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

TUESDAY, 24 APRIL 2012
ROOM 578, CITY HALL
SAM SHERMAN, CHAIR

PRESENT

Sam Sherman, Chair of Historical Commission and Committee on Financial Hardship
John Haak, City Planning Commission
Dominique Hawkins, Chair of Architectural Committee
JoAnn Jones, Office of Housing & Community Development

Jonathan Farnham, Executive Director
Jorge Danta, Historic Preservation Planner II

ALSO PRESENT

Meg Sowell, Real Estate Strategies
Stephen Kazanjian, Real Estate Strategies
Paul Sehnert, University of Pennsylvania
Esaul Sanchez, University of Pennsylvania
David Hollenberg, University of Pennsylvania
Jonathan Weiss, Equinox
Pete Staz, Equinox
Sam Olshin, Atkin Olshin Schade Architects
Paul Avazier, Atkin Olshin Schade Architects
Ben Leech, Preservation Alliance
Marianna Thomas, Woodland Terrace Homeowners Association
Mary Daniels, Woodland Terrace Homeowners Association
Magali Larson, Woodland Terrace Homeowners Association
Ed Halligan, Spruce Hill Community Association
Mark Wagenveld, Spruce Hill Community Association
Ben Chesluk, Spruce Hill Community Association
Guy Laron
Richard Tyler
Paul Boni, Esq., Boni Law
John Mondlak, Commerce Department

CALL TO ORDER

Mr. Sherman called the meeting to order at 9:05 a.m. Mses. Hawkins and Jones and Mr. Haak joined him.

ADDRESS: 400 S 40TH ST
Project: Demolish building, construct five-story residential building
Review Requested: Final Approval
Owner: OAP, Inc.
Applicant: Jonathan Weiss, Azalea Garden Partners, LP
History: 1853; John P. Levy House; Colonial Revival alterations and additions for David P. Leas,1902; additions for convalescent home, 1964, 1975
Individual Designation: 11/1/1973
District Designation: None
Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660

OVERVIEW: This application proposes the complete demolition of the historic house with non-historic additions at 400 S. 40th Street and the construction of a five-story residential building in its place. The application claims that the altered house cannot be used for any purpose for which it is or may be reasonably adapted and that its required retention would impose a financial hardship on the owner. The property is individually designated; it is not within a historic district. The house is currently vacant and in poor condition.

Thomas and James T. Allen, plasterers, constructed the historic house in the Italianate style in 1853 or 1854 for John P. Levy, a partner in the Neafie & Levy Ship & Engine Building Company. James T. Allen is known to have commissioned famed architect Samuel Sloan to design speculative Italianate and Gothic style houses for the area around 40th (then called Till) and Pine Streets in early 1854. Sloan may have designed this house. David P. Leas, a partner in Leas & McVitty, a leather tannery, substantially altered and expanded the house in the Colonial Revival style in 1902. Architects Keen & Mead probably prepared the plans for the Leas rehabilitation and expansion. The Italianate-Colonial Revival house was converted into a convalescent home in 1942, but still retained its 1902 appearance. In 1964 and 1975, the house was significantly altered and almost entirely encased in a series of unsympathetic concrete block additions. Although the Historical Commission designated the property on 1 November 1973, it appears that it did not review the 1975 additions and alterations.

In 2003, OAP, Inc., a non-profit entity controlled by the University of Pennsylvania, purchased the property for $1,685,000. Since the purchase, the University has explored various options for redeveloping the property. In July 2007, a developer working with the property owner petitioned the Commission to rescind the individual designation of the property so that he could demolish the building and erect a hotel building. The developer claimed that the building was so altered at the time of designation that the Commission, which appeared to be unaware of the alterations, erred when designating it. The Commission denied the rescission request and suggested that the applicant develop a scheme for his hotel project that would allow for the retention and restoration of the historic house. In 2008, the applicant followed the Commission's advice and developed a scheme for a 10-story hotel building with a connector to the restored house. The Commission approved that proposal in December 2008, but the project was not undertaken owing to community opposition.

Owing to community opposition to the hotel project, the property owner sought alternative developments for the property. In October 2011, the Commission approved in concept a proposal from the current applicant to restore the house to its 1902 appearance and construct a free-standing, 7-story, L-shaped apartment building in the side and rear yards. That project was likewise not undertaken owing to community opposition.

The community has indicated that it might support a five-story development at the site. The property owner contends with this application that the redevelopment of the site with the rehabilitation of the historic building and construction of anything less than a seven-story building would not be financially feasible.

