REPORT OF THE COMMITTEE ON FINANCIAL HARDSHIP
PHILADELPHIA HISTORICAL COMMISSION

THURSDAY, 4 JUNE 2009
ROOM 578, CITY HALL
SAM SHERMAN, CHAIR

PRESENT
Sam Sherman, Chair
David Amburn
John Haak, City Planning Commission
Bob Thomas
Scott Wilds, Office of Housing & Community Development

Jonathan Farnham, Executive Director
Rebecca Sell, Historic Preservation Planner II

ALSO PRESENT
Avis Allman, Allman Financial
Stephen Perna, Perna Frederick Commercial Real Estate
James Plunkard, Hartshorne Plunkard Architecture
David Radomski, John Buck Company
William Schwartz, Esq., Obermayer, Rebmann, Maxwell & Hippel, LLP.
Lynne Fox, Hillman Medical Center
George Hoez, K & A Appraisal Co.
Ron Street, Northstar Advisors
Bernard Kolodner, Esq., Kleinbard, Bell & Brecker, LLP
Anthony Forte, Esq., Saul Ewing
Michael Mattioni, Esq., Mattioni Ltd.
Rev. Karen Hart, Lutheran Church of the Holy Communion
Rev. Nate Walker, First Unitarian Church
Randal Cotton, Preservation Alliance
Mike Simeone
Antony Dugdale, UNITE HERE
Caitlin Prendiville, UNITE HERE
Sarah Roberts, UNITE HERE
Andrew Palewski
Jeanette Blize, State Representative Joseph's Office
William Cooley
John Gallery, Preservation Alliance

CALL TO ORDER
Mr. Sherman called the meeting to order at 1:15 p.m. Messrs. Amburn, Haak, Thomas, and Wilds joined him.

2116-32 CHESTNUT STREET
Owner: Sidney Hillman Medical Center of the Male Apparel Industry
Applicant: William Schwartz, Esq.
History: 2116-32 Chestnut Street, Magaziner & Polss, architects, 1950
Contributing to Rittenhouse Fitler Residential Historic District, 2/8/1995
Project: Demolish buildings, construct mixed-use tower with parking

OVERVIEW: This application proposes the complete demolition of the buildings at 2116-32 Chestnut Street and 2115-2127 Sansom Street and the construction of a 32-story, mixed-use building on the site. The properties are within the boundaries of the Rittenhouse Fitler Residential Historic District. The Chestnut Street property is classified as Contributing in the district. The Sansom Street property is classified as Non-contributing.

Section 14-2007(7)(j) of the historic preservation ordinance states that:

> No permit shall be issued for the demolition of … a building … located within an historic district which **contributes**, in the Commission's opinion, to the character of the district, unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building … cannot be used for any purpose for which it is or may be reasonably adapted. [emphasis added]

The applicant has submitted a hardship application claiming that the Chestnut Street property cannot be used for any purpose for which it is or may be reasonably adapted. Requiring an owner to retain a building that cannot be used for any purpose for which it is or may be reasonably adapted would inflict a hardship on the owner. The historic preservation ordinance authorizes the Commission to approve the demolition of an historic building, despite the loss of the historic resource, if requiring its retention would cause the owner to suffer a hardship. The applicant has not submitted a hardship application for the Sansom Street property; the Commission may approve the demolition of the Sansom Street building without a finding of hardship because it does not contribute, in the Commission's opinion, to the character of the district. Therefore, the hardship portion of this application only relates to 2116-32 Chestnut Street, not 2115-2127 Sansom Street

The hardship provision in Philadelphia's preservation ordinance is critical to law's constitutionality. The landmark court case that established this precedent is worth reviewing. In its 1978 decision in the case of *Penn Central Transportation Co. vs. City of New York*, the United States Supreme Court found that government regulation to preserve historic resources was a valid exercise of police power. The New York City Landmarks Preservation Commission had denied two Penn Central proposals to build on top of Grand Central Station. Penn Central appealed the denials, alleging that New York's preservation law was unconstitutional because the denials deprived the railroad company of its full use of the property and therefore constituted a taking of its property without just compensation under the Fifth and Fourteenth Amendments. Rejecting Penn Central's claim, the Court found that a substantial economic burden caused by a preservation law is constitutional as long as the property retains reasonable economic value. Following the Supreme Court's 1978 Penn Central decision, municipalities across the country revised their historic preservation ordinances, authorizing preservation agencies to deny demolitions of historic buildings in instances when the building could be adaptively reused and thereby retain reasonable economic value. Before the Penn Central decision, to avoid the takings claim, municipal historic preservation laws typically authorized agencies to delay but not deny demolitions. Philadelphia was typical in this regard. Philadelphia's original preservation ordinance allowed the Commission to "postpone" demolitions for a period up to but not in excess of six months. Taking advantage of the 1978 Penn Central decision, Philadelphia rewrote its ordinance in the early 1980s, authorizing the Commission to deny demolitions outright unless the property owner proves that the historic building cannot be used for any purpose for which it is or may be reasonably adapted. With the new authority came new responsibility. In order for the historic preservation ordinance to be deemed constitutional, the Commission's hardship process must be reasonable and it must allow for the demolition of a historic building, regardless of the significance of that building, when the property owner proves that a denial of the demolition permit would deprive her of any reasonable economic value. During its review, the Commission must make a series of judgments about what is feasible and infeasible, reasonable and unreasonable, and practicable and impracticable before it determines whether requiring retention of this building would impose a hardship on the owner.

