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**MANAYUNK NEIGHBORHOOD
COUNCIL, INC.**
and
KEVIN SMITH

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

Appellants,

SEPTEMBER TERM, 2006

v.

DOCKET NO. 1384

**BOARD OF BUILDING STANDARDS
and
CITY OF PHILADELPHIA**

and

RECTOR STREET ASSOCIATES, L.P.

**Re: 3 Rector Street
Board of Building Standards
Case No. 0701-06**

Appellees/Intervenors.

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BRIEF OF APPELLEE RECTOR STREET ASSOCIATES, L.P.

I. INTRODUCTION

Appellee, Intervenor, and equitable owner of the property located at 3 Rector Street, Philadelphia, Pennsylvania (the "Property"), Rector Street Associates, L.P., ("Rector Associates"), hereby files the within Brief in support of the decision of the Philadelphia Board of Building Standards rendered on August 15, 2006. The Appellant, Manayunk Neighborhood Council Inc. ("Appellant"),¹ appealed the unanimous decision of the Philadelphia Board of Building Standards (the "Board") in favor of Rector Associates, which denied Appellant's

¹ The appeal of Appellant Kevin Smith has been quashed due to lack of standing.

unmeritorious appeal of the also unanimous decision of the Philadelphia Historical Commission (the "Commission"), which granted permission to Rector Associates to construct a five-story roof-top addition to the long-time vacant and dilapidated warehouse structure on the Property in order to convert it to a residential condominium building. Appellee's project enjoys the strong support of then Councilman Michael A. Nutter, the Philadelphia City Planning Commission, the Manayunk Development Corporation and the Philadelphia Preservation Alliance.

Appellant's appeal must be dismissed because the Commission is the body entrusted to protect the City's historic fabric and it voted unanimously in favor of Rector Street's proposal. Additionally, the project enjoyed the support of the Philadelphia Preservation Alliance², the City Planning Commission, then Councilman Michael A. Nutter, and the Manayunk Development Corporation. The project enjoyed such broad support from preservationists, development groups and planning agencies alike because it preserved a crumbling, obsolete and dilapidated historic structure while developing it feasibly and economically. The Board correctly denied the Appellant's isolated appeal since the proposal preserved the historic fabric of the building consistent with the Philadelphia Property Maintenance Code and its applicable provisions. For the reasons that follow, the Appellant's appeal must be denied and the decision of the Board of Building Standards affirmed.

II. FACTUAL BACKGROUND

The Property is currently owned by Raymond Labov ("Labov"). Labov and his family operated a plumbing supply business from the location beginning in 1946. By the late 1980s it was clear to Labov that the building on the Property, a two story warehouse structure, was not large enough for the business to survive due to changing market conditions in which smaller

² The Philadelphia Preservation Alliance is the leading preservation advocacy group in the City of Philadelphia.

businesses like the business operated by Labov could not compete with larger volume, lower priced stores (i.e. Home Depot). See Hardship Affidavit of Raymond Labov, attached hereto as Exhibit "A"

Thus, in the early 1990s the plumbing business was sold to Victor Croes who continued to operate it from the Property under the Labov name. In 2001 Croes relocated the plumbing business as he found it increasingly difficult to remain due to the building's age, mounting maintenance costs and lack of loading area and parking for customers and deliveries. Unable to attract any replacement tenants, Labov ultimately decided to place the Property on the market for sale. See Exhibit "A".

Between 2001 and early 2004, Labov was unable to obtain any serious offers for the Property or get it under an agreement of sale. While interest in property in Manayunk was high, Labov found that there was little interest in the Property since it lacks frontage on Main Street, which is extremely important for retail, commercial and restaurant users. The Property and structure also have no capacity for off-street parking. The cost of converting the structure to office or residential uses was deemed impractical since any of these possible users would demand massive exterior changes in order to even consider using the Property. Such changes would involve punching holes in the roof and walls in order to provide windows, skylights, loading areas, which would compromise the integrity of the historic structure.

Despite the real estate broker for the Property's best efforts, no legitimate offer was made until the late summer/fall 2004 – when Labov entered into negotiations with Rector Associates to acquire the property and an agreement of sale was executed in February 2005. The agreement of sale was made contingent on Rector Associates' ability to obtain all necessary approvals for a certain number of residential units.

