

A

Raymond LaBov
 Raymond LaBov Date 4/11/05

Sworn to and subscribed before me
 this 11th day of April 2005

Marie K. Plachta

NOTARIAL SEAL
 MARIE K. PLACHTA, Notary Public
 City of Philadelphia, Phila. County
 My Commission Expires May 9, 2005

Income/Expenses on the Property

There has been no income derived from this property since 2001. The current annual operating expenses are listed below:

OPERATING EXPENSES:

There is a \$175,000 mortgage on the property; monthly debt service is \$1846.10

Taxes are \$3966.70 a year

Insurance runs \$4600 a year

Utilities: \$200 a month (water, electric and gas)

Maintenance Expenses: \$1000 a year (estimated)

TOTAL ANNUAL COSTS: **\$34,119.90**

	2001	2002	2003	2004	2005est
Rental Income	0	0	0	0	0
Operating Expenses					
Utilities	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)
RE Taxes	(3,967)	(3,967)	(3,967)	(3,967)	(3,967)
Insurance	(4,600)	(4,600)	(4,600)	(4,600)	(4,600)
Misc. Expenses (maint, security, etc)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
Total Operating Expenses	(11,967)	(11,967)	(11,967)	(11,967)	(11,967)
Net Operating Income	(11,967)	(11,967)	(11,967)	(11,967)	(11,967)
Mortgage	(22,152)	(22,152)	(22,152)	(22,152)	(22,152)
Profit/Loss	(34,119)	(34,119)	(34,119)	(34,119)	(34,119)
Total income/loss for 5 year period	(170,594)				

Affidavit of Raymond S. LaBov – Owner of 3 Rector Street

3 Rector Street has been owned by the LaBov family since 1946. It was originally purchased by my father and grandfather who have both since passed away. Today I am the only owner of the building.

My family ran a plumbing supply business from the location beginning in 1946. In the early 1990s the business was sold to Victor Croes who continued to operate it from 3 Rector Street under the LaBov name. In 2001, Victor purchased a building on Umbria Street and relocated the business as he found it increasingly difficult to remain due to the building's age, mounting maintenance costs and lack of loading areas for customers and deliveries.

Unable to attract any replacement tenants when the building became vacant in 2001, I ultimately decided to place the property on the market for sale. Between 2001 and early 2003, I 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, I found that there was little interest in my property since it lacks frontage on Main Street as is sought by retail, commercial and restaurant users and has no capacity for off-street parking. The costs of converting it to office or residential uses were quickly deemed impractical by these type of users.

In fact, I received only one verbal offer from a possible restaurant user that never progressed into a formal agreement being executed. During due diligence it quickly became apparent that the offer was not serious since he did not the financial backing or other necessary support and resources to enter into serious discussions. My attorney subsequently received a simple one-page offer that was quickly abandoned by the proposed buyer.

In July 2003, I listed the property with Richard Seltzer Inc. During the listing period numerous parties toured the building but ultimately we were unable to enter into an agreement of sale for the property.

Despite the broker's best efforts he was unable to bring any legitimate offers to me over the course of almost a year. In the late summer/fall 2004 – I entered into negotiations with David Waxman to acquire the property and an agreement of sale was executed in February 2005. Our agreement of sale is contingent on the demolition of the existing structure and his ability to obtain all necessary approvals for a certain number of residential units. Over the past four years of marketing this property (and my family's nearly 60 year ownership), I have become convinced that the only reasonable option for continued use of the property is for the existing building to be demolished and a new building to be erected. While I will miss the building, I believe that new residential which respects the architecture of Manayunk is the best option for this property.

I reserve the right to revise and update this affidavit and provide the historical commission with supplemental information as it may become available.

B

**THE MINUTES OF THE 522ND STATED MEETING OF THE
PHILADELPHIA HISTORICAL COMMISSION
10 FEBRUARY 2006**

**1515 ARCH STREET, ROOM 18029
MICHAEL SKLAROFF, ESQ., CHAIR**

PRESENT

Michael Sklaroff, Esq., Chair
James Brown IV
Warren Huff, Deputy Director, City Planning Commission
Joseph James, Deputy Commissioner, Department of Public Property
Sara Merriman, Special Assistant to the Director, Department of Commerce
Kathleen Murray, Special Assistant to Council President Verna
David Perri, Department of Licenses & Inspections
Vincent Rivera, AIA
Denise Smyler, Esq.
Thomas Sugrue, Ph.D.
Scott Wilds, Deputy Commissioner, Office of Housing & Community Development