The application for a demolition permit for a Contributing building triggers the hardship test. All hardship applications are assessed according to the same standards. Relative historical significance is not a factor. Only one fact about the property's historical significance is relevant for the Commission during the hardship review; the property at 2116-2132 Chestnut Street is classified as Contributing to the historic district. Beyond that fact, the relative historical significance of the building should play no role in the Commission's deliberations. The applicants are not contesting the contributing classification.

Likewise, the merits of the proposed tower should not play a role in the Commission's hardship deliberations. The hardship claim relates to the feasibility of the adaptive reuse of the existing building only. The impact of the proposed building on the surrounding area, positive or negative, should not influence the Commission's hardship decision. If the Commission arrives at a hardship finding and allows the demolition of the building, it will have an opportunity to review the new construction with plenary jurisdiction.

The ownership of this property is the subject of a heated debate that is tied to recent mergers and divisions within the labor union that owns the property. Some opponents claim that that the application is incomplete or invalid owing to this dispute. The Law Department has reviewed that matter and advised that the Commission may proceed with its review. The application forms, deeds, and City's Board of Revision of Taxes all list the owner as the Sidney Hillman Medical Center of the Male Apparel Industry of Philadelphia. The attorney representing the application has signed the application forms certifying that he is "authorized by the owner to make the foregoing application." Lynne P. Fox has submitted an affidavit swearing that she is the president of the Sidney Hillman Medical Center of the Male Apparel Industry of Philadelphia and is authorized to make the application on behalf of the property owner. The Commission must not base any rejection of the application on ownership.

Ultimately, this Commission has one charge when reviewing the hardship application, to determine whether this building can be used for any purpose for which it is or may be reasonably adapted. The historic preservation ordinance states that "In order to show that building cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed."

First, the applicant must demonstrate that the sale of the property is impracticable. The terms "impracticable" and "impossible" are a legal terms of art. Impossibility means that the duty cannot be physically performed; impracticability means that performance is physically possible, but very burdensome. Impossibility is an objective condition; impracticability is a subjective condition for the Commission to determine. There may be many ways to determine whether the sale is impracticable. Disagreeing with some opponents, the Law Department has opined that a public listing is not necessary to determine whether the sale is impracticable. An applicant can demonstrate that a sale is impracticable by showing that no feasible reuse is possible without placing the property on the open market. This opinion is supported by the case law related to the 10 Rittenhouse project, which the Commission approved in 2004. The Commission found that an adaptive reuse of the buildings would pose a hardship and thereby allowed their demolitions even though the applicant stated that he had not and had no intention of marketing the properties, publicly or privately. Rather than demonstrating that no one would purchase the property by allowing them sit on the open market, he demonstrated that it would not be financially feasible for anyone to reuse them. The Board of License & Inspection Review and the Court of Common Pleas upheld the Commission's action on appeal.

Second, the applicant must demonstrate that commercial rental cannot provide a reasonable rate of return. The term reasonable is not defined in the historic preservation ordinance, but is left for the Commission to determine. Typically, this demonstration is made using pro-formas analyzing the economics of possible reuses.

Third, the applicant must demonstrate that other potential uses of the property in its current state or after a reasonable adaptation are foreclosed. The ordinance does not state that ALL other potential reuses must be explored, but only that other reuses must be explored. Typically, the Commission has required hardship applicants to study reuses that are the most likely to lead to a feasible rehabilitation project. Also, the Commission cannot require an unreasonable adaptation to make the building reusable, but only a reasonable adaptation. The addition of a stair tower might be a reasonable adaptation; the addition of four floors on a three-story building might be unreasonable. Finally, the Commission can assume that other uses are foreclosed if they do not provide a reasonable rate of return, with the Commission defining reasonable.

The Rules & Regulations not only echo the historic preservation ordinance but also provide one additional sentence of guidance. The Rules state that:

> The applicant has an affirmative obligation in good faith to attempt the sale of the property, to seek tenants for it, and to explore potential reuses for it.

Again, the Law Department advises you that the applicant need not necessarily publicly market the property to prove that a sale is impracticable or to prove that she has met her affirmative obligation in good faith.

The applicant has submitted substantial documentation, a summary of which is included below.

On 6 April 2009, the applicants submitted:

- demolition plans and architectural plans for the new building,
- photographs of the site and surroundings,
- copies of the zoning and building permit applications,
- copies of the deed and Board of Revision of Taxes assessment information,
- a summary of an appraisal report,
- a cost estimate to rehabilitate the historic building,
- an affidavit from the property owner providing facts about the property as requested in Section (7)(f) of the ordinance.