In 2005 Rector Associates made a proposal to the community and the Philadelphia Historical Commission (“Commission”) for the complete demolition of the existing building and development of new residential units on the Property. Due to opposition from the Commission’s Architectural Committee and other considerations, Rector Associates scrapped the proposed full demolition of the building, retained a new architecture firm, and began work on a revised plan that saved the existing historic building, incorporated an overbuild concept, and provided as much parking as possible given the constraints of the building and Property. The revised plan involved a five-story addition to the structure on the Property in order to convert it into a condominium building (the “Project”). The revised plan was prepared in concert with the Philadelphia Preservation Alliance.

After extensive deliberation and several public hearings before the Commission’s Architectural Committee and the full Commission on the Project, on February 10, 2006, the Commission approved the Project “in concept.” The Commission’s deliberations during the February hearing reflected the truism regarding the Property, i.e., that the developers were faced with certain economic and physical constraints regarding the Property, and that the proposed Project was a good compromise between preserving the historic elements and allowing the Property to be developed feasibly. See Minutes of the Commission, February 10, 2006, attached hereto as Exhibit “B”.

Rector Associates returned to the Commission for final approval for the five-story addition and on June 9, 2006, the Commission voted *unanimously* to give final approval for the Project. At the June 9, 2006 meeting of the Commission, former Appellant Kevin Smith stated that the project “was the most promising design he had seen to date”. Councilman Michael Nutter also again testified in support of the proposal. John Gallery of the Preservation Alliance

agreed that the Project should be approved and mentioned that Rector Associates “made a sincere effort to accommodate the recommendations and work with the building.” See Minutes of the Commission, June 6, 2006, attached hereto as Exhibit “C”. However, despite the support for the project voiced by Mr. Smith at the Commission, the unanimous vote of the Commission, and the overwhelming support for the Project by the many community organizations, historic groups and elected officials, on July 5, 2006 the Appellant and Mr. Smith filed an appeal of the Commission’s decision to the Board.

A public hearing was held July 20, 2006 before the Board. Jonathan Farnham, Director of the Commission testified in support of the Project at the Board. Rector Associates presented evidence of the overwhelming support for the Project, which included Councilman Michael A. Nutter, the Philadelphia Preservation Alliance, and the Manayunk Development Corporation. After the hearing, the Board unanimously affirmed the decision of the Commission and denied the Council’s appeal.³ The Commissioner of the Department of Licenses and Inspections (“L&I”) ratified the Board’s decision by letter dated August 15, 2006. A copy of the Commissioner’s Letter is attached hereto as Exhibit “D”.

Never satisfied, on September 14, 2006 Kevin Smith and the Appellant appealed the decision of the Board to this Court. During the pendency of this appeal, on November 30, 2006, the Zoning Board of Adjustment (“Zoning Board”) unanimously granted variances for the Project. At the Zoning Board hearing, the Project had the support of Councilman Michael A.

³ Rector Associates was informed by the Law Department that the recording of the Board of Building Standards’ hearing was unable to be transcribed.

Nutter, the City Planning Commission, the Philadelphia Preservation Alliance, and the Manayunk Development Corporation.⁴

After the Appellants' appeal, Rector Associates filed a Motion to Quash the Appellants' appeals for lack of standing. This Court struck the appeal of Kevin Smith, who lives over a mile away from the Property and cannot see it from his home, but did not quash the Appeal of Appellant.

The Board filed its Findings of Fact and Conclusions of Law (the "Findings") on March 7, 2007. Finding of Fact Number 12 reads as follows:

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 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 Council of behalf of the Historical Commission; see also Phila. Code Section 14-2007 and Title 4 Section 704.2)

See Findings, attached hereto as Exhibit "E". Conclusions of Law Number 8 states:

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...

⁴ The transcript of the Zoning Board of Adjustment was attached to Rector Associates' Motion to Quash as Exhibit "E". Those notes of testimony show that John Gallery of the Preservation Alliance, Paula Brumbelow of the Philadelphia City Planning Commission, Julia Chapman of Councilman Nutter's office all testified in support of the Project. The Manayunk Development Corporation also submitted a letter of support for the project.

