MEETING OF THE COMMITTEE ON FINANCIAL HARDSHIP
OF THE PHILADELPHIA HISTORICAL COMMISSION

FRIDAY, 29 APRIL 2015
ROOM 578, CITY HALL
SAM SHERMAN JR., CHAIR

PRESENT
Sam Sherman Jr., chair
Melissa Long, Office of Housing and Community Development
Sara Merriman, Commerce Department
Robert Thomas, AIA

Jonathan Farnham, Executive Director
Randal Baron, Historic Preservation Planner III

ALSO PRESENT
Arrus Farmer, PMC Property
S. David Fineman, Esq, Fineman Krekstein & Harris P.C.
Josh Horvitz, Esq, Fineman Krekstein & Harris P.C.
Andrew Rosen, Esq, Fineman Krekstein & Harris P.C.
Kevin Kozlik, Fastrack
Clifford Schwinger, The Harmon Group
Patrick Grossi, Preservation Alliance

CALL TO ORDER
Mr. Sherman called the meeting to order at 3:00 p.m. Ms. Long and Merriman and Mr. Thomas joined him.

ADDRESS: 201 S 13TH ST

Project: Legalize removal of balcony, patch and paint masonry
Review Requested: Final Approval
Owner: Walnut Square Partners
Applicant: Joshua Horvitz, Fineman Krekstein & Harris P.C.
History: 1900; St. James Hotel; Horace Trumbauer, architect
Individual Designation: 8/2/1973
District Designation: None
Staff Contact: Randal Baron, randal.baron@phila.gov, 215-686-7660

OVERVIEW: This application proposes:

- the legalization of the removal of a balcony at the seventh floor, north façade and the installation of infill where the balcony was removed without the Historical Commission's approval or a building permit; and,
- the legalization of the installation of masonry patches and paint to repair deteriorated ornament on the facade.

After the Historical Commission's staff witnessed work underway without and/or in excess of permits or approvals, the Historical Commission's staff advised the contractor and owner of the necessity for approvals and permits and the Department of Licenses & Inspections issued a verbal stop work order at the request of the Commission. The work was completed despite the City's efforts. The City initiated an enforcement action in court; the court ordered the property owner to seek the Commission's approvals for remedies for the work undertaken without permits and approvals.

With regard to the legalization of the removal of a balcony, the application requests an exemption from the requirements of the historic preservation ordinance because repairing or replacing the balcony in kind would have imposed a financial hardship and an unnecessary hardship on the property owner. The terra cotta clad balcony was removed, the opening infilled, and Dryvit installed over the infill.

In very general terms, a financial hardship is a hardship that would be suffered by a property owner owing to a defect in the property such as condition or configuration that is inherent to the property and unrelated to any particular owner's financial situation. An unnecessary hardship is a hardship that would be suffered by a property owner owing to that particular owner's financial situation. Section 11 of the Historical Commission's Rules & Regulations states that "The legislative history of this [preservation] ordinance indicates that this [unnecessary hardship] provision was included out of concern and consideration for low and moderate income persons." Section 11.2.a specifies that:

> As its initial criterion for evaluating a request for an exception under the Unnecessary Hardship provision, the Commission may employ the Section 8 eligibility guidelines of the United States Department of Housing and Urban Development (HUD), which defines a low or moderate-income household as one with an income of not more than eighty percent (80%) of the median family income for the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area.
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> The Commission also recognizes the existence of circumstances under which the rigid application of this standard could result in unnecessary hardship. Examples of this include, but are not limited to, extraordinary medical or education expenses, the cost of

> maintenance contrasted with the cost of alterations, and the financial ability of persons on fixed incomes, particularly in areas with markedly appreciating values. In view of these and similar situations, the Commission shall consider requests for exemptions under this provision from persons who do not meet the standard of the HUD or other formula.

The application also proposes to legalize repairs to ornament on the building, which was removed and replaced with a "cement material." The cement material was then painted. The repairs do not replicate the appearance of the removed ornament. The application neither provides an inventory of the repairs nor information about the repair materials. Likewise, the application makes no claim that undertaking the appropriate repairs would induce any sort of hardship.

STAFF RECOMMENDATION: The staff recommends that the Committee on Financial Hardship recommend denial of the application.

Any so-called "financial hardship" resulting from the removal of the balcony and infilling of the resulting opening was self-induced. The Historical Commission designated the property in 1973. The property owner acquired the building in 1993. The property owner should have kept the building in good repair as required by the preservation ordinance and not let the balcony deteriorate. The property owner has an obligation to maintain the building. Moreover, the property owner should have obtained the requisite permits or approvals for the alterations to the balcony. Even if one concedes that the emergency removal of the balcony was necessary for public safety reasons, the property owner should have obtained the requisite permits or approvals after abating the dangerous condition, but before completing the alteration.