Randal Baron, Historic Preservation Specialist
Jorge Danta, Historic Preservation Planner
Jonathan E. Farnham, Acting Historic Preservation Director
Karen Gonski, Administrative Technician

Leonard Reuter, Assistant City Solicitor, City Law Department

ALSO PRESENT

Lenore Millhollen, Preservation Alliance
Jody Della Barba, Girard Estates Area Residents
Joseph Loonstyn, Owner, 532 N. 22nd Street
Gerry Gutierrez, Group G, Inc
Rachel Schade, Schade & Bolender Architects
James Garrison, Hillier
J.P. Donohue, Loomis McAfee Architects
Daniel Collins, FESPP
Barry Jacobson, Mattress Giant
Larry Link, PennDOT
Monica Harrower, PennDOT
George Lyons, Chestnut Hill Historical Society
Tim Shaaban, Urban Space Development Inc.
Elizabeth Amisson, A.D. Marble & Co.
Harry Laspee, Pennoni Associates
Larry Link, PennDOT
Nathan Dobbs, Pennoni Associates
Frances Jones, Assistant General Manager for Governmental Affairs, SEPTA
David Waxman, Rector Street Associates, C.P.
Michael Shannon, Michael Shannon Designs
Devin Bates, Michael Shannon Designs
Jamar Kelly, State Representative Rosita Youngblood
John Gallery, Preservation Alliance

3 RECTOR STREET

Owner: Raymond Labov

Applicants: David Waxman & Alon Barzilay

Project: Demolish roof, add 4-story addition and parking

History: bet. 1876 and 1879 as the office for Archibald Campbell & Co. textile mills

Architectural Committee Recommendation: denial, pursuant to Property Maintenance Code 704.2.3 [Repair: Original architectural features such as cornices and bays shall not be removed.]; and 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.].

OVERVIEW: This application proposes in concept the conversion of an industrial building to residential use. In the spring of 2005, the current applicants applied to the Commission to demolish the historic building and erect an entirely new residential building. The Commission denied the demolition application in June 2005. The applicants appealed the denial to the Board of Building Standards, which upheld the Commission's decision. The applicants appealed to the Board of Building Standards decision to the Board of License & Inspection Review; that appeal is pending.

The conversion of the historic industrial building to residential use would entail the removal of most of the historic roof and the erection of a new structure inside the historic walls. The new structure would stand four stories above the historic building and have a contemporary design with banks of industrial-looking, multi-light windows. The east and west facades would have balconies. The project also stipulates parking at the lower level, with the garage entrance on the main façade and a ramp in the interior along the towpath façade of the building.

The building has three highly visible façades: the front, pedimented façade that faces Rector Street and is visible from Main Street; the east façade, also visible from Rector and Main Streets; and the two-story west façade that faces the towpath.

The application includes information on an advertising campaign for Manayunk that highlights the canal and towpath; several articles that emphasize the importance of the canal; financial information and an affidavit from the owner supporting demolition of the property; and support letters for the project.

DISCUSSION: Mr. Farnham presented the application to the Commission. Developer David Waxman, architect Jonathan Broh, and attorney Brett Feldman represented the project.

Mr. Feldman provided an overview of the project including its involvement with the Commission. He explained that the property housed a plumbing and heating supply company for many years until 2001. Since 2001, it has been vacant. The owner is incurring approximately \$34,000 per year in carrying costs including taxes and insurance. Mr. Feldman stated the building covers 100% of the lot, constricting any possible additions. Many efforts have been made to market this property. In 2005, his client submitted an application to the Commission to demolish the building. The Commission denied the demolition. He appealed the denial to the Board of Building Standards. He stated that the Board of Building Standards was unsure how to review the appeal because of its lack of experience with the historical properties. It voted to uphold