See Exhibit “E”.

For the reasons that follow, this Court must deny the Appellant’s appeal and affirm the Board.

III. LEGAL ARGUMENT

A. Standard of Review.

The standard of review for local agency appeals is defined in 2 Pa.C.S. Section 754(b), which states, in relevant part:

b) Complete record.-In the event a full and complete record of the proceedings before the local agency was made, the court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. Section 706 (relating to disposition of appeals).

Appellants do not allege that there was not a complete record before the Board or the Commission. Therefore, this Court may not reverse the Board unless “the agency’s findings of fact were not supported by substantial evidence, an error of law was committed, constitutional rights were violated, or the procedure before the agency was contrary to statute.” *Boston Concessions Group, Inc. v. Logan Township Bd. Of Supervisors*, 815 A.2d 8, 11 (Pa. Cmwlth. 2002). The term “substantial evidence” means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 640 (1983).

In cases involving zoning board cases, which are local agencies, Courts of this Commonwealth have given deference to the Boards' decisions. Such deference is also applicable to other local agencies, such as the Board and Commission. Courts of this Commonwealth have held that "the Board is the finder of fact with exclusive province over matters of credibility and weight to be afforded the evidence." *In re Realen Valley Forge Greenes Assoc.*, 799 A.2d 938, (Pa. Cmwlth. 2002). A court reviewing a zoning board decision should not "engage in fact finding or disturb the Board's credibility determinations on appeal." *In re Brickstone Realty Corp.*, 789 A.2d 333, (Pa. Cmwlth. 2001).⁵ Most importantly, all evidence presented at the local agency must be viewed in the light most favorable to the parties in whose favor the board ruled and the Court must credit all reasonable inferences that can be drawn from the testimony in favor of the appellees. *Lewis v. Civil Serv. Comm'n*, 518 Pa. 170, 173, 542 A.2d 519, 522 (1988).

Applying these standards to the case *sub judice* reveals that the decision of the Board, and the Commission, must be affirmed.

B. The Historical Commission Properly Reviewed The Project under the Applicable Provisions of the Philadelphia Property Maintenance Code.

The Commission's jurisdiction over the Property in this matter is unusual in that the Property was made historic through the creation of the Manayunk Historic District, which was codified in 1983 in the Philadelphia Property Maintenance Code (the "PM Code") by Philadelphia City Council.⁶ The relevant portions of the PM Code with regard to historic preservation are as follows:

SECTION PM-704.0 BUILDING STANDARDS APPLICABLE TO DESIGNATED AREAS

⁵ This standard of review for zoning board decisions is applicable to other administrative boards.

⁶ Normally, the Historical Commission designates properties as historic through their designation process.

* * *

PM-704.2 Historic area standards: Standards within the designated historic area shall be as set forth in Sections PM-704.2.1 through PM-704.2.7 in addition to the requirements of Sections PM-704.1 through PM-704.1.4.2.

PM-704.2.1 Permit: No building 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.

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-704.2.4 Facings: Refacing of facades, bays, cornices with inappropriate materials such as aluminum siding, or brick veneer shall be prohibited. Existing inappropriate facade facings shall be removed at the termination of the useful life of the facing. Any inappropriate facing material lawfully in existence shall not be repaired or altered in any substantial manner.

PM-704.2.5 Elements: Original window and door openings, sills, lintels, and sashes shall be retained and repaired whenever possible. Replacement elements shall match the original appearance in proportion, form, and materials as closely as possible.

PM-704.2.6 Storefronts: Original existing storefronts contributing to the character of the district shall be retained and repaired. New storefronts shall be compatible with the proportion, form and materials of the original building.

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.

See PM Code, Section PM-704.2 et seq. As stated in Section PM-704.2.2, the Commission has jurisdiction over the Property, and the Project, not under the Philadelphia Historic Preservation Ordinance (the "Ordinance") (See Philadelphia Zoning Code, Section 14-2007 et seq.), but under

the above PM Code provisions. Thus, the Commission was properly reviewing the Project under the PM Code.