The Rules & Regulations indicate that the so-called "unnecessary hardship" provision is primarily intended for persons of low and moderate income, but may also be applicable to other classes of property owners when extenuating circumstances exist. Although no such evidence is offered, it would appear that the property owner in this case would not qualify as low or moderate income persons. Moreover, there are no extenuating circumstances that would warrant an exemption because any unnecessary hardship was self-induced. Again, maintenance was deferred for two decades and, when the maintenance was finally undertaken, it was undertaken without permits or approvals.

DISCUSSION: Mr. Baron presented the application to the Committee on Financial Hardship. Property owners' representative Arrus Farmer, attorneys S. David Fineman, Josh Horvitz, and Andrew Rosen, engineer Clifford Schwinger, and contractor Kevin Kozlik represented the application.

Mr. Sherman asked Mr. Fineman whether the current property owners had known that the building was designated as historic when they purchased it. Mr. Fineman responded: "I suspect they did." Mr. Sherman asked Mr. Fineman whether the balcony was removed in response to a violation issued by the Department of Licenses & Inspections, or if the property owner removed it at its own initiative. Mr. Fineman answered that it was not removed in response to a violation issued by the Department of Licenses & Inspections. The owner took the initiative to remove it, owing to the danger it posed. He added that it was removed after a citation was issued in another matter, the problems with the brick on the east façade. Mr. Fineman stated that he did not disagree with everything Mr. Baron had said in his overview of the application. Mr. Fineman submitted large packages of materials to the Committee members and the staff. He stated that he would provide two witnesses to testify. Mr. Fineman explained that his client received a violation for the brick problems on the east façade. As a result, his client retained a contractor who began to inspect the entire building. When they inspected the balcony on the north façade, they determined that it was so deteriorated that they were extremely concerned and called in a structural engineer. The structural engineer determined that the balcony posed a danger to people walking on Walnut Street. The balcony came apart into many pieces when the contractors touched it. Mr. Sherman stated that the Department of Licenses & Inspections should have been involved in the inspection and removal of the balcony. He asked Mr. Fineman if his client obtained any permit for the work. Mr. Fineman stated that his client “eventually pulled the appropriate permits.” Mr. Sherman asked what “eventually” means in this case. Mr. Fineman responded that it took his client about six months to obtain the proper permits. Mr. Horvitz stated that the permit was applied for in January, but it took some time to put a plan in place to “deal with the east façade issues.” He added that an inspector from the Department of Licenses & Inspections “was around and involved.” He pointed Mr. Sherman to emails from Perry Coco of the Department of Licenses & Inspections in today’s submission package. Mr. Sherman noted that the building was shrouded in scaffolding for months, not a short time. He asked the applicants why they did not obtain the Historical Commission’s approval or a building permit if the project continued for months. Mr. Sherman stated that they needed permits and the Streets Department’s approval for the scaffolding. He asked if they obtained those permits and approvals. Mr. Fineman answered that Mr. Farmer could address those questions. Mr. Fineman directed Mr. Sherman to Exhibit 7 in the package submitted at the start of the meeting. Mr. Farnham interjected that it appears that today’s submission package includes materials that were not submitted previously to the Historical Commission. Mr. Baron corrected earlier misstatements, informing the Committee that the applicants have no permit for the balcony removal on the north facade, but did obtain a permit for the brick replacement at the east façade in advance of undertaking the work. He noted, however, that that permit, which the Historical Commission’s staff approved, only covered work to the east façade; no work elsewhere on the building including the balcony removal was covered by the permit. Mr. Baron observed that they could not have yet obtained a permit for the balcony removal because such a permit requires the Historical Commission’s approval, which has not been obtained. Mr. Baron noted that Mr. Fineman claimed that other permits have been obtained; Mr. Baron stated that he is unaware of any other permits. Mr. Sherman stated that the Historical Commission stamp of approval is a pre-requisite to any permit for this building. Mr. Fineman’s clients cannot have other permits as he claims because they have not obtained the Commission’s approval stamp on any other permit applications. Mr. Farmer conceded that there are no other permits for the work other than the one issued for the east façade only. However, he stated that all of the work in question was done in response to the violation for the east façade and the subsequent façade inspection. While the façade inspection was underway, the condition of the balcony on the north façade was discovered. Mr. Sherman asked if the Department of Licenses & Inspections issued violations for any dangerous conditions other than the brick at the east façade. Mr. Farmer stated that the Department of Licenses & Inspections did not issue violations for anything other than the brick at the east. Mr. Sherman asked if a report for the façade inspection was submitted to the Department of Licenses & Inspections. Mr. Baron noted that the case went to court and the court requested a copy of the report. Mr. Fineman stated that a copy of the report was presented to the court. Mr. Fineman continued, explaining that an agreement was reached between his client and the City while in court that stipulated that his client would seek certain approvals and permits from the City. Mr. Fineman claimed that his client had provided that report and obtained those approvals and permits. Mr. Sherman again asserted that Mr.