the denial with a vote of 2 to 1. Owing to the lack of parking and loading zones, this building is obsolete and not suited for industrial use. Mr. Feldman noted the significance of the building is related to Manayunk's industrial past. He displayed the latest proposal to add to the building. Mr. Feldman lamented the deteriorating conditions of the building, but Mr. Sugrue pointing out that the current owner is responsible for its continued maintenance. Mr. Feldman requested that the Commission approve in concept the proposed massing diagram. Mr. Sugrue questioned the fenestration on the canal façade. Mr. Broh provided an overview of the basement parking. The parking entrance will be located on the Rector Street facade. A ramp will run down from the entrance to the basement along the canal façade. The basement, which will be expanded 10 feet under the sidewalk, will provide approximately 18 parking spaces. Mr. Broh stated that screens would be installed in the window openings for ventilation. Mr. Sugrue felt the most significant issue is the relationship of the building to the canal. He stated that the canal is an important but underutilized asset. Mr. Feldman assured him that the team is dedicated to making the development as attractive as possible. He also noted the importance of parking for the project. Mr. Wilds questioned the design of the parking opening and asked if its impact on the façade could be reduced. Mr. Broh stated the ramp is very aggressively pitched at 16%-18%.

Ms. Merriman asked about the flood levels at this property. Mr. Feldman remarked that they had consulted with the City Planning Commission. He also noted that parking is a good use for the lower level. He also stated that there would be a single entrance in and out of the garage to keep the opening as small as possible. It would use a red and green-light traffic control system. Mr. James, who felt that the front façade must retain as much of its original fabric as possible, expressed his opposition to a large opening for the parking. Mr. Feldman reiterated that the building is too small for parking entrances anywhere else. The rear wall is on the property line.

Ms. Murray asked if the appeal would be withdrawn if the concept is approved. Mr. Feldman replied in the affirmative.

Mr. Sugrue opined that the proposal appeared, essentially, to be a "facadectomy." He suggested that it was no better than the complete demolition. Mr. James also expressed concerns.

John Gallery of the Preservation Alliance stated that the Commission is operating under the Manayunk ordinance, not the historic preservation ordinance. Under the preservation ordinance, a finding of financial hardship would be necessary for an approval of the proposed project. There is no means to resolve this question under the Manayunk ordinance. It has no hardship provision. He stated that, if the Commission denies the proposal, the developers have no options. He recommended that the Commission approve a proposal for this site, but one with a better and more interesting design. Mr. Reuter responded, stating that there is an option. The applicants could appeal to the Board of Building Standards for a variance based on financial hardship. He remarked that the Commission should not decide this case based on a perceived hardship; the Manayunk ordinance has no hardship provision.

Kevin Smith of the Manayunk Neighborhood Council stated that it would be premature to accept this design; a better design should be demanded. The Council contends that reuse is the best use of the building. He rejected the proposal, which would require major changes to a historical building, and asked for a more stringent application of the

rules.

Councilman Michael Nutter spoke to the Commission in support of this project. He requested that the Commission be flexible and give this developer an opportunity to work with the staff to develop an appropriate design. He recognized that this property is challenging and unique. He noted the significant efforts already expended by the applicants in search of an appropriate solution.

Mr. James suggested that the developers retain the historic weathering of the building and respond to its history.

Mr. Huff stated that the towpath frontage is very important. He suggested that the landscaping treatment be sensitive at this location. He also suggested creating a pedestrian and bicycle access to the building from the towpath.

Mr. Sugrue emphasized that great care must be taken with the design due to the context and the visual impact it would have on the views from Main and Rector Streets and the towpath. Mr. Brown stressed that the parking entrance design must be thoroughly considered. Mr. Gallery stated that four stories may be too many for the addition. Mr. Wilds responded that four is acceptable, but he would also consider five. Mr. Huff suggested that the garage entrance, which will be within the historic building, should not be modern in style, but should be compatible with the historic structure.

ACTION: Mr. Wilds moved to approve the proposal in concept with a four-story addition set back at least ten feet from the Rector Street facade and a garage opening no more than ten feet wide. Ms. Merriman seconded the motion, which passed with a vote of 7 to 1. Mr. Rivera dissented. Mr. Sklaroff recused.

Ms. Merriman recused from the review of 421 Catharine Street owing to a personal relationship with the applicant.

