit shall be issued without Staff approval.
- G) After considering extensive testimony, the Board of Building Standards voted 3-0 to recommend denial of the appeal
- H) Commissioner Solvibile approved the Board's recommendation.

thus, although the Department has not filed formal findings of fact and conclusions of law, there are facts of record. The absence of formal findings of fact does not automatically preclude a decision. ZHB v. Konyk, 5 Pa. Cmwlth 466, 290 A.2d 715 (1972). If the agency's findings of fact are insufficient as a matter of law, the court may overturn the decision of the agency. WCAB v. Paris Neckware, 22 Pa. Cmwlth 543, 350 A.2d 212 (1976); Melwood Corp. v. ZBA, 107 Pa. Cmwlth 246.

ADDITIONAL FACTS

On February 26, 2007, Intervenors filed a Motion to Quash which although it did not include formal findings of fact, did include new evidence in the form of Zoning Board transcripts, emails, and presented a Motion with thirty-seven paragraphs of factual allegations. Generally, the receipt of minor evidence and new facts requires that the court must decide the case de novo and render its own factual findings. Mitchell v. ZHB, 838 A.2d 819 (Pa. Cmwlth 2003); Borough of Jenkintown v. Bd. of Commissioners, 858 A.2d 136. On March 19, 2007, Appellants filed a Response to the Motion to Quash, answering the thirty-seven paragraphs of factual allegations.

ORDINANCES

In 1983, to help preserve Main Street Manayunk, Philadelphia City Council amended several sections of the Philadelphia Code, which are not at issue in this appeal, as well as the Property Maintenance Code, which states in relevant part:

PM-703.1.2 Historic area:

The Main Street Manayunk National Historic District shall consist of the following area: [Incorporating the boundaries of the Main Street Manayunk National Historic District]

PM-704.2.2 Approval:

All applications for such permits shall be forwarded by the Department to the Historical Commission for review and approval, before issuance of the permit. No permit shall be issued unless the proposed work has been approved by the Historical Commission staff as preserving the historical character of the district.

PM-704.2.3 Repair:

Original architectural features such as cornices and bays shall not be removed. Deteriorated features shall be repaired where possible. Replacement material where necessary shall duplicate the original as closely as possible.

PM-704.2.7 Design:

Additions, alterations, and new construction shall be designed so as to be compatible in scale, building materials, and texture, with contributing buildings in the historic district.

The express language of these ordinances directs the protection of the Manayunk Historic District, along with the preservation of the individual buildings in the Manayunk District.

In 1999, in response to development pressure, City Council enacted additional ordinances to protect and preserve the Main Street Manayunk National Historic District; which state in relevant part:

§14-1615. Main Street/Manayunk and Venice Island Special District

§14-1615(2) District Boundaries.

For purposes of this section, the Main Street/Manayunk and Venice Island Special District Controls shall apply to: (a) all properties within the area bounded by Shurs lane, the rear property line of the properties fronting on the northeast side of Cresson street, Gay street, the rear property line of the properties fronting on the northeast side of Baker street, Leverington street and the Manayunk Canal;

§14-1615 (8) Height Regulations.

(.1) For the area described in paragraph (2)(a) and (b) above the following height regulations shall apply. The maximum height of a building shall be thirty-five feet above the average ground level at the base of the structure, but in no case over three stories, provided, that the thirty-five feet height restriction shall be applicable to parking garages but the three story restriction shall not be applicable to parking garages, further provided that additions to existing buildings which do not increase the gross floor area of the building by more than 10% may be built to a height (in both feet and stories) not to exceed the existing building, provided that all of the yard, set back, and building width requirements are met;

The express language of §14-1615 sets the scale for buildings along Main Street as three stories or thirty five-feet. City Council has clearly set out that new buildings over three stories in height are not appropriate within this section of the Main Street Manayunk National Historic District.

SECRETARYS STANDARDS

The Secretary of the Interior's Standards for Preservation Nos. 2 and 6, 36 C.F.R.

§ 68.3(a)(2) and (6), provide:

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided. . . .

(6) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

The Philadelphia Historical Commission Staff, the Architectural Committee and the Commission itself are required to apply these standards when considering demolition and new construction projects. Soc'y Hill Civic Ass'n v. Phila., 905 A.2d 579; n.4 (Pa.CmwltH 2006).