On 21 April 2009, the applicants submitted:

- an addendum to the rehabilitation construction estimate.

On 30 April 2009, the applicants submitted:

- information about 36 contacts made as the building was marketed,
- an engineer report regarding adding to the historic building,
- the complete appraisal report with analyses of reuses (labeled Scenarios 1-4) as Class B/B office, Class B/B office with a 33% reduction in construction costs to account for tax credits and grants, senior housing, and apartments, along with pro formas showing that no project would be economically feasible,
- information on preservation tax credits and grants claiming that their effect would be negligible, and
- a design for a 51-story building behind the historic building that would provide the same gross floor area as the proposed building.

On 27 May 2009, the applicants submitted:

- additional information on the marketing of the property including 4 offers,
- a statement that the building contains 30,000 rentable square feet,
- additional information about tax credits and grants claiming that their effect would be negligible, and
- additional information including architectural plans related to a tall tower at the rear of the site.

On 3 June 2009, the applicants submitted:

- architectural plans for three towers at the rear of the site (labeled Options A-C) with pro formas showing that no project would be economically feasible.

Attorneys for the Sidney Hillman Medical Center and UNITE HERE, the union faction claiming ownership rights, submitted letters explaining their positions on the ownership matter on 3 June and 5 May 2009 respectively.

Finally, the Commission has received correspondence on the application from several interested parties.

The Committee on Financial Hardship reviewed the project once prior to this review, on 21 April 2009. The minute of that review is included with the application materials for this Commission meeting. The Committee issued the following recommendation at that review:

> **COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION:** The Financial Hardship Committee recommended that the Commission table the application for a period not to exceed six months to allow for the submission of additional information.

The Committee requested the additional information as outlined in this quotation from the meeting minute:

> The Committee members advised the applicant to augment the application with a pro-forma; information on all listings with prices asked and offers received; information on possible grants and tax credits for which the property and non-profit owner may be eligible; a statement of the rentable square footage in the renovated Hillman Medical Center building; an architectural study of a development at the rear on Sansom Street that would preserve most or all of the Hillman Medical Center building; an architectural study of an addition on the Hillman Medical Center building; and a study of other possible reuses in addition to the office reuse.

The Architectural Committee likewise reviewed the project once prior to this review, on 21 April 2009. The minute of that review is included with the application materials for this Commission meeting. The Committee issued the following recommendation at that review:

> **ARCHITECTURAL COMMITTEE RECOMMENDATION:** The Architectural Committee voted to recommend denial of the application.

The Architectural Committee recommended denial because the hardship and demolition questions had not been decided. It did not opine on the merits of the proposed building.

DISCUSSION: Mr. Farnham presented the application to the Committee on Financial Hardship. Mr. Sherman reminded the audience that the Committee has a very narrow purview. He asked that everyone addressing the Committee restrict her testimony to the financial hardship matter. He then asked the applicants to discuss the supplemental information.

Attorney William Schwartz, realtor Stephen Perna, developer David Radomski, architect James Plunkard, union representative Lynne Fox, appraiser George Hoez, construction cost estimator Ron Street, and attorney Bernard Kolodner represented the application and property owner.

Mr. Schwartz summarized the application. He stated that his team first investigated four reuse scenarios using pro formas. The analyses are in the full appraiser's report. He stated that they chose these reuse scenarios because they were the most likely to be successful in the context of Center City. He stated that they could have evaluated other potential uses, but his professional team determined that these uses are the most likely to be feasible. The first, called Scenario 1, Class B/B office use, is the highest and best use. He summarized that Scenario 1 would not be feasible; the value of the resulting building would be less than one half of the total expenditure on the rehabilitation. He stated that Scenario 2 investigated the same office use with the renovation costs cut by one third to account for potential grants and tax benefits. He summarized that Scenario 2 would not be feasible, even with the rehabilitation costs cut by 33%. He stated that the team next investigated a senior citizen residential reuse as Scenario 3. He summarized that Scenario 3 would not be feasible. Finally, he presented Scenario 4, which investigated a residential apartment use. He summarized that Scenario 4 would not be feasible. Mr. Schwartz then described the additional information submitted on June 3, the day before this Committee meeting. He explained that this information was not required, but was submitted in an effort to be as thorough as possible. He stated that the additional scenarios have been labeled Options A, B, and C and the analyses are documented in architectural drawings and pro formas. Option A proposes a zoning code-compliant building at the rear of the site with the same gross floor area as the proposed building. Option B proposes a shorter building taking up more of the site with the same gross floor area as the proposed building. Option C proposes a building that would require some rear demolition of the historic building and would have the same gross floor area as the proposed building. He handed out documents that detailed these three options. Mr. Wilds asked if the documents being distributed are identical to those that were delivered to the Commission and emailed to the Committee members on June 3. Mr. Schwartz stated that they are identical.

Mr. Hoez, the appraiser, testified before the Committee. He stated that none of the four schemes to adaptively reuse the building, Scenarios 1 to 4, would be profitable. He reviewed the pro formas for the Committee members. He contended that the pro formas demonstrate that none of the four scenarios would be profitable. He explained that the John Buck Company prepared the pro formas. He testified that the numbers used in the pro formas are all reasonable. He concluded that none of the pro formas showed that a rehabilitation project would be feasible.