Fineman's client could not have obtained the permits because the Historical Commission's approval is a prerequisite to those permits and the Historical Commission has not granted its approval for the balcony removal or the patching and painting. Mr. Sherman also noted that the new brick on the east façade does not match the old brick even though its matching was a prerequisite of the Commission's approval on the permit application for the east façade. Mr. Baron showed a copy of the permit application with the condition to the Committee and applicants. Mr. Sherman asked Mr. Baron if the applicants ever requested that the staff conduct the review of masonry samples at the site. Mr. Baron replied that the applicants never requested the review required by the approval of the permit for the east façade. Mr. Sherman asked Mr. Baron if the applicants ever contacted the Commission's staff about any of the work. Mr. Baron explained that he was aware of the ongoing work, including the work beyond that that was permitted, but had no contact with anyone associated with the property for many months despite the fact that he was in constant contact with the inspector from the Department of Licenses & Inspections, who was requesting that the contractors and owner obtain the requisite permits and approvals. Mr. Baron stated that, after several months, he was contacted by a Neal Hammerschlag, a former employee of the property managers. Eventually, Mr. Baron met Mr. Hammerschlag at the site and explained that the ongoing work needed the review of the Historical Commission. Mr. Baron stated that he explained the application process to Mr. Hammerschlag. Mr. Sherman stated that Mr. Baron would have provided guidance regarding the process to the applicants if they had contacted the Commission in a timely fashion. He concluded that the Historical Commission was not given the opportunity to assist in decision-making about the repairs.

Mr. Fineman again directed the Committee to Exhibit 7. He again noted that the engineer and contractor were available to testify if the Committee wished to hear from them. The Committee members responded that they would accept any testimony, but it was up to Mr. Fineman to call on them to present to the Committee. Mr. Fineman read from the email from Perry Coco of the Department of Licenses & Inspections at Exhibit 7. He noted that it related to life safety. Mr. Baron observed that the email only referenced the swing scaffolding at the east façade, not the scaffolding and balcony at the north façade. Mr. Fineman then claimed that a violation was issued requiring a façade inspection and they then did the repair work as part of that inspection. He stated that the contractor found a very dangerous condition and "had to take down that balcony."

Mr. Thomas asked when the owner acquired the property. Several responded that it was acquired by the current property owner in 1993. Mr. Thomas noted that it had been designated 20 years before, in 1973. Mr. Thomas asked when the balcony was determined to be dangerous. Mr. Horvitz responded that the dangerous condition was discovered in 2013. Mr. Thomas observed that the dangerous condition "did not creep up over night." He asked what measures the owner took to inspect and maintain the building over its 20 years of ownership. Mr. Farmer stated that the owner did "everything that was required by the City." Mr. Thomas stated that the property maintenance code and the preservation ordinance obligate the owner to maintain the building. Mr. Thomas asked why the applicants submitted the appraisals. Mr. Horvitz responded that the Commission's ordinance requires the submission of all appraisals with any hardship application. They may not provide any useful information, but were required for submission. Mr. Thomas stated that he does not understand how an emergency condition would suddenly appear after 20 years of ownership. Mr. Sherman asked if the owner had inspected the balcony prior to the most recent inspection. Mr. Fineman stated that he was not sure. Mr. Farmer stated that there were no inspections undertaken at the level required currently. There have been visual inspections and property managers on site. Mr. Sherman asked if the balcony was accessible. The applicants stated that it was not and noted that there are several such balconies on the building. Mr. Farmer claimed that the recent winters have been harsh and caused sudden changes in buildings. "Issues can arise seemingly overnight." He stated that his company owns many historic buildings and has done many renovations to historic buildings.