ARGUMENT

1 THE DECISION FAILS TO APPLY THE SECRETARY'S PRESERVATION STANDARDS

Appellants request that this honorable Court reverse the Department because the Commission fails to apply the Secretary of the Interior's Standards for Treatment to the 3 Rector Street property. The property at 3 Rector Street is on the National Register of Historic Places, therefore it is covered by the Secretary's Standards. "Because the Statue of Liberty National Monument is listed in the National Register of Historic Places, the ... Project was governed by the Secretary of the Interior's Standards for the Treatment of Historic Preservation Projects (the "Standards"). Brotman v. United States, 111 F. Supp. 2d 418; Soc'y Hill Civic Ass'n v. Phila., 905 A.2d 579. Therefore because the property at 3 Rector Street is on the National Register, the Intervenor's development proposal is governed by the Secretary's Standards. Further, the Secretary's Standards guide the Historical Commission when it reviews demolition and development proposals for city historic districts. Soc'y Hill Civic Ass'n v. Phila. In Soc'y Hill Civic the Commonwealth Court held that allowing original architectural elements to deteriorate and then replacing them with fiberglass did not meet the standards of 36 C.F.R. §68.3 as they did not protect the architectural integrity of the building. Clearly the total removal of the architectural details from the property at 3 Rector Street is not in conformity with the Secretary of the Interior's Standards. Similarly, the proposed seven story building is over twice the height that City Council has established for this area. The five story modern addition on the little two story historic building puts the 3 Rector Street project far out of scale with the underlying historic property, the surroundings, the streetscape, the Manayunk Canal and the district as a whole.

2 THE DECISION FAILS TO APPLY THE PROPERTY MAINTENANCE CODE PRESERVATION STANDARDS

Appellants request that the Department be reversed because the proposal clearly does not preserve the character of the Manayunk National Historic District. The 1983 amendments to the Property Maintenance Code require that any demolition or new addition must preserve the historical character of the Manayunk district. Clearly, demolishing and altering a National Register building is the antithesis of preservation. The Staff and Architectural Committee both found that this proposal failed to meet the express requirements of PM-704.2.3 (Repair) and PM-704.2.7 (Design). Significantly, there is no allegation from the Historical Commission that this project meets the standards. A cursory review of the plain language of the ordinance shows that the Historical Commission is not following the legislative provisions established to protect the district, and have instead allowed a project that is detrimental to Manayunk.

3 THE DECISION IGNORED THE PROPERTY MAINTENANCE CODE PROCEDURE

Appellant requests that the court overturn the Department decision because the Historical Commission Staff have denied the application, the plain language of the Property Maintenance Code states that no permit may be issued, yet the Historical Commission has approved the permit application. The provisions of the Property Maintenance Code are clear; the approval by the Historical Commission staff is a prerequisite for demolition or additions in the Manayunk Historic District. The interpretation of municipal ordinances such as the PM Code follows the same guidelines as interpreting statutes; the object is to ascertain and effectuate the intention of the legislative body. 1 Pa.C.S. §§ 1903(a), 1921(b); see Martin v. Commonwealth, Dep't of Transp., 588 Pa. 429, 905 A.2d 438, 443 (Pa. 2006). The primary indicator of the

legislative body's intention is the plain language of the ordinance. See Penna. Fin'l Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84, 87 (Pa. 1995)("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."). City Council spoke quite clearly

- no permit shall be issued [without Staff approval].

The Historical Commission has interpreted this to mean the exact opposite

- a permit may be issued [without Staff approval].

Clearly, the Historical Commission's interpretation of the PM Code is arbitrary as it disregards the plain language of the law, and it is capricious as the Commission has twisted the language of the ordinance to mean the exact opposite of what the words say. A Philadelphia City Agency lacks authority to grant relief from an ordinance and issue a permit when the application does not comply with the appropriate regulations. Denny Building Corporation Appeal; 387 Pa. 311, 127 A.2d 724 (1956); H.A Steen Industries Inc. v. Cavanaugh, 430 Pa. 10. Here, the Historical Commission lacks authority under the plain terms of the ordinance, thus its actions are an unauthorized exercise of power.

4 THE DECISION FAILS TO APPLY THE MANAYUNK ORDINANCE STANDARDS

In 1999, in reaction to development pressure in the Main Street Manayunk National Historic District, City Council specifically addressed the issue of what height was appropriate for new buildings in the Historic District. City Council held that a three story height limit was appropriate. The Historical Commission has no statutory or administrative authority to overturn City Council. The Historical Commission has no

authority under statute, regulation or the City Charter to usurp the powers of the Zoning Board of Adjustment.