1. The Federal Standards Are Not Specifically Applicable to the Project.

Appellants attempt to argue in their Brief (See Page 9 of Appellant's Brief) that the Secretary of the Interior's Standards for Historic Preservation (the "Secretary's Standards") are applicable to this matter. Such an argument is incorrect as a matter of law. The above sections of the PM Code, which the Commission was bound to apply, make no mention of the Secretary's Standards.⁷ Thus, the minutes of the Commission and the Commission's Architectural Committee for both the "in concept" and final approvals of the Project show that the Commission and its Architectural Committee appropriately applied the above provisions of the PM Code, and not the Secretary's Standards. See Exhibits "B" and "C" under "[R]ecommendations". There is no mention of the Secretary's Standards in any of the Commission's minutes, and appropriately so. While the Secretary's Standards could certainly serve as guidelines for the Commission, they cannot apply with the same force as a matter brought before the Commission pursuant to the Ordinance. Since the Project was brought to the Commission pursuant to the provisions of the PM Code, the provisions of that Code must apply.

Appellant also makes the argument on page 9 of its Brief that the fact that the Property is listed on the "National" Register compels the application of the Secretary's Standards. They cite

⁷ Although not applicable to the Project, the Secretary of the Interior's Standards are usually applied by the Commission pursuant to the Ordinance, which specifically mentions the Standards at Section 14-2007(7)(k)(6). For the Court's convenience, that Section states:

(k) In making its determination as to the appropriateness of proposed alterations, demolition or construction, the Commission shall consider the following:

* * *

(.6) In addition to the above, the Commission may be guided in evaluating proposals for alteration or construction by the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" or similar criteria.

the case of *Brotman v. United States*, 111 F. Supp. 2d 418, in support of this proposition, a case that dealt with the Statue of Liberty. However, there is no evidence whatsoever that the Property is listed on the *National Register*. The Property is only listed on the *Philadelphia Register*, which is much different from the National Register, thus Appellant's case law is inapplicable. Additionally, the Property is only present on the Philadelphia Register by virtue of the passage of the Manayunk Historic Ordinance, which is part of the PM Code. Thus, the Property was not listed as historic on an individual basis. Indeed, the date of the passage of the historical amendments to the PM Code for Manayunk, in December of 1983, coincides exactly with the date of the "listing" of the Property on the Register, which is December 14, 1983. Thus, the Property is listed on the Philadelphia Register only by virtue of the amendments to the PM Code.

Appellant also contradicts itself by arguing the application of the Secretary's Standards to the Project since it admits that the PM Code is applicable to the Property and the Commission did not have jurisdiction over the Property pursuant to the Ordinance. On Page 2 of its Brief, Appellant states as follows:

In 1983 Councilwoman Ann 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*.

(Emphasis added). Thus, clearly Appellant is estopped from arguing the applicability of the Secretary's Standards when it agrees wholeheartedly that the Commission's jurisdiction over the Property was not based on the Ordinance.

2. The Historical Commission Determined that the Project Appropriately Preserved the Historic Elements of the Property as Dictated by the

PM Code.

Even though the Ordinance was not applicable, Rector Associates went through a rigorous process before the Commission for its Project pursuant to the PM Code. The Commission, before approving the current Project, rejected the original proposal for development of the Property, which involved the complete demolition of the historic structure on the Property. The current Project is a result of a useful process of give and take between Rector Associates, the Commission, Councilman Nutter, and the Philadelphia Preservation Alliance (which is the primary historic preservation organization in the city). The result of this process is a Project that completely preserves the original historic building's structure, and builds upon it, retaining all of the historic characteristics of the building. The Commission, and the many persons and organizations that supported the Project clearly recognized this, and the Commission's decision is consistent with the applicable preservation provisions of the PM Code.

Each and every provision of the PM Code was followed in the Project. The PM Code states that the features of the original structure should be "retained and repaired wherever possible." PM Code Section 704.2.5. The PM Code also states that "[o]riginal existing storefronts contributing to the character of the district shall be retained and repaired." PM Code 704.2.6. The Project's elements complied with these provisions, since the Project saved an historic building from deterioration and obsolescence, by incorporating the original building into a feasible economically sound development, with none of the building's exterior features altered or removed.