Mr. Thomas stated that he does not understand why the applicants did not seek the Historical Commission's guidance and review once the dangerous condition was abated and the building stabilized, but before the scar on the building was repaired. Mr. Farmer stated they removed 16 tons of material at the balcony, which left gaping holes in the building. They vacated apartments. The contractor told them they needed to fill the hole immediately to maintain the structural stability of the building. He concluded that they understood that, at some point, they would enter into the Historical Commission process and "arrive at some kind of intervention that would be acceptable to all parties on the side of the building." Mr. Fineman stated that the balcony had to be removed. "It had to come down." He stated that, short of reconstructing the balcony, he has been unable to come to any sort of arrangement with the Historical Commission. He stated that Mr. Baron has insisted that the balcony must be rebuilt.

Mr. Sherman asked the applicants if any pieces of the balcony had been retained. Mr. Fineman stated that nothing was retained. He stated that his witnesses will testify that nothing could have been retained. It would have been "a fruitless exercise." Mr. Sherman asked the applicants if they were aware that the work that they were undertaking fell under the jurisdiction of the Historical Commission. Mr. Fineman responded: "It is what the law is." Mr. Sherman responded that he can only conclude that the applicants knew that the work required the Commission's review, but chose not to undergo that review. Mr. Sherman asked Mr. Baron to summarize the process, had the applicants applied to the Commission in a timely manner. Mr. Baron stated that, when someone claims that a building presents a danger, the Commission's staff recommends that the person making the claim immediately contact the Department of Licenses & Inspections and report the danger. Once the Department issues a violation, the staff can approve the removal of dangerous elements, provided they are reconstructed within one year. Mr. Baron stated that he met with Mr. Hammerschlag before the balcony was removed and advised him that the Commission's staff might be able to approve repairs to the balcony, like removing some terra cotta and fixing the underlying structure. He also advised him to save any pieces that were removed to be used in the reconstruction. Mr. Baron reported that Mr. Hammerschlag refused to submit an application to the Commission and proceeded with the work. Mr. Sherman asked Mr. Baron how long the process would have taken. Mr. Sherman suggested that it could have been resolved very quickly. Mr. Baron stated that the Commission's staff typically approves proposals to abate dangerous conditions immediately, upon submission. Mr. Sherman stated that the Commission acts on make-safe permit applications in a very efficient manner, allowing for the building to be made safe. Mr. Sherman asked if the engineer's report addressing the imminently dangerous condition had been submitted to the Department of Licenses & Inspections. Mr. Fineman responded that the report was submitted "at an appropriate time." Mr. Sherman asked what he meant by "at an appropriate time." Mr. Horvitz stated that the reports were provided to the Department of Licenses & Inspections and the violations were cured. Mr. Farmer stated that a full report was submitted to the Department of Licenses & Inspections after the façade inspection was complete. Mr. Sherman asked if the applicants interacted with the Historical Commission during that process. Mr. Fineman responded in the negative. Mr. Fineman stated that Philadelphia

Management has done significant work on historic buildings and received "exemplary awards" for it. Mr. Fineman explained that his clients are "sophisticated people who are familiar to a large degree with how the process works." He conceded that his clients should have applied that knowledge to the process in this case, but did not. He noted, however, that the person who was responsible for following the process at Philadelphia Management, Neal Hammerschlag, no longer works for the company. Mr. Sherman asked about Mr. Hammerschlag's role. Mr. Fineman stated that he was a project manager. Mr. Fineman stated that the balcony had to be removed and, owing to the need to remove it, the ownership suffered a financial hardship. Apartments had to be vacated and tenants had to be housed elsewhere. He stated that public safety was paramount. The removal of the balcony happened at about the same time as the tragedy on Market Street. Mr. Sherman stated that he acknowledges that life safety was at issue in this case, but he asserted that he still does not understand why the owners failed to consult with the Historical Commission, even after the dangerous condition had been abated. He stated that the Commission would have worked with the owner to restore the appearance of the façade, even if it was done in a different material. Mr. Sherman stated that the owners chose not to engage with the Commission. The process was not followed even though that process was clear. The owner knew the building was designated as historic. The owner had worked on other designated buildings in the city. The owner knew the process. Yet, the owner made a decision not to engage with the Historical Commission. He asked for an explanation. He asserted that involving the Commission would not have resulted in delay. Why did the owner avoid the Historical Commission? Mr. Farmer stated that they were aware of the Historical Commission's process at the time they undertook the work. He stated that his engineer informed him of the threat and told him that he needed to act immediately. He stated that delaying for the Historical Commission would have resulted in "incredible exposure," meaning significant liability. Mr. Sherman asked how the engineer accessed the façade. He asked if there was a scaffold erected. Mr. Fineman stated that there was no scaffold "originally." Mr. Farmer stated that the first step to abate the dangerous condition was to erect a scaffold. Mr. Sherman asked about the length of time that elapsed between identifying the condition and beginning the work. Mr. Farmer stated that work began that day from swing scaffolding. Mr. Baron stated that he watched the work occur; it took many weeks to remove the balcony. He asserted that the owner should have consulted with the Commission during that lengthy period while the dangerous condition was being abated. Mr. Fineman offered a summary of the Historical Commission's logic, as he perceived it. He stated that the Commission is asserting that there can be no finding of financial hardship because his client did not follow the process. Mr. Sherman responded, stating that, if the owner had interfaced with the Department of Licenses & Inspections and the Historical Commission and the Department had issued a violation for the balcony, the Commission would have signed off on its removal immediately. The Commission could then have worked with the owner to install a facsimile of the balcony. Mr. Fineman stated that the balcony could not have been recreated. He asked if that fact makes a difference.