Recently, in Residents Against Matrix v. Lower Makefield Twp., 845 A.2d 908 (Pa.CmwltH 2004) the Commonwealth Court held that when a development plan is presented to a municipal review board, the board may not approve a plan that clearly violates the zoning ordinance. Here, the Historical Commission purports to approve a plan for a five story addition to a two story building, for a total height of seven stories in an area of the Manayunk Historic District where City Council has enacted a uniform three story height limit. The power of the Philadelphia Historical Commission to grant variance or exceptions is limited to section 14-2007 of the Zoning Code. Therefore, the Commission has no power to grant variances to other sections of the Philadelphia Code.

The Historical Commission's actions clearly usurp the authority to grant zoning variances which the Philadelphia Home Rule Charter expressly places in the Zoning Board of Adjustment. Actions by an agency that are not allowed in its enabling ordinance are per-se void. Denny Building Corporation Appeal; 387 Pa. 311, 127 A.2d 724 (1956); H.A Steen Industries Inc. v. Cavanaugh, 430 Pa. 10.

5 THE DECISION IS NOT SUPPORTED BY THE FINDINGS OF FACT

The Commissioner of L&I attached basic findings of fact to the August 15, 2006 decision letter, however the findings do not support the decision. The Department has made no reasoned attempt to explain why the decision of the Board of Building Standards was followed, in fact, the findings in the August 15, 2006 letter support the Appellants, as the Department has recited multiple reasons raised by Appellants for overturning the Historical Commission decision, but the record is devoid of any facts or reasoning to

support affirming the Historical Commission decision. When the findings of fact only discuss reasons for denying a variance, those findings of fact cannot be turned around subsequently to support the granting of a variance. Rees v. ZHB., 2 Pa. Cmwlth. 551. Here, there are no findings of fact explaining the conclusion that the partial demolition of a National Register Historic Building is a benefit that preserves the historic character of the Manayunk Historic District. There are no findings of fact explaining why the violation of the three story height limit is a benefit that preserves the historic character of the Manayunk Historic District.

Finally, although the court has taken new evidence, the court need not to hear the entire case de novo, as that the agency's findings of fact are insufficient as a matter of law. WCAB v. Paris Neckware, 22 Pa.Cmwlth 543, 350 A.2d 212 (1976); Melwood Corp. v. ZBA, 107 Pa.Cmwlth 246. In this situation, the court may overturn the decision of the agency without prolonged hearings and factual investigations.

V RELIEF

WHEREFORE, for all the above reasons, the Appellants requests that the Court affirm the Appeal of Manayunk Neighborhood Council an overturn the Decision of the Department to adopt the decision of the Historical Commission.

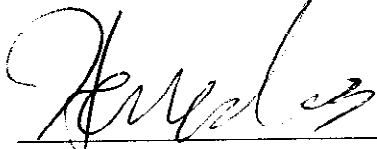

Henry L. Schirmer Jr., Esq.

EXHIBIT 16

THE MINUTES OF THE 514th STATED MEETING OF THE
PHILADELPHIA HISTORICAL COMMISSION
10 June 2005

1515 Arch Street, Room 18025
Michael Sklaroff, Esq., Chair

Present

Michael Sklaroff, Esq., Chair
Warren Huff, Director of Urban Design, City Planning Commission
Joseph James, Deputy Commissioner, Department of Public Property
Sara Merriman, Special Assistant to the Director, Department of Commerce
David Perri, P.E., Chief Code Official, Department of Licenses & Inspections
Vincent Rivera, AIA
Harris Steinberg, AIA
Thomas Sugrue, Ph.D.
Norman Tissian
Scott Wilds, Deputy Director, Office of Housing & Community Development

Randal Baron, Historic Preservation Specialist
Jorge Danta, Historic Preservation Planner
Jonathan E. Farnham, Acting Historic Preservation Officer
Diane M. Hughes, Executive Secretary
Laura M. Spina, Historic Preservation Planner

Lawrence Copeland, Esq., Senior Attorney, Law Department
Leonard Reuter, Esq., Assistant City Solicitor, Law Department