Mr. Wilds asked Mr. Hoez to provide the appraised value. Mr. Hoez stated that he appraised the building for $2.3 million in 2009. Mr. Wilds then asked why the owner did not accept the offers for $5 and $5.5 million. Mr. Schwartz stated that Mr. Perna would testify about the sales offers. However, he noted that there are several factors that make the $2.3 million appraisal and $5 million offers incomparable. First, the offers were tendered in 2006 in a very different real estate market; the market has changed and values have dropped significantly. Second, those are initial offers, prior to due diligence periods; it can be assumed that the offers would drop significantly during the investigation of the property. Third, those were partnership offers, not offers to buy the property outright. Fourth, and very importantly, they were offers for both parcels, not only the Chestnut Street parcel; the 2009 appraisal value is for the Chestnut Street parcel only. Finally, those are offers for a cleared site; the appraisal takes the restriction arising from the historic designation into account. He stated that the offers were for preliminary discussions only. He concluded that the offers from 2006 for both properties and the appraisal from 2009 for the Chestnut Street property are incomparable. Mr. Wilds stated that the Committee must determine whether a sale is impracticable. Mr. Schwartz responded that the report by the appraiser, Mr. Hoez, concludes that the property is impracticable in today's market.

Mr. Radomski testified before the Committee. He stated that he has worked for the John Buck Co. for one and one-half years and in real estate development for 30 years. He stated that, during his career, he has considered thousands of properties for development. He acknowledged that he prepared the pro formas for this application. He stated that he used standard numbers based on current market rates, banking rates, and construction estimates from Northstar. He stated that he solicited numbers from major, local contractors. He stated that the numbers are conservative; they are not inflated in any way. He concluded that he would not advise that anyone invest in these projects. None provides a reasonable rate of return. None of the projects is feasible. Mr. Sherman asked him what he would consider a reasonable rate of return. Mr. Radomski replied that he would consider anything over 20% an acceptable internal rate of return (IRR). Mr. Sherman noted that Scenario 2 with the 33% reduction of rehabilitation costs only showed an IRR of 5%. He asked if this was acceptable. Mr. Radomski stated that it would not be feasible. Mr. Schwartz asserted that Scenario 2, with its significant reduction in rehabilitation cost to approximate the best-case-scenario tax credits and grants, would not be feasible. Mr. Sherman asked Mr. Radomski to confirm that the IRR accounted for all costs including debt service and maintenance. Mr. Radomski stated that it did. He stated that the Class B/B office estimate included an allowance for tenant fit-out. Mr. Sherman asked if construction costs were higher in Chicago or Philadelphia. Mr. Radomski replied that they are significantly higher in Philadelphia. He stated that he was surprised how much higher they are.

Mr. Wilds asked if the Sidney Hillman Medical Center is related to the Sidney Hillman Senior Housing on 22nd Street. Lynne Fox, the president of the Medical Center, stated that they are separate, unrelated corporations.

Mr. Wilds asked why no subsidies were included in the senior housing pro forma. He stated that there are subsidies available from the Department of Housing & Urban Development (HUD) for both construction and rental expenses. Mr. Wilds suggested that the applicants incorporate the available federal subsidies into their analyses. He reported that the low income housing tax credit may reduce the construction costs by as much as two-thirds. He stated the HUD 202 credit may reduce the construction costs by as much as 80%. However, they cannot be combined. Mr. Radomski did some calculations and replied that, even with those reductions in construction costs, the senior housing project would not produce a rate of return necessary to make it feasible. Mr. Schwartz added that the building is not eligible for the federal historic preservation tax credit or the rehabilitation tax credit because it was not built before 1936 and is listed as an intrusion in the National Register historic district. He stated that he nonetheless included the preservation tax credit in his Class B/B office analysis. Mr. Schwartz concluded that the building is fundamentally handicapped by its inefficient use of space. It will never be able to be profitably rehabilitated.

Mr. Wilds asked Mr. Hoez how he would have appraised this building in 2006. Mr. Hoez stated that he would have looked at the building as a shell because of its inefficient space. He stated that it would have been worth more in 2006 than it is now, but not twice what it appraises for currently. He added that he would need to include interior demolition into the building's overall value. Mr. Schwartz reminded the Committee that the appraisal value is for the Chestnut Street property only, not the Sansom Street property. The offers from 2006 are for both properties. It is meaningless to compare the 2006 offers for two properties with the 2009 appraisal for one property.