Mr. Thomas stated that, as an architect, he has been involved with emergency stabilizations. He has experience in recreating lost historic features with alternate materials like fiberglass. He stated that, if the contractor had saved some pieces of the balcony, a replica could be created in fiberglass, which is light and inexpensive. Mr. Thomas stated that this event included several stages, including the abatement of the dangerous condition. The next step was the decision about how to repair the scar left on the building. Even if the one concedes that the dangerous condition had to be abated immediately, the Historical Commission should have been involved in the subsequent steps. Mr. Fineman contended that his clients obtained estimates for reinstalling the balcony that showed that recreating it in various materials was financially infeasible in light of the financial condition of this partnership. He acknowledged that these estimates were obtained after the fact. Mr. Horvitz stated that they obtained estimates for replicating the balcony in four materials. The lowest estimate was $1.37 million. Mr. Farmer stated that the fiberglass option was one of the less expensive. Mr. Horvitz stated that the concrete was the least expensive. They also considered terra cotta. Mr. Horvitz stated that, if his experts are allowed to testify, they will state that the balcony materials could not be preserved. It was taken down by hand and crumbled as it was removed. Mr. Thomas responded that, if we assume that the balcony had to be removed immediately without a permit, then that still leaves open the question of its replacement. Once the balcony was removed and the dangerous condition was abated, the owner should have sought the Commission's approval and a permit for the subsequent work. Mr. Thomas stated that the Commission could have advised the owner and worked with the owner to find a reasonable compromise, but the Commission was never given the opportunity. Mr. Horvitz responded that he has engaged with the Historical Commission through the court proceedings and Mr. Baron has always asserted that the balcony should be replicated in kind, with an exact replica. Mr. Farmer stated that this application is an attempt to engage with the Commission's process. Mr. Thomas replied that the applicants have not been working with the Commission until they have appeared before the Commission. The staff and Architectural Committee may have opinions about what constitutes appropriate work, but, until an owner has the Commission's decision on the matter, it has not engaged with the Commission. Mr. Thomas concluded that, had the owner engaged with the Commission in a timely manner, other options, perhaps less expensive options, could have been considered. Mr. Fineman again stated that the rebuild option, even in other materials, is too expensive, in excess of $1 million. Mr. Horvitz stated that the court ordered his clients to file an application with the Historical Commission. The court had not given them an opportunity to explore other options, but simply said "you need to get something in or else." He stated that they were threatened with fines. Mr. Fineman stated that they filed an application to get out of the court proceedings and get before the Historical Commission. He stated that they are willing to discuss options with the Historical Commission that "makes some sense in an economic way." Mr. Fineman stated that the Committee, with its expertise, "does not need to hear from his engineer." He stated that his engineer wanted to remove the balcony as quickly as possible, so that he could sleep at night. Mr. Thomas stated that they are not disputing the need to remove the balcony. He contended, however, that they may be some self-inflicted damage to the ownership because it refused to engage in the Commission's process. Mr. Thomas stated that the owners may not have considered all of the options before they acted. Mr. Fineman stated that they have been in court for months and, during that time, Mr. Baron has insisted that they must reconstruct the balcony. Mr. Fineman stated that the balcony would cost more than $1 million and the building is losing $2 million per year. The limited partners have been forced to make capital contributions for the building. Mr. Sherman stated that the application claims that replacing it in fiberglass would cost about $322,000. Mr. Farmer stated that that is the cost of the balcony alone. With the installation, it would cost more than $1 million. Mr. Fineman stated that they have provided four estimates. Mr. Sherman expressed skepticism about the estimates and asked the applicants to explain the cost breakdowns. Mr. Farmer stated that the estimates include scaffolding. He pointed the Committee to the second page of Exhibit 13. He stated that the masonry contractor provided four options for reconstructing the balcony including precast, fiberglass, and terra cotta. Mr. Farmer said that the estimates including site fencing, sidewalk protection, and scaffolding for $128,000. Mr. Sherman asked the applicants why they had included in the estimate the cost of demolishing the infill that they installed illegally, without a permit. Mr. Sherman stated that he has already identified $438,000 that would not have to be spent again if the owner had followed the process initially. Mr. Farmer responded that only a small segment of the costs relates to undoing work that has already been done. Mr. Horvitz claimed that any of the alternatives would have taken months to fabricate and the owner could not wait months in the middle of the winter. He claimed that the infill needed to be installed quickly to ensure the structural integrity of the building. Mr. Sherman acknowledged that old buildings require maintenance. He countered the applicants' claims and asserted that the owner had imposed the financial hardship on itself by undertaking work illegally and incurring costs that will now be duplicated to correct the illegal work. Mr. Sherman stated that the Commission is reasonable and would have worked with the owner to find a reasonable solution, but the owner did not give the Commission the opportunity to participate in the decision-making.