Also

Patrick Hauck, Powers & Company
James Rowe, Agoos/Lovera Architects
Neil Sandvold, Sandvold Blanda Architects
John E. Thrower, Bower Lewis Thrower Architects
John F. Tucker, Bower Lewis Thrower Architects
Lenore Millhollen, Preservation Alliance/Center City Residents' Association
Craig Deutsch, Harman Deutsch Architects
Jesse Carpenter, J. G. Carpenter & Company Wood Workers
Robert Levitt, Second Street Parkominium
Michael Swiszczy, University of Pennsylvania
Mary Matricciano, 620 Hancock Street
Josefa Castineira, 620 Hancock
Richard Russell, University of Pennsylvania
Robert Pisani, 2502 Garnet Place
Kevin Smith Manayunk Neighborhood Council
Serge Nalbantian, Brown Hill Development
Jonathan Mallie, SHoP Architects
John M. Sabatini, AIA, Marshall Sabatini Architects
Dominic Chiacchiero
Dan Griffith, Wachovia
Mike Maddalo, Sr., NW Sign

Mike Maddalo, Jr., NW Sign
Joseph Clark, 2502 South Garnet Place
Chris Kytzidis
Clay Cann, 633 North 16th Street
Stephen Goldner, SPG3
Greg Skaler
Ray Labov
David Dinenberg, Metro Development
Colleen Ginder, Singer Real Estate
Judy Robinson, Woodcock Design
Brett Feldman, Esq., Klehr Harrison Harvey Branzburg & Ellers
David Waxman, Rector Street Associates
John Gallery, Preservation Alliance
Richard Thom, Old City Civic Association
Shawn Plum, VMA
Carl Primavera, Esq., Klehr Harrison Harvey Bransburg & Ellers
Vicki Leon, 4163 Main Street
David Grasso, Metro Development
Jane Glenn, Manayunk Neighborhood Council
Craig Mandenberg, Idletime Network
Jen Pastore
Denise Centafanti
William G. Schwartz, Esq.
Jeff Walter, Brandywine Street
Richard Tyler

Michael Sklaroff, Chair, recognized the presence of a quorum and called the 514th Stated Meeting of the Philadelphia Historical Commission to order at 9:05 a.m.

Minutes of the 513th Stated Meeting of the Philadelphia Historical Commission

Upon a motion made by Mr. Wilds and seconded by Mr. Steinberg, the Commission voted to approve the minutes of the 513th Stated Meeting, 13 May 2005, Michael Sklaroff, Chair, as corrected.

OLD BUSINESS

3 Rector Street

Rector Street Associates, Owner

Brett Feldman, Esq., Applicant

DATE: c. 1880 – contributing to the Manayunk Historic District

PROPOSAL: Demolish building; construct 4-story multi-unit residential building with parking

Architectural Committee recommendation: Denial, pursuant to PM § 704.2.1 of the Property Maintenance Code - No buildings or portion of the exterior thereof within the historic district shall hereafter be constructed, altered, repaired, demolished, or partially demolished unless a permit has first been obtained from the Department; and PM 704.2.2 - All applications for such permits shall be forwarded by the Department to the Historical Commission for review and approval, before issuance of the permit. No permit

shall be issued unless the proposed work has been approved by the Historical Commission staff as preserving the historical character of the district.

Ms. Spina present the proposal, which calls for the total demolition of the historic building and the construction of a four-story, multi-unit residential building in its place. The inventory for the Manayunk Historic District lists the extant building as contributing to the district. The building reflects the industrial history of the neighborhood. The application includes some financial hardship information making a claim that the building could not be sold and reused as it is; however, the Manayunk Ordinance, which governs Commission reviews in the Manayunk Historic District, does not include hardship provisions.

The application proposes a four-story building with brick facing and stuccoed corners, beltcourses, and balconies. Large industrial-type windows would punctuate the symmetrical facades. Cars would enter the first-level parking from Rector Street. The openings along the tow path would provide ventilation of the parking area.

Mr. Sklaroff reviewed the Commission's jurisdiction in the Manayunk Historic District. He noted that the district was created by the City Council at the request of the Commerce Department, not by the Commission. He stated that the ordinance designating Manayunk as historic is part of the Property Maintenance Code. He reported that applications are to be reviewed by the Commission's staff only under the Manayunk ordinance. He stated that there are no provisions in the code for the Architectural, Hardship, and Designation Committees. He added that the Commission's role likewise is not defined. Appeals of decisions go not to the Board of Licenses & Inspection Review, but to the Board of Building Standards. He further noted that the Board of Building Standards is advisory to the Commissioner of the Department of Licenses & Inspections. Mr. Perri agreed and elaborated on Mr. Sklaroff's comments. Mr. Sklaroff added that Manayunk perhaps should be included on the Commission's long-range planning agenda when it considers the creation of new historic districts.