Realtor Stephen Perna addressed the Committee. He stated that he has been in the real estate business for 23 years. He stated that he made 36 contacts with potential buyers during the 2½ to three years of marketing. He stated that there were four offers, which are documented in the submission. He stated that he marketed the property in a neutral way, not pushing either rehabilitation or demolition. He stated that two potential buyers considered rehabilitating the building. Both rejected rehabilitation after investigating the prospects because they did not have the funds for the work. He stated that a "gut rehab" was too expensive for both of the buyers who considered reuse of the building. Mr. Wilds asked Mr. Perna if he disclosed the historic designation to potential buyers. Mr. Perna stated that he talked about the designation with serious buyers. Mr. Sherman asked him how he marketed the building. He stated that it was a neutral marketing for either reuse or new construction. Mr. Sherman asked Mr. Perna how much space the Hillman Medical Center would occupy in the new building. Mr. Perna stated that it would occupy 20,000 to 25,000 square feet. He stated that the current building has 38,000 square feet and the Hillman Medical Center uses 10,000 square feet now.

Mr. Thomas stated that he has been involved with several rehabilitation projects that took advantage of the federal historic preservation and housing tax credits and involved limited partners. He asked the applicants if they had considered this type of arrangement. Mr. Schwartz stated that they had investigated this approach through the senior housing analysis.

Mr. Wilds asked why none of the four offers led to a sale. Mr. Perna stated that one offer was explored fully. However, in the end, he concluded that the offer was intended to "tie up" or "control" the site, but not purchase it. He stated that the potential buyer did not intend to develop, only to hold onto the site.

Messrs. Sherman and Wilds asked if they had submitted all appraisals. Mr. Schwartz stated that they had submitted the one and only recent appraisal. He acknowledged that they had not submitted the appraisal that he assumed was made in 1950 when the property was purchased. Messrs. Sherman and Wilds agreed that the 1950 appraisal would have no value today.

Mr. Perna turned his attention to Options A, B, and C. Mr. Schwartz explained that he selected the options to represent the poles and the middle ground. Mr. Perna explained that he provided the rental value data to the John Buck Co. for incorporation in the pro formas. Mr. Schwartz asserted that the analyses of these Options are above and beyond the Commission's requirements, but they were submitted for the sake of thoroughness. Mr. Radomski stated that the pro formas for the building options at the rear prove that a new building at the rear could not “carry” the historic building. He stated that the analyses are very conservative. He stated that he used low construction costs, a low cap rate, and rents that are higher than the going market rate. He stated that all options still show negative returns. He commented that no bank would ever consider financing any of these projects. Mr. Sherman asked about the square-foot construction costs. Mr. Radomski stated that he used $215 for Options A and C and $225 for Option B. He noted that local contractors gave him ball-park costs for Option B in the $250 to $260 range, yet he used the lower number to ensure that his analysis was expositive. Therefore, his cost numbers are not padded, but are aggressively low. Mr. Wilds asked about the square-foot costs used in the rehabilitation analyses. Mr. Radomski did some calculations and responded that they used $244.95. Mr. Wilds agreed that that was a reasonable square-foot cost for rehabilitation. Mr. Radomski concluded that none of the three Options would be financially feasible. Mr. Thomas asked about Keystone preservation and other grants. Mr. Schwartz replied that they had been considered, but were so negligible as to make no difference in the analyses.

Mr. Wilds asked if they could transfer air rights from the Chestnut Street parcel to the rear of the property. Mr. Radomski responded that they had done that in the Option analyses.

Mr. Sherman asked what estimates they used for the rents in the Options analyses. Mr. Radomski stated that they used $2.55 per square foot for the monthly rent estimates, but he noted that rents had dropped significantly recently. Mr. Hoez noted that the actual rate in Old City, which is more expensive, is about $2 per square foot today.

Mr. Sherman invited members of the audience to address the Committee. Antony Dugdale of UNITE HERE stepped to the table. He claimed that UNITE HERE is the owner of the building. He stated that his union is interested in rehabilitating and reusing the property. He stated that his union is well capitalized and has 500,000 members. He reported that UNITE HERE owns Amalgamated Bank, which has $6 billion in assets. He asserted that UNITE HERE has the resources to reuse the building. He stated that his union is not making a commitment to saving the building, but would like to study the question. He noted that he has no specific development proposals for the property to offer to the Committee. He claimed that the applicants had not made the application materials available to him. He requested that the Commission deny the demolition. Mr. Wilds asked Mr. Dugdale about the timeline for resolving the ownership dispute. Mr. Dugdale stated that the case would be heard in federal court in Brooklyn in the fall, but that he hoped for a settlement before that time. He again stated that his union would study the reuse of the building. Messrs. Sherman and Wilds agreed that the ownership claim was not relevant to the application at this point in time. Mr. Sherman asked Mr. Dugdale if his group had done any analysis or feasibility studies for the property. Mr. Dugdale conceded that they had not.

Attorney Bernard Kolodner explained that he represents the applicants in the union dispute, but not in the development matter. He asserted that UNITE HERE and the Joint Board have no ownership rights to the building. He stated emphatically that the Sidney Hillman Medical Center is the owner of the building and is not part of the federal lawsuit. He vigorously disputed Mr. Dugdale’s claims and reported that the building is not part of the lawsuit. He added that his client will continue to preserve the legacy of the union and Mr. Hillman.