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**THE MINUTES OF THE 526TH STATED MEETING OF THE
PHILADELPHIA HISTORICAL COMMISSION**

9 JUNE 2006
1515 ARCH STREET, ROOM 18029
MICHAEL SKLAROFF, ESQ., CHAIR

PRESENT

Michael Sklaroff, Chair
Thomas Sugrue, Ph.D., Vice Chair
Warren Huff, City Planning Commission
Joseph James, Department of Public Property
Sara Merriman, Commerce Department
Kathleen Murray, Office of the Council President
David Perri, Department of Licenses & Inspections
Vincent Rivera, AIA
Norman Tissian
Scott Wilds, Office of Housing & Community Development

Randal Baron, Historic Preservation Specialist
Jorge Danta, Historic Preservation Planner
Jonathan Farnham, Acting Historic Preservation Director
Erin McGinn, Historic Preservation Planner
Karen Gonski, Administrative Technician
Leonard Reuter, Assistant City Solicitor, Law Department

ALSO PRESENT

Lydia Grose, SEPTA
Anthony Bohara, SEPTA
W. Green, SEPTA
Harry Laspee, Pennoni Assoc.
Larry Link, PennDOT
E. Kerry
Thomas Witt, Esq., Wolf Block Schorr & Solis-Cohen
Jason Brown
M. Becal, Society Hill Towers
George Lyons, Chestnut Hill Historical Society
John Gallery, Preservation Alliance
Howard Coonley, Old City Civic Association
Tim Duffy
Andrew Scott, Urban Engineers
Farah Jimenez, Mt. Airy U.S.A
M. Eskine, Greenbelt Knoll
A. Brooks, Greenbelt Knoll
Vesna Hess, 316 S. 21st Street
Catherine Franklin, Penn-Knox N.A.
Laura Siena, West Mt. Airy Neighbors
Larry McEwen, architect
Jennifer Foster
Julia Scott

Kristin Pazulski, Chestnut Hill Local
Elizabeth Blazeovich, Preservation Alliance
J. Berwick, Glen Foerd
C. Romano, Glen Foerd
Jack Conroy, Conroy Catering
Mark Wieand, Bower Lewis Thrower
Kevin Smith, Manayunk Neighborhood Council
Arlene Matzkin, Friday Architects
Brett Feldman, Esq., Klehr Harrison Harvey Branzburg & Ellers
Douglas Mellor
Joe Pagano
Jerry Fiore, CVM Design-Build

526TH STATED MEETING OF THE PHILADELPHIA HISTORICAL COMMISSION

Michael Sklaroff, Chair, recognized the presence of a quorum and called the 526th Stated Meeting of the Philadelphia Historical Commission to order at 9:07 a.m.

MINUTES OF THE 525TH STATED MEETING OF THE PHILADELPHIA HISTORICAL COMMISSION

ACTION: Upon a motion proffered by Mr. Sugrue and seconded by Mr. Tissian, the Commission unanimously approved the minutes of the 525th Stated Meeting of the Philadelphia Historical Commission, held 12 May 2006.

3 RECTOR STREET

Owner: David Waxman

Applicant: Tiffany Strother

History: c. 1876 as the office for Archibald Campbell & Co. textile mills

Project: Construct five-story addition on two-story building

ARCHITECTURAL COMMITTEE RECOMMENDATION: The member of the Architectural Committee recommended denial, pursuant to 704.2.3 and 704.2.7 of the Property Maintenance Code.

OVERVIEW: This application proposes the conversion of an industrial building to residential use. In the spring of 2005, the current applicants applied to the Commission to demolish the historic building and erect an entirely new residential building. The Commission denied the demolition application in June 2005. The applicants appealed the denial to the Board of Building Standards, which upheld the Commission's decision. The applicants appealed to the Board of Building Standards decision to the Board of License & Inspection Review; at the appeal hearing, the applicant agreed to send a revised application to the Commission rather than pursue the appeal. The Commission reviewed a revised application in February 2006 and approved the proposal in concept with a four-story addition set back at least ten feet from the Rector Street facade and a garage opening no more than ten feet wide.

The current proposal differs significantly from the proposal that the Commission approved in concept. The addition is now five, not four, stories tall. It is no longer styled like an industrial building. The exterior materials have changed significantly from those shown in the photo-simulations submitted with the in-concept proposal. The parking design has been significantly altered. There are now two, not one, parking entrances and they are on the north facade. Parking now occupies most of the historic building; the earlier proposal limited parking to the basement; the current proposal shows parking at the basement and first-floor levels. Also, the addition now extends beyond the historic building's footprint, overlapping the wall of the historic building at the north.

DISCUSSION: Mr. Farnham presented the proposal. Attorney Brett Feldman, architect Jonathan Broh, and developer David Waxman represented the application.

MOTION: Mr. Tissian moved to adopt the recommendation of the member of the Architectural Committee and deny the proposal, pursuant to 704.2.3 and 704.2.7 of the Property Maintenance Code. Mr. James seconded the motion.