Mr. Thomas directed people to page five of eight of the Struc-Tite estimate, Exhibit 13. He read through the estimate and asked about the other $900,000. Mr. Horvitz stated that the Struc-Tite bid is one component in the larger job. Mr. Sherman stated that there appears to be duplicate costs in the components and overall breakdowns. He asked about the drywall, for example. Mr. Farmer stated that there would be drywall repairs required where the swing scaffolding mounts. He directed the Committee members to the third page of Exhibit 13. Mr. Farmer read from the itemized estimate. Mr. Baron asked what was included in the general conditions line item. Mr. Farmer pointed him to the list of items included in that part of the estimate.

Mr. Sherman asked about the size of the balcony. Mr. Farmer replied that it is 80 feet long. Ms. Merriman asked Mr. Baron if other contractors construct fiberglass replacement pieces for buildings. Mr. Baron replied that other contractors do undertake this type of work. He noted that he is working with a contractor who is replacing terra cotta at the Belgravia on Chestnut Street. There, the contractor is replacing most of the original terra cotta with new terra cotta. He noted that he recently reviewed the replacement of a cornice on the Coronado on Chestnut Street. The Lafayette Building at 6th and Chestnut is another example of work such as this recently reviewed by the Commission. He concluded that the Commission has reviewed many such applications to replace ornamental features in a variety of materials. Mr. Baron disputed Mr. Fineman's claim that he had stated that the Commission would only approve a replacement of the balcony in kind. He noted that the Commission has allowed for numerous alternate materials. Mr. Baron stated that he urged the contractor in this case to retain pieces of the balcony because it is less expensive to cast a copy from an original piece. He also noted that other balconies survive on this building and could be used to make molds for a new casting.

Mr. Sherman asked the applicants to explain how they would install a fiberglass replica of the balcony. Kevin Kozlik of Fastrack explained that they would install a steel structure and then attach the fiberglass replica of the balcony to the structure in pieces. Mr. Farmer stated that he was told that the precast option was the best option. Mr. Thomas asked about the relationship between Fastrack and Struc-Tite. The applicants replied that they work together, but have no shared ownership. Mr. Thomas asked for additional explanation. Mr. Farmer stated that Fastrack would be the general contractor. Ms. Merriman asked why the Struc-Tite estimate was dated 15 days after the Fastrack estimate if the Fastrack estimate was dependent on the Struct-Tite estimate. Mr. Farmer replied that "they were both asked to come out at the same time." Mr. Sherman noted that the Fastrack bid is for one material option only. He asked about the total price for fiberglass. Mr. Farmer explained how to substitute the cost for one material for another in the overall bid. Mr. Sherman noted that fiberglass would be about $1.275 million total by this estimate, or about $100,000 less. Mr. Fineman stated that the lowest cost estimate number they have generated is about $1.1 million. Mr. Sherman asked about the concrete slab. Mr. Kozlik stated that they would need to pour a concrete slab at the balcony to manage the storm water.