William Cooley introduced himself as an engineer and stated that he is opposed to the project. He suggested turning the building toward Chestnut Street and cutting it to 16 stories. He suggested that the developer consider the Quartermaster’s site in South Philadelphia. He suggested converting the first floor of the existing building into a food court. Mr. Sherman asked him to focus his comments on the hardship application. Mr. Cooley said that Philadelphia is an old, dilapidated city and the streets are too narrow. He spoke of failed development projects in the area. He stated that this development would be too noisy for the churches. He concluded that this is the wrong building for the site. Mr. Sherman stated that this Committee is not considering the new construction.

John Gallery of the Preservation Alliance stated that he disagreed with the Law Department's advice regarding the ownership question. He claimed that, without certainty regarding the identity of the owner, the application is incomplete. Mr. Sherman asked why this claim regarding ownership was not made at the April 2009 Committee meeting. He questioned the timing of the second claim of ownership. Mr. Gallery insisted that the application is incomplete because the applicants have not submitted a hardship application for the Non-contributing building on Sansom Street. He stated that the Committee should not be considering options that include the Sansom Street property. Mr. Wilds asked Mr. Gallery to be clear. He asked if Mr. Gallery was requesting that the Committee not consider Options A, B, and C, which were submitted yesterday. Mr. Gallery responded in the affirmative, stating that the Committee should not consider Options A, B, and C. Mr. Gallery claimed that he had not become aware of "all of the pro formas" until 10:00 a.m. today, 4 June 2009. Mr. Farnham stated that that was not true. He stated that the four pro formas related to Scenarios 1, 2, 3, and 4 had been available in the Commission's office for weeks and that Mr. Gallery had photocopied the entire appraiser's report with the pro formas for Scenarios 1 to 4 one week ago. He explained that the documentation for Options A, B, and C were received in hard copy and email at the Commission office on Tuesday, 2 June 2009 and had been emailed to Committee members that day. Mr. Farnham stated that he personally delivered a copy of the documentation for Options A, B, and C to the Preservation Alliance office on Wednesday, 3 June 2009. Mr. Gallery agreed, but added that he had not received the copy of the documentation for Options A, B, and C until 10:00 a.m. the day of the meeting, 4 June 2009. Mr. Farnham suggested that the Commission carefully consider Mr. Gallery's claims and the dates of receipt of the documents. He reported that Mr. Gallery has had the documentation related to Scenarios 1, 2, 3, and 4 for at least one week, but the documentation for Options A, B, and C for a very short time. Mr. Schwartz noted that Mr. Gallery's advance warning about the documentation for Options A, B, and C is immaterial because Mr. Gallery is suggesting that the Committee ignore Options A, B, and C because they relate to the Sansom Street lot as well as the Chestnut Street lot. He is claiming both that they are irrelevant and that he did not receive them in time.

Mr. Gallery asserted that the application is incomplete and should be denied. The applicants have not provided information on all of the offers received, as required. They have not provided information on the offer from the John Buck Company; they should have. He also stated that the offers that were submitted should not have been redacted for confidentiality. He asserted that there is no way to determine if all offers have been submitted because the prospective buyers are not identified. He added that most of the offers do not include confidentiality clauses. He contended that the full offers must be provided. He again stated that the applicants have not met the submission requirements. He stated that the applicants have not considered the charter school use. While the property was for sale, three charter schools were looking for property. The Independence Charter School spent $13 million on its property and rehabilitation. He claimed that there is an unsubstantiated rumor that a charter school did try to buy this building, but was rejected. He claimed that the applicant has not demonstrated that a sale is "impractical." He defended the Commission's decision to find a hardship and allow demolition in the 10 Rittenhouse case even though the developer stated that he did not and would not market the buildings. He noted that the Hillman owner received unconditioned offers of about $5.5 million, but did not sell, even though the property is appraised for $2.3 million. Mr. Gallery claimed that unnamed people were willing to pay $6 million for the property. Mr. Gallery stated that the applicants have not fully explored senior housing. He stated that they applicants could combine senior housing subsidies and the federal historic preservation tax credit. Mr. Gallery asserted that the building would be eligible for the National Register. He stated that he contacted the Pennsylvania Historical & Museum Commission (PHMC), which would not state that the building is either eligible or ineligible for individual listing on the National Register until an application is submitted. He stated that Emily Cooperman, who prepares National Register nominations, claimed that this building would be eligible for the National Register. He concluded that the application is incomplete and asked the Committee to recommend denial.

Mr. Sherman asked Mr. Schwartz if he would like to respond to Mr. Gallery's comments. Mr. Gallery interrupted Mr. Sherman and stated that he would like an opportunity to cross-examine all members of the application team. Mr. Wilds stated that the applicant has a right to respond to the comments offered by the public. He guaranteed Mr. Gallery that he would have another opportunity to speak. Mr. Gallery stated that he had nothing else to say at the moment.