Mr. Wilds asserted that the Manayunk ordinance is silent on demolition and new construction. He requested clarification on the Commission's role in the matter.

Mr. Sklaroff stated that the applicant has a choice. He must decide whether to proceed to the Board of Building Standards or to accept a review by the Commission. Mr. Sklaroff also stated that if the Commission proceeds, it must decide if it has jurisdiction and, if so, what standards it will apply. Mr. Tissian asked how the Commission's decision in this matter might be appealed. Mr. Sklaroff replied that any decision of the Commission, right or wrong, with or without jurisdiction, would be appealed to the Board of Licenses & Inspection Review or to the courts. Mr. Baron stated that he was aware of at least one appeal of a staff decision for a Manayunk property to the Board of Licenses & Inspection Review.

Mr. Primavera acknowledged the complexities of the case and stated that, if it was easy, he would not have been retained as the attorney in the case. He then reported that Councilman Nutter was the inspiration behind the ordinance, which was enacted to promote commerce. Mr. Sklaroff observed that the ordinance predates Mr. Nutter's election to the City Council by several years. Mr. Primavera noted for the record the letter of support for the project from the Councilman. He then appeared to agree to

continue with the review by the Commission, out of respect for the body. Mr. Sklaroff asked him directly if he wished to proceed. He stated that he did.

Mr. Sklaroff then asked the Commission if it wished to proceed. Mr. Sklaroff requested an opinion on the matter from Mr. Copeland of the Law Department. Mr. Copeland offered an informal opinion. He asserted that the Commission cannot simply decline jurisdiction. He also asserted that the staff could refer a matter to the Commission for guidance and that the Commission could, in turn, refer it to the Architectural Committee for guidance. He concluded that, although the ordinance is open to interpretation, it does appear to provide a framework for review; the Commission does hold jurisdiction in this case.

Mr. Sklaroff then presented his opinion. He stated that the Manayunk ordinance is part of the property maintenance code, not the zoning code. He asserted that the code expressly mandates that appeals from decisions of the Commission staff must be heard by the Board of Building Standards. Mr. Copeland agreed. Mr. Sklaroff contended that the Commission itself does not have jurisdiction over Manayunk applications. He then recommended that the Commission vote whether to hear the application as an appeal from the Architectural Committee's recommendation or to refuse to hear it with the understanding that the remedy is an appeal to the Board of Building Standards. He then offered a third alternative: the Commission could review the application and render a decision with the understanding that the applicant could appeal that decision as well as the Commission's claim of jurisdiction.

Based on his reading of the first sentence of Subsection II of the Manayunk ordinance, Mr. Sugrue suggested that the Commission did have jurisdiction. Mr. Wilds added, following Mr. Sugrue's interpretation, that the staff should be directed by the Commission. Mr. Sklaroff noted that the staff has made its determination in the matter: the proposal does not preserve the historic character of the district.

Speaking from the audience, Mr. Tyler offered a legislative history of the ordinance. He stated that the ordinance had been proposed by the Commerce Department in the early 1980s to offer some control over the fast-paced development occurring in Manayunk. He observed that the final decisions on applications had been limited to the Commission's staff to expedite the review process. Whereas the Commission's staff must render its decisions within five days, the Commission's decision process can take six to eight weeks. Final jurisdiction was conferred to the staff in the ordinance to allow for timely reviews and accelerated revitalization. He concluded that he believes that the staff, but not the Commission itself, has jurisdiction in this case.

John Gallery of the Preservation Alliance interpreted the ordinance as giving the jurisdiction to the staff, not the Commission. However, regardless of the jurisdictional question, the ordinance only allows for the maintenance of the historic character of the district. It does not allow for the review of demolition proposals, much less their approvals. Mr. Sklaroff rebutted Mr. Gallery's claim, noting that the ordinance did address demolition. He added that if Mr. Gallery's claim were true, then he had given Mr. Primavera a basis for appeal. Mr. Wilds asserted that the staff could approve the demolition of a building that was not compatible with the district.

Mr. James stated that past practice should guide the Commission. He noted that the Commission had both approved and disapproved applications; therefore, it should move forward with its review. Mr. Sklaroff agreed. The Commission members decided unanimously to proceed with the review.