The Committee turned to the income statements for the building. Mr. Sherman asked why anyone would continue to own a building that was running $1 million in the red every year. Ms. Merriman agreed that it was an important question. Mr. Farmer explained that the building has only been losing money for the last few years, when the work was done. He stated that the balcony work that was done cost about $800,000. He noted that the expense is listed on the financial statement of the owners' partnership. He stated that the scaffolding created "leasing issues" and the finances of the building have not looked good for a couple years. The building is a "cash drain on its partners." He explained that the building is just getting back to full occupancy; it was about 75% occupied at its lowest occupancy. Tenants were moved out of six units on the 12th floor for the work. Tenants on the 11th floor were moved to other units. Mr. Fineman asked if they would need to move people again to do the balcony replacement. Mr. Farmer stated that they would have to move people again. He concluded that a $1 million capital expenditure to reconstruct the balcony would be impossible for this building. Mr. Baron commented that the Committee should consider the financial situation of the building across more than a few years. He asserted that, by the argument that is being offered, any expenditure on the building would result in a hardship. He asked about specifics of the financial statements. For example, he asked about a significant charge to repair fire damage and asked if it was covered by insurance. Mr. Baron noted that the building was purchased for very little, yet the building is carrying a large mortgage. He asked if the proceeds of the mortgage were used to pay for the illegal work. He suggested that the cost of the illegal work should be discounted on the financial statement; the applicants should not be claiming that they are suffering a financial hardship because they spent money unwisely on illegal work. Mr. Baron asserted that money spent on work without a permit should not now be deducted on the building's books to show that the owners are facing a hardship. Mr. Farmer interrupted, claiming that the money had to be spent to keep the building safe, "with or without a permit." The unsafe condition was a liability to the partnership, he contended. He concluded: "We had to spend that money." Mr. Fineman asked: "If you don't spend that money, what happens?" Mr. Baron stated that that money should have been spent on appropriate work. If the owners now need to spend money to undo work done without a permit, that is a self-imposed hardship. Mr. Sherman asked about the $902,000 expenditure. Mr. Farmer responded that most of that money was spent on the removal of the balcony. Mr. Horvitz added that the vendor ledger shows that the balcony work cost "a little over $800,000." Mr. Sherman stated that that is a one-time charge, not a recurring charge. Mr. Farmer reported that there were insurance proceeds for the fire damage, which occurred at one unit. Mr. Sherman noted that that was a one-time charge as well. Mr. Baron observed that the insurance proceeds are not included in the financial statement. Mr. Farmer responded that the payment may have been received in another year. Mr. Farmer stated that he provided financial statements for three years to provide the complete picture.

Ms. Merriman asked the applicants to identify the owner and manager of the property. Mr. Farmer stated that PMC manages the property. Mr. Fineman stated that Walnut Square LP is the owner. Ms. Merriman and Mr. Sherman asked about the identities of the partners. Mr. Fineman stated that he did not know. Mr. Sherman asked about PMC's management fee. Mr. Farmer replied that it is about $95,000 annually. Mr. Sherman stated that it is impossible to believe that a building in that location is not making money. Mr. Farmer listed many of its expenses. Mr. Farmer stated that the income for the building is about $1.9 million. He asked how one can spend $1 million on a capital expenditure with that income. Mr. Sherman stated that, if this building is really in such bad financial shape, it would be for sale. He contended that financial statements such as these can be easily manipulated. "You can make them say whatever you want them to say." He stated again that he does not believe that this building is not profitable. He stated that they should "back out" the one-time charges to develop a better sense of the long-term financial state of the building. Mr. Farmer stated that the capital expenses require cash, which had to be provided by the partners. Ms. Merriman noted that the financial statements identify the partners. Mr. Fineman noted that the names of the partners are very recognizable. Ms. Merriman asked whether the financial capacity of the partners should be taken into account. Mr. Horvitz stated that the "as a matter of law it's the individual owner whoever is not considered by law. It's the financial hardship to the property." Mr. Fineman clarified, asserting that the Committee cannot consider the financial capacity of the individual partners as a matter of law. Mr. Sherman agreed, citing the 400 S. 40th Street case. Mr. Baron noted that the applicants have made both "financial hardship" and "unnecessary hardship" claims. Unnecessary hardship relates to the financial capacity of individuals, not the hardships inherent to a property. Mr. Fineman contended that the financial state of the partnership, not the individuals, is at question here.

Mr. Sherman asked about the real estate taxes. Mr. Farmer responded that they are $187,000 annually. Mr. Sherman asked about the number of units. Mr. Farmer replied about 100, one bedrooms and studios. Mr. Fineman claimed that the maintenance charges for buildings with small units are greater. Mr. Sherman commented that the building is nothing more than a tax deduction for the partners, an "offset vehicle." Mr. Farmer agreed. Mr. Fineman asserted that that is irrelevant. Mr. Thomas stated that most applications like this that the Commission reviews are submitted by low and moderate-income persons who cannot afford minor upkeep like window replacement.