Avis Allman, a neighbor whose property is adjacent to the site, stated that she was concerned about the Section 202 tax credit and something that she referred to a Criterion A in an undisclosed letter, but then stated that she was more familiar with development activities in Brooklyn. She stated that, in Brooklyn, the developer proposes a project and the community and borough president negotiate regarding low-income housing at the development. She offered to give the name of the Brooklyn Borough President to the Committee. She suggested "mixed-use financing." She stated that she is not for or against the project. She stated that low-income housing credits are competitive in New York State.

Attorney Anthony Forte, who represents the Lutheran Church adjacent to the site on Chestnut Street, and attorney Michael Mattioni, who represents the Unitarian Church across Chestnut Street, stated that they have not made any conclusions regarding the demolition or whether a financial hardship exists, but they asked the Committee to follow the appropriate process. He acknowledged that additional information had been submitted on Options A, B, and C, but stated that he had not had a chance to review it. He asked rhetorically if the applicants had operated in good faith. He stated that they had pre-determined to demolish the building. He claimed that the owner received two offers at $5.7 and $5.8 million, but rejected them. Mr. Sherman stated that these were not agreements of sale, but were letters of interest. Mr. Forte countered that the two offers had few contingencies. Mr. Mattioni agreed.

Mr. Dugdale asked if the financial analysis reflected the John Buck Co. offer of $6.75 million. Mr. Schwartz stated that the Buck Co. is not buying the land, but is entering into a partnership with the Hillman Medical Center. It is not an offer for the property. Mr. Schwartz asked for an opportunity to clarify several facts, which are in dispute. He stated that the documents submitted to the Commission including the deed and tax information clearly show that the Sidney Hillman Medical Center is the owner of the property. He rejected Mr. Gallery's claim that the application is incomplete in this regard. He added that the shareholder dispute has nothing to do with the ownership. He claimed that the record proves that that his client owns the property and has standing to submit the application. He asserted that he has submitted every offer his client received for the property to the Commission with the application. He stated that his client did not ask a particular price when the property was marketed; therefore no prices asked were submitted. He observed that Mr. Gallery had pointed to two offers in 2006 for $5.7 million and $5.8 million and had asked why they were not accepted if the appraisal contends that the property is worth $2.3 million. He asserted that Mr. Gallery is comparing apples and oranges. The offers were made for both properties, the Chestnut and Sansom Street properties, in 2006, before the crash; the Chestnut Street property alone is currently appraised after the crash at

$2.3 million. He stated that the property is not eligible for the 10% tax credit because it was not built before 1936. He also claimed that it would take one year for the state to determine if the property would be eligible for the National Register and the 20% tax credit. He noted, however, that they included a "mythical" 30% credit or grant in the analysis to account for the 20% tax credit and any other credit or grant for which they might be eligible. Jim Plunkard, an architect on the development team, stated that he had spoken with PHMC regarding eligibility and had been told that the later third-floor addition detracts for the building and reduces its chances for eligibility. He was also told that any addition or new building at the rear would also reduce its chances for eligibility and the tax credit. They stated that they included it in the analysis nonetheless. Mr. Schwartz stated that the four Scenarios were submitted over one month ago to the Commission and available to the public.

Mr. Wilds stated that he was convinced that the Commission does not need to concern itself further with the ownership issue. He stated that the Law Department has considered the matter fully and opined that the Commission may proceed with its review. He noted that the applicant has submitted deed and Board of Revision of Taxes documents indicating that the Sidney Hillman Medical Center is the owner of record. Mr. Wilds commented on the changing value of properties in the city. He stated that this downturn is much more significant than the real estate downturn in the late 1980s; he reported that the Commission approved several hardship applications at that time. Property values have dropped significantly since the property was marketed. He noted that one can always cobble together a number of government grants and credits to try to make a project feasible, but that the credits are not worth what they were a few years ago. He explained that credits are now worth about 68¢ on the dollar, not the 92¢ on the dollar that they were worth recently. He concluded that the "notion" that there is a "magical solution" to this complex problem is "unrealistic."

Mr. Sherman advised the applicants that, if the Commission finds that there is a hardship and allows this building to be demolished, then the developer must undertake this project faithfully. He asserted that he would not accept a vacant lot or parking lot on this important site. Mr. Thomas agreed and stated that any demolition approval should be conditioned. The developer should not be permitted to demolish the building until he has provided assurances that the new development is fully financed and will be constructed. Mr. Schwartz stated that the developer would proceed in good faith. Mr. Wilds noted that the 10 Rittenhouse project was conditioned in such a way.

Mr. Haak stated that the charter school use had not been investigated. He stated that charter schools are still well funded despite the downturn in the real estate market. He commented that a charter school may not produce the income necessary to make a project feasible, but it should be investigated nonetheless. Mr. Schwartz noted that a charter school did consider the property as indicated on the list of marketing contacts, but determined that it would not be feasible to reuse the building. Mr. Schwartz added that there are myriad uses that might be considered for the building, but the ordinance does not require the owner to consider every possible use, but only other potential uses. He stated that his development team considered the most probable uses, not all uses. He concluded that they determined that the most likely uses would not be economically feasible.

Mr. Amburn stated that he is "worried about losing this wonderful building." He asserted that the building should be marketed in the $2 million dollar range to a single user.