Section PM-704.2.7 states that any additions shall be "compatible in scale, building materials, and texture, with contributing buildings in the historic district." Very little information regarding contributing buildings in the historic district was available in this record,

so it is difficult to fully apply this PM Code Section. However, Appellant never pointed out to the Commission in its testimony how the Project was not compatible with other contributing buildings. Additionally, the Commission clearly determined, by a unanimous vote, that the Project should be approved. The Commission is the administrative body entrusted with preserving historic properties and areas in the City, and its members have the necessary expertise in architecture, preservation and economic development to make such decisions regarding preservation, and interpretation of a provision such as Section PM-704.2.7. Since the Project fully retained the original historic structure, the Commission approved the Project and necessarily deemed it consistent with other contributing buildings pursuant to Section PM-704.2.7.

Appellants claim that the fact that the Commission's Architectural Committee recommended against the approval of the Project, renders the Commission's decision reversible. See Page 10 of Appellant's Brief. Such a radical argument would turn the Ordinance on its head and usurp the power of the Commission. The Commission's Architectural committee strictly serves in an advisory capacity, and the ultimate decision regarding historic preservation is made by the Commission only. Indeed, the Ordinance states that the Commission has the sole power to:

Review and act upon all applications for permits to alter or demolish historic buildings, structures, sites or objects; to alter or demolish buildings, structures, sites or objects located within historic districts, and to review and comment upon all applications for permits to construct buildings, structures or objects within historic districts as provided in this Section...

See Philadelphia Zoning Code, Section 14-2007(4)(d). The Ordinance provides for the creation of committees to assist the Commission in its duties (See Ordinance, Section 14-2007(4)(h)), but in no way does it delegate any power to such committees. Thus, it is clear that since the

Commission is the final arbiter of historic preservation in this City, Appellant's argument that the Commission was bound to follow the recommendations of the Architectural Committee fails as a matter of law. To find otherwise would contravene the will of City Council and the Ordinance.

C. The Property Maintenance Code Cannot be Interpreted as Usurping the Power of the Historic Commission, Which is the Only Entity Entrusted With Making Decisions Regarding Historic Preservation.

Appellant makes a bizarre argument on Pages 10-11 of its Brief. It argues that because Section PM-704.2.2 mentions that no permit shall issue before being approved by the Commission's staff, the Commission cannot issue a decision if its staff recommends against it. Frankly, this is a silly argument. First, Appellant attempts to cherry pick a portion of Section PM-704.2.2 to suit its own needs, attempting to read the second sentence of the Section in a vacuum. The full Section reads as follows:

All applications for such permit 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.

See PM Code Section 704.2.2. Thus, clearly this Section of the PM Code vests the ultimate power to review applications for alteration of historic properties within the historic district in the Commission. The second sentence can be read that the Commission's staff merely signs off on projects after the Commission has voted upon them.

To accept Appellant's argument would render the Commission utterly powerless with regard to preservation decisions under the PM Code, and would vest all of the power to protect historic preservation in the Commission's staff. There would be no need for the Commission at all, and all applications to the Commission made under the PM Code would be reviewed or

rejected by the Commission's staff without input from the Commission. Additionally, if Appellant's argument were to be accepted, there would be no public hearing process, and no possibility for public input into projects involving historic properties under the PM Code. Clearly this Court cannot condone such a radical result.

The attorney for the Commission clearly recognized the absurdity of Appellant's argument during the Board's proceedings, where he argued that the Commission's staff could not be afforded the power to finally review permit applications without the involvement of the Commission. See Exhibit "E", Finding of Fact Number 8. This position is reflected in the Board's Findings, specifically Conclusion of Law Number 8. Conclusion of Law Number 8 reads, in relevant part:

...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...

Clearly such strong language from the Board shows that the City recognizes the inanity and radical nature of Appellant's argument in this regard, and if the argument were to succeed, the power of the Commission would be effectively stripped. Such a result cannot be condoned by this Court. Therefore, Appellant's argument must be rejected.

D. Zoning Restrictions Are Irrelevant to Historical Preservation Decisions.

Appellant argues in Section 4 of its Brief that the fact that the Property exceeded a zoning height restriction renders the decision of the Commission erroneous. However, Appellant does not even cite the zoning regulation referred to. Nonetheless, this argument can be dismissed immediately. The height limit referred to by Appellants is a zoning regulation, and the

Commission has no jurisdiction over zoning matters. Such decisions are strictly the province of the Philadelphia Zoning Board of Adjustment (the “Zoning Board”). Height is only relevant to the Commission in the limited context of historic preservation. The fact that the zoning height regulation exists is of no import to the Commission. Thus, Appellant’s argument is specious.