Mr. Primavera asserted that the Commission's role in reviewing Manayunk proposals is to advance economic development in the area. He added that Mr. James had expressed this opinion moments earlier. Mr. James denied having made such an assertion and Mr. Sklaroff requested that Mr. Primavera limit himself to the merits of the case.

Stephen Goldner of SPG³ presented the design for the new building to the Commission. He stated that he prepared his design with the assumption that the old building would be demolished. At the request of Mr. Wilds, Mr. Goldner described the site and its surroundings. Mr. Sugrue pointed out that the building to the west of the one in question is very similar and houses a successful restaurant. Mr. Goldner conceded that it is very similar but slightly smaller. Mr. Primavera noted that the restaurant is named Bourbon Blue; a Smith & Hawkins store formerly occupied the building. He stated that Smith & Hawkins store is the model on which Mr. Sugrue would like to see the development of the site in question based. Mr. Sugrue replied that he had no model in mind.

Mr. Goldner continued his overview, opining that the building is not visible from Main Street. Commission members countered that it is highly visible from Main Street. Mr. Goldner conceded that it is visible from Main Street and the canal. He reported that the large building to the north houses the offices of architect Robert Venturi and Denise Scott Brown. He began to discuss the plans for the new building and several Commission members interjected that the new construction should not be addressed until the question of the demolition was resolved. Mr. Goldner explained that he was not charged with securing the demolition approval; his charge was to design the new building. After Mr. Sklaroff inquired about the Architectural Committee's opinion of the new building, Mr. Goldner revealed that he had not presented the plans for the new building to the Committee because the discussion never progressed beyond the question of demolition.

Mr. Sugrue asked about the canal façade. Mr. Goldner explained that the building is two stories at the south, along the towpath. Mr. James asked about the condition of the extant building. The architect explained that it is a large, vacant garage. Messrs. James and Sklaroff asked if it is sound. The architect explained that it is sound, secured, and maintained. Mr. Tissian asked if the building floods and if the flooding would preclude residential development. The architect answered that flooding would not prevent the existing building from being converted for residential use; he stated that getting light into the interior was problematic along one side. Mr. Perri asked how much of the original fabric of the building survives. The architect answered that he did not know. Mr. Primavera referred the question to the current owner, Raymond La Bov, who was seated in the audience. He reported that the building was essentially unaltered.

After Mr. Wilds asked about the new building, Mr. Goldner presented the plans, explaining that there would be 17 units with 17 parking spaces, that it would look somewhat industrial; that it would not be too large; and that it would be compatible with its surroundings.

Ms. Merriman asked about the last use of the building. Mr. La Bov explained that it was last used in 2002 as a plumbing and heating supply business. He also stated that it has been for sale since 2001. The asking price is \$1 million. He added that he has had no offers at that amount. Mr. Tissian asked him what offers he had received. He stated that he had received an offer for \$800,000, but that the buyer had withdrawn the offer. The last tenant paid about \$2,200 per month rent.

Mr. Steinberg asserted that the Commission should concentrate on the question of demolition. Mr. Sklaroff asked Mr. Primavera to summarize the case for demolition. Mr. Primavera asserted that the Commission was acting as a Committee of the Whole. After a request that he speak more directly, Mr. Primavera argued that this proposal must be viewed in a larger context, the commercial revitalization of Manayunk. He stated that the proposal should be reviewed using the development of Manayunk as the standard. An industrial building is not the best use for Manayunk. Mr. Sklaroff contended that the last use was retail, not industrial. Mr. Primavera countered that it was used for distribution.

Mr. Sugrue inquired if the architect had considered incorporating the existing building into a larger development. He did not respond.

Mr. Primavera concluded that the building is not viable for any use. Its industrial use is not suitable for Manayunk. It should be photographed and then demolished. The new building will advance the Manayunk district. Under the Manayunk ordinance, the Commission should seek to advance Manayunk, not simply preserve buildings.

Mr. Sklaroff asked Mr. Primavera if he had any testimony or evidence to present on the architectural or historical merit of the building. Mr. Primavera stated that he accepts the claims made by the staff that the building has architectural and historical merit and would not contest them. Mr. Sklaroff asked him if he planned to address the standards that the Commission normally applies during such reviews. Mr. Primavera replied that only the standard of commercial revitalization is relevant in Manayunk.