Mr. Thomas reported that his associate Henry Magaziner was the project architect for the building in 1950. He related that Mr. Magaziner recently told him that the building was designed to carry four additional stories. Mr. Magaziner conveyed that the union intended to convert the building into a real hospital. Mr. Thomas acknowledged that the applicants' engineering report contradicts this story; it claims that the building could carry one additional story at the most. Mr. Thomas observed that almost any building could be saved with enough money. For example, a donor could write a large donation check. However, the Commission must be reasonable. He asked rhetorically how hard the Commission could require this applicant to work to find a feasible project. He agreed with Mr. Wilds that feasible development projects are much more difficult to arrange today than they were two years ago. Mr. Sherman agreed, stating that the opponents suggested projects that are rife with contingencies and unrealistic assumptions.

Mr. Gallery stated that it is implausible that the owner would not accept an offer of $5.8 million for a building worth only $2.3 million. He asserted that the marketing has not met the test of the ordinance.

> **FAILED MOTION:** Mr. Sherman moved that the Financial Hardship Committee recommend that the Commission find that the building at 2116-2132 Chestnut Street cannot be used for any purpose for which it is or may be reasonably adapted. Mr. Wilds seconded the motion, which failed by a vote of 2 to 3. Messrs. Amburn, Haak, and Thomas dissented.

The members of the public began to leave the meeting room. Mr. Farnham noted that Mr. Sherman's motion had failed and observed that the Committee had taken no action. He advised the Committee that it should continue deliberating until it formulated a recommendation. If the Committee adjourned without acting, the Commission would be handicapped because it would be without a recommendation on the hardship matter. Mr. Sherman announced that the Committee had not adjourned. The members of the public returned to their seats.

Mr. Farnham advised the Committee that is should provide guidance to both the applicant and the Commission. He stated that he sensed that only one Committee member, Mr. Amburn, was strongly advocating for a denial of a finding of hardship. He asked Messrs. Haak and Thomas to speak about their perceptions of the deficiencies of the application and perhaps fashion a motion that would request the missing information. Mr. Haak stated that the Committee has asked a lot of the applicants and they have provided a large amount of information. Mr. Haak, however, suggested that the Committee might table the application pending the receipt of additional information. Mr. Thomas conceded that the application team has much more knowledge than he about pro formas and the assessment of the viability of development projects. Mr. Thomas stated, however, that he wanted "to be convinced beyond a doubt that there really was no alternative use." He suggested that the Commission might retain its own independent consultant. He stated that the Commission must be sure "because this is an important building in the district and this is an important location in the district." He suggested investigating subsidized housing or a charter school. He suggested that the applicants consider two or three additional options, not 10 or 12.

Mr. Haak suggested a motion to table the application for one month to allow for the submission of additional information. Mr. Sherman stated that he believes that the applicants have already submitted sufficient information. He cautioned that the Committee must be very explicit about the information it is requesting; it must be reasonable.

Mr. Farnham asked the Committee to state its positions on two open matters. He observed that it appeared that Messrs. Thomas and Haak had concluded that additional analyses of other uses must be undertaken. He asked them to comment on the marketing question. Had they reached a conclusion regarding whether the applicants had made a good faith effort to market the property? The Committee members stated that it would be unreasonable to require the applicants to place the property on the open real estate market at this point in time. Mr. Wilds asserted that the applicants do not need to take any additional steps to market the property; they only need to fully disclose the marketing effort that has already taken place. He noted that he believes that they have disclosed all of the pertinent information, allowing the Committee to come to a conclusion. Mr. Sherman agreed that they have provided the requisite information regarding marketing. Mr. Farnham stated that he agreed with Messrs. Sherman and Wilds, but had raised the question to compel the Committee members to place their thoughts on the record. Mr. Haak again stated that he wanted to review pro formas on the subsidized housing and charter school uses. Mr. Wilds again asked the three dissenters to formulate a motion.

Mr. Amburn moved that “the application be rejected.” No one seconded the motion. Mr. Gallery asked Mr. Sherman to ensure that no one had seconded the motion. Mr. Sherman called for a second. No one responded. Mr. Farnham stated for the record that no one seconded Mr. Amburn’s motion.

Mr. Thomas stated that the applicants have undertaken very thorough and very conscientious analyses. However, he would like to review similar pro formas for the subsidized housing and charter school uses. He suggested that the applicants include historic tax credits in the analyses and consult with PHMC. Mr. Sherman noted that the applicants had already consulted with PHMC and accounted for the potential for tax credits in their other analyses.

> **COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION:** Mr. Thomas moved that the Financial Hardship Committee recommend that the Commission table the application pending the submission of additional information regarding the feasibility of adapting the building at 2116-2132 Chestnut Street for:
>
> - a charter school or other educational use; and,
> - a subsidized senior housing or other subsidized housing use.
>
> Mr. Haak seconded the motion, which passed by a vote of 3 to 2. Messrs. Sherman and Wilds dissented.

<u>ADJOURNMENT</u>

The Committee on Financial Hardship adjourned at 3:50 p.m.