Even so, Rector Associates properly sought Zoning Board approval for its Project, which was granted by the Zoning Board on November 30, 2006. The Zoning Board had proper jurisdiction over such a request, and has the power to grant variances from the Zoning Code (See Philadelphia Zoning Code, Section 14-1801(1)(c)). As such, Rector Associates was permitted to exceed any applicable zoning height restriction for its project.

Again, Appellant suggests a radical interpretation of the Philadelphia Codes, which would turn the current system on its head. If the Commission were to invade the province of the Zoning Board and apply the Zoning Code to projects before it, the Commission would be usurping the power of the Zoning Board. An administrative board only has the power that the legislature bestows upon it, and no other powers can be implied. See *Pennsylvania Human Relations Commission v. St. Joe Minerals Corp.*, 476 Pa. 302, 310, 382 A.2d 731, 735-36 (1978) (“The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist.”). Furthermore, if the Commission started applying the Zoning Code to projects before it, and rejected them on the basis of the Zoning Code and not on the basis of protecting historic preservation, it would violate the Ordinance, which through clear and unmistakable language entrusted the Commission to render decisions regarding historic preservation (See Philadelphia Zoning Code, Section 14-2007(4), and carefully delineated the criteria which it must consider when rendering such decisions, and zoning considerations are clearly NOT mentioned among those criteria (See

Philadelphia Zoning Code, Section 2007(7)(k). If Appellant's argument were taken to its ultimate conclusion, there would be no need for the Zoning Board, since the Commission would make decisions regarding the Zoning Code when considering development projects. There would also be mass confusion regarding the administrative process, with the role of the Zoning Board unclear. This Court cannot condone such a result.

E. The Appellant Failed to Consider the Official Findings of Fact and Conclusions of Law of the Board In Its Brief.

Appellant argues in Section 5 of its Brief that the decision of the Board is not supported by any official Findings of Fact and Conclusions of Law. This argument must be dismissed since Appellant clearly has missed the fact that the Board filed its official Findings of Fact and Conclusions of Law (the "Findings") on March 7 of this year. Appellant's mistake is clearly due to the fact that the official Findings were not mailed to the parties by the Board. In fact, Rector Associates only became aware of the filing of the Findings because it checked the official Common Pleas Court Docket Entries and determined that the Findings had been filed, and then requested a copy of them from the Prothonotary. Although this Court might be perturbed that the Findings were not mailed to the parties, it is up to the Appellant to make inquiries regarding the Findings where possible, especially when it is Appellant's appeal that is being litigated, for which it has the burden of proof. Rector Associates was in the same position as Appellant, but was able to obtain a copy of the Findings without any problem. Thus, Appellant cannot be afforded any special accommodation in its appeal because of the failure of the Board to mail the Findings to the parties, since a reasonable inquiry would have determined that the Findings had been filed and issued by the Board.

The Board filed its Findings, which clearly and cogently supported the decision of the Board and the Commission regarding Rector Associates' Project. Thus, since Appellant's

argument in Section 5 of its Brief was based on the incorrect assumption that the Findings had not been filed, this argument must be dismissed.

III. CONCLUSION

Rector Associates' Project was supported by Councilman Michael A. Nutter, the City Planning Commission, the Manayunk Development Corporation, the Philadelphia Preservation Alliance, and before the Board, the Historical Commission. Even previous Appellant Kevin Smith spoke highly of the Project before the Commission. The Project enjoyed such overwhelming support because it preserved a decaying and obsolete historic structure, allowing it to be preserved as part of an exciting and economically feasible residential development. All of the interested parties recognized the overall benefits of the Project, save for the Appellant, who filed this isolated appeal. The legal arguments that support this appeal are so radical that to accept them would rewrite the Ordinance and the PM Code, and turn the current administrative process on its head, resulting in mass confusion. This Court cannot condone such a result, and this appeal must be dismissed.

Respectfully submitted,

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