Mr. Feldman briefly introduced the project and enumerated the key facts included in the conceptual approval. He explained that the garage entrance had moved to the north facade and that entire Rector Street facade would be retained. He explained that the towpath connection was accentuated with the inclusion of a bike ramp. Mr. Feldman stated that the applicant was requesting final approval with the details to be reviewed by the staff.

Mr. Tissian asked if the parking was underground. Mr. Feldman answered that the parking was now planned for the basement and ground-floor levels.

City Councilman Michael Nutter stated that the new proposal was a dynamic design that would save a historic building in disrepair. He encouraged the Commissioners to approve the proposal as submitted.

Mr. James asked if the existing openings could be reused for entrances into the parking garage. Mr. Broh answered that they cannot be reused for structural and space planning reasons.

WITHDRAWAL OF MOTION: Messrs. Tissian and James withdrew their motion.

Mr. Wilds stated that he approved of the proposal. He added that, owing to the numerous restrictions, this was the best possible proposal for the site. Mr. Huff commended the design and suggested lighting along the towpath. Mr. Rivera stated that the material cladding the stair tower should be revised to better harmonize with the historic building.

Kevin Smith of the Manayunk Neighborhood Council stated that this was the most promising design he had seen to date. However, he requested that the Commission approve it in concept only and require another review before any final approval.

ACTION: Mr. Tissian moved to approve the proposal as submitted. Mr. James seconded the motion, which passed 9 to 0. Mr. Sklaroff abstained.

Mr. Sklaroff recused and passed the gavel to Mr. Sugrue.

D



CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES & INSPECTIONS
Municipal Services Building - 11th Floor
Philadelphia, PA 19102-1687
(215) 686-2400

ROBERT D. SOLVIBILE, SR.
Commissioner

August 15, 2006

Board of Building Standards Case No. 0701-06

3 Rector Street

Occupancy: R-3

Type of Construction: 5B (existing)

Re: **Building Permit Application #17230**

PROPERTY OWNER

Kevin Smith

Manayunk Neighborhood Council

293 Hermitage St.

Philadelphia, PA 19127

Dear Mr. Smith:

On July 20, 2006, you appeared before the **Board of Building Standards** to appeal the June 9, 2006 decision of the Philadelphia Historical Commission regarding the above stated property.

At its June 9, 2006 meeting, the Philadelphia Historical Commission voted to grant final approval to a five-story addition atop of and alterations to the exterior of the historically certified two-story building. The building is proposed to be reused for apartments with accessory parking.

Jonathan Farnham, Executive Director for the Philadelphia Historical Commission presented a chronology of the Commission's actions regarding the building. He testified:

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 approve a proposal in concept for exterior alterations and a four-story addition atop of the building;
3. On June 9, 2006, 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.

3 Rector Street

In your appeal, you argued that there were procedural errors because plans were not submitted to the staff ahead of the meeting. In addition you stated that the proposed design is out of scale, the materials are inappropriate, and the plans lack cornice details.

Community member John Hunter stated that the revised plan in June is one story higher than the plan that was approved in concept by the Commission in February, 2006.

Community member Hal Schimmer testified that section PM-702.2 of the Philadelphia Property Maintenance Code requires that no permit shall be issued without approval of the Historical Commission staff.

BOARD RECOMMENDATION – Deny Appeal – Sustain Historical Commission

After considering extensive testimony, the **Board of Building Standards**, by a 3-0 vote, recommended denial of your appeal against the Philadelphia Historical Commission.

I have approved the Board's recommendation.

Very truly yours,



Robert D. Solvibile, Sr.,
Commissioner

cc: Robert Murray, Permit Services Manager
Jon Farnham, Executive Director – PHC
Brett D. Feldman, 260 S. Broad St., Philadelphia, PA 19102

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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

RECEIVED
PROTHONOTARY
MAR 21 2007

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
PROTHONOTARY
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. Galymon
Board of License and Inspection Review

ATTEST:

Clare S. Galymon

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

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: Clare S. Gatzmer
Board of License and Inspection Review

ATTEST:

Clare S. Gatzmer
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.

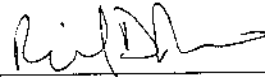
CERTIFICATION OF SERVICE

I, Richard C. DeMarco, certify that on June 1, 2007, I mailed, by first class mail, the foregoing Brief upon the following parties:

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