Mr. Fineman stated that he believes that there is "a due process violation here. That is, you have an imminently dangerous condition here. You have to remedy it right away. You take care of that and now you come back and say now you've got to put back, put it back in a condition without giving us any opportunity, without due process. It's a taking of money, in essence, without due process. Just saying, put that on the record. I'm not sure. I'd be happy to argue that with appropriate lawyers." Mr. Sherman replied that the Commission is very cognizant of the rights of property owners. Mr. Fineman stated that, given the nature of the conversation thus far, he would like an opportunity to have additional discussions with the staff about a remedy to this situation. Mr. Thomas stated that the Commission's task is to find a solution to the problem, not to assess blame for the illegal work. Mr. Fineman noted that Neal Hammerschlag has been blamed and punished. Mr. Baron stated that he has spoken with the applicants about alternatives regarding design and materials many times; the onus is now on the applicants to propose a solution. Mr. Fineman stated that he is willing to consider creative solutions. Mr. Sherman asked the applicants if they have sought subsidies to assist with rehabilitating this building, perhaps federal tax credits. Mr. Farmer stated that federal tax credit would not be available in this case. Mr. Sherman stated that they should consider creative ways to preserve this building. Mr. Fineman stated that his clients may be able to undo the illegal work over time. Mr. Sherman informed the applicants that the Commission often allows work reversing illegal alterations to take place over time.

Mr. Baron reminded the Committee that this matter is also being addressed in an ongoing enforcement case in court. He stated that the court proceedings have already been extended. He stated that the applicants have filed this application to comply with a court order. Mr. Baron observed that the applicants could submit a new application proposing a solution. Mr. Fineman commented that the court would likely allow for good-faith discussions to continue. Mr. Sherman suggested that the applicants should determine what remedial work they are capable of undertaking. Mr. Sherman suggested that one estimate from the contractor who undertook the illegal work, even if it includes four alternatives, is not enough. He suggested that the applicants should obtain other, independent estimates. Mr. Sherman noted that Mr. Baron may be able to suggest names of contractors who undertake this type of work.

Ms. Long suggested that the applicants provide a pro forma projecting the financial state of the building over 10 years. The finances of the building over the last couple of years appear to be anomalous. Mr. Baron called the financial documents "a snapshot of a very bad period." Ms. Long also suggested that the applicants should provide more information about the rentals and vacancies. Mr. Sherman suggested that the Committee should recommend that the Commission table the matter to allow the applicants to solicit additional estimates from independent contractors for the remedial work and to provide a 10-year pro forma for the building. Ms. Merriman and Mr. Thomas agreed. They stated that the applicants should provide multiple bids from independent contractors pricing out various schemes to correct the illegal work and restore the appearance of the building. Ms. Long opined that the documents that were submitted are very confusing and should be reorganized to present the case clearly. Ms. Merriman stated that the Committee must be provided with a pro forma that demonstrates how this building will perform, especially after it is renovated. Ms. Merriman stated that she works with businesses in Philadelphia every day in her job at the Commerce Department and understands the demand for real estate in this area as well as the rents that are obtainable; she opined that she cannot understand how this building is not profitable. Ms. Long and Mr. Sherman advised the applicants to meet with the staff and obtain guidance. Mr. Farnham stated that the Commission can table matters for periods not to exceed six months. Ms. Merriman suggested that the Commission should table this matter for a shorter period, perhaps 90 days. Mr. Baron noted that the applicants could request in writing that the Commission table the matter.

Patrick Grossi of the Preservation Alliance stated that his organization acknowledges that dangerous conditions must be abated. However, given that this building has been designated since 1973, the owners were well aware of the designation, and assumed some risk when purchasing a historic building, the Alliance advocates for the reconstruction of the balcony, but notes that alternate materials may be acceptable. He stated that, if the applicants' argument is accepted, it will set a very dangerous precedent and place numerous buildings at risk. Mr. Grossi questioned the granting of any exemption in a situation such as this one. He asserted that the character of the building should be restored and can be restored in a cost-effective manner.

COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION: Ms. Merriman moved that the Committee on Financial Hardship recommend that the Historical Commission table this application for 90 days to allow the applicants to submit additional information as requested and that the Historical Commission remand the supplemented application to the Committee on Financial Hardship for additional review and a recommendation. Ms. Long seconded the motion, which passed unanimously.

ADJOURNMENT

ACTION: Ms. Merriman moved to adjourn at 4:50 p.m. Mr. Thomas seconded the motion, which passed unanimously.