Mr. Goldner stated that the surrounding buildings overshadow this one-story building. He added that he cannot adapt the building for contemporary use. One would need to demolish much of the walls to allow light in for residential use. Mr. Sklaroff asked about the square footage. Mr. Goldner replied that it is 60' by 90' and has about 6,000 square feet without the cellar. The total square footage is 11,000 square feet. Mr. Sklaroff asked if a study was done to convert the building to residential use, perhaps using tax credits. The architect answered that no study was undertaken.

Kevin Smith of the Manayunk Neighborhood Council presented a letter and highlighted the points for the Commission and audience. He stated that his organization is opposed to the demolition. He noted a recent master plan for the canal and towpath. He asserted that the new construction would not comply with that master plan. It would not enhance the experience of the users of Main Street, the towpath, or the canal. He argued that it would not revitalize commerce in Manayunk. Mr. Tissian asked Mr. Smith who he represents. He explained that he represents about 150 dues-paying residents. He claimed that the turn-over rate of the building across the street, which houses Bourbon Blue, is no greater than that of the stores on Main Street or in any typical suburban mall. He suggested that other uses could be found for the 3 Rector Street building. For example, he understands that the owner of the Manayunk Brewing Company was willing

to pay \$600,000 for the building. Also, a recording studio made an offer on the property. It is premature to assert that this building cannot be sold. The current asking price is simply too high. He concluded that mill buildings throughout the neighborhood have been adaptively reused.

Mr. Gallery claimed that this application highlights the problems presented by the Manayunk ordinance. He offered three points. First, although this ordinance may have been devised to promote economic development in Manayunk, it is, first and foremost, a preservation ordinance. Its goal is to preserve the historic character of the district; in fact, its historic character is the engine of the district's economy. If Mr. Primavera's argument was accepted, economic development would take precedence over preservation in every case in Manayunk. Second, a clear financial hardship claim has not been made. Third, Manayunk is an industrial district; this building is part of the history of Manayunk.

Shawn Plum, an architect, suggested that this building could be rehabilitated for residential use. She suggested that a rehabilitation by SHoP in New York's meat packing district could provide some guidance for a sensitive adaptive reuse. Mr. Goldner noted that there is no room to expand this building, which occupies 100% of its lot.

Mr. Steinberg stated that he agreed with Ms. Plum that the adaptive reuse of this building should be fully explored. He asserted that it would be irresponsible to approve the demolition without more exploration. Ms. Merriman contended that the proposed building would be an appropriate addition to Manayunk. Ms. Wilds concurred with Ms. Merriman that the proposed building is compatible with the district. He also reminded his fellow commissioners that they were not operating under §14-2007, but under the Manayunk ordinance and therefore needed to consider the implications of this project for the entire district. Mr. Sklaroff interjected that the towpath, like Main Street, is part of the Manayunk district. Mr. Tissian asserted that the Commission would not approve the demolition of this building if it stood in Old City; he contended that the Commission should preserve the building. He suggested that the price at which the building was marketed was too high; preservation would be viable if it was lowered. Mr. Sugrue concurred with Mr. Steinberg, who noted that adaptive reuse had not been fully explored. He added that if the Commission chose to approve the building, it should not allow parking along the important canal frontage. The parking garage would deaden the towpath. Agreeing with Mr. Sugrue, Mr. Huff noted the neighbors concerns about the new building's impact on the towpath.

Mr. Tissian moved to adopt the recommendation of the Architectural Committee and deny the proposal. Mr. Steinberg seconded the motion, which passed with a vote of 7 to 3. Ms. Merriman, Mr. Wilds, and Mr. Perri dissented.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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MANAYUNK NEIGHBORHOOD	:	MISC- AGNECY APPEAL
COUNCIL INC.	:	
v.	:	SEPTEMBER TERM, 2006
BOARD OF BUILDING STANDARDS	:	
and	:	No. 01384
CITY OF PHILADELPHIA	:	

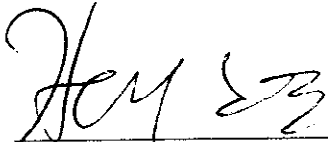
**CERTIFICATE OF SERVICE OF BRIEF
OF MANAYUNK NEIGHBORHOOD COUNCIL**

I Henry L. Schirmer Jr., Esq. certify that a true and correct copy of the Appellants
Brief has been served by mail upon the following counsel,

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this 7th day of May 2007.


Henry L. Schirmer Jr., Esq.