CONTENTS OF THE APPLICATION

The application includes the following:

1. an affidavit from the property owner presenting the hardship case;
2. photographs of the property;
3. information about the parcel;
4. information about the property owner and its non-profit status;
5. information about the purchase of the property;
6. information about the carrying costs of the property;
7. the Becker & Winston study of adaptive reuses of the property;
8. a pro forma analyzing the Becker & Winston adaptive reuse;
9. a summary of 2007 redevelopment proposals;
10. the decision letter from Historical Commission denying the rescission request, 19 July 2007;
11. the minutes of Architectural Committee meeting, 25 November 2008;
12. a plan for the 10-story extended stay hotel;
13. the solicitation of interest for redevelopment, 2010;
14. a comparison of redevelopment proposals, 2010;
15. the selected proposal for house and seven-story building, 2011;
16. minutes of Architectural Committee meeting, 27 September 2011 and Commission meeting, 14 October 2011;
17. a Spruce Hill Community Association resolution opposing seven-story development, 27 February 2012;
18. financial analyses of five, six, and seven-story schemes;
19. the proposed demolition plan;
20. a plan for five-story building; and,
21. a building permit application.

COMPLETENESS OF APPLICATION PURSUANT TO SUBMISSION REQUIREMENTS

Section 9.3 of the Rules & Regulations authorizes the Commission's staff to "review the financial hardship documents and ascertain their completeness pursuant to the submission requirements delineated in Sections 6.7 and 9.2 of these Rules & Regulations." This review for completeness is not equivalent to the Commission's review for completeness and should not be confused or conflated with it. The staff's review for completeness determines whether the applicant has provided the documents to satisfy the minimum submission requirements stipulated in the historic preservation ordinance and Rules & Regulations. The Commission's review for completeness determines whether the applicant has provided sufficient information to render a hardship decision. The staff can reject an application that does not meet the minimum submission requirements. The staff cannot reject an application that meets the minimum submission requirements, but does not provide adequate information for the Commission to render a decision because the Commission alone has the authority to determine whether it has been provided with the information necessary to make a decision.

The staff has reviewed the application and determined that it satisfies the minimum submission requirements. The list below details the satisfaction of the submission requirements.

Section 6.7 of the Rules & Regulations delineates the submission requirements for any alteration or demolition application.

Section	Required document	Provided (Y/N/NA)
6.7.a	building permit application	Y
6.7.b	cover letter	Y
6.7.c	historic documentation	NA
6.7.d	photographs	Y
6.7.e	site plan, demolition plan	Y
6.7.f	interior plan	NA
6.7.g	shop drawings	NA
6.7.h	specifications	NA

Section 9.2 of the Rules & Regulations delineates the submission requirements for any hardship application. It mirrors Section 14-2007(7)(f) of the ordinance, which requires the submission by affidavit.

Section	Required document	Provided (Y/N/NA)
9.2	by affidavit	Y
9.2.a.1	purchase information	Y
9.2.a.2	assessed value	Y
9.2.a.3	financial information for property, 2 yrs	Y
9.2.a.4	all appraisals	Y
9.2.a.5	sales information	Y
9.2.a.6	consideration of reuses	Y

Section 10.2 of the Rules & Regulations delineates the submission requirements for any hardship application in which the applicant claims non-profit status.

Section	Required document	Provided (Y/N/NA)
10.2.a	documents stipulated in 6.7 and 9.2	Y
10.2.b	documentation of non-profit status	Y

As the above analysis demonstrates, the applicant has provided the documents needed to satisfy the minimum submission requirements stipulated in the historic preservation ordinance and Rules & Regulations. Pursuant to Section 9.3 of the Rules & Regulations, the staff has determined this application to be complete and therefore forwards it to the Architectural Committee and Committee on Financial Hardship. Note that only the Commission may require the submission of the additional documentation as authorized in Section 14-2007(7)(f)(.7) of the ordinance and delineated in Sections 9.2.b and 10.2.c of the Rules & Regulations. The staff, Architectural Committee, and Committee on Financial Hardship may recommend that the Commission require the additional documentation, but the staff and committees may not unilaterally require that documentation.

REVIEW CRITERIA

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

> No permit shall be issued for the demolition of an historic building … 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. In order to show that [the] 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.

Therefore, to comply with the ordinance, the Commission may approve this demolition request only if it first finds that the existing building cannot be used for any purpose for which it is or may be reasonably adapted; in other words, it may approve if it finds that the forced retention of the building would deny the owner of any reasonable economic value and thereby cuase a financial hardship. The historic preservation ordinance allows for demolitions in cases of so-called financial hardship to comply with the Fifth Amendment of the US Constitution, which mandates that private property shall not be taken for public use without just compensation. A taking can occur when the government seizes or occupies a property without just compensation, or, more abstractly, when it regulates it without just compensation in such a way that the property loses any reasonable economic value. If the Historical Commission were to require the retention of an historic building that had no feasible or reasonable reuse, and thereby force the value of the property to $0 or almost $0, without just compensation, it would be in violation of the Fifth Amendment of the US Constitution. Section 14-2007(7)(j) of the historic preservation ordinance provides a path for the Commission to avoid the constitutional issue. In fact, if the Commission finds that its regulation removes any reasonable economic value from a property, it must either grant an approval to return some reasonable value to the property (i.e. approve the demolition) or justly compensate the property owner for the taking.

Some background on the hardship clause is elucidating. In 1975, the Fifth Circuit of the US Court of Appeals decided *Maher vs. City of New Orleans*, a case that established the language later used in the hardship provision in Philadelphia's historic preservation ordinance. In *Maher vs. City of New Orleans*, a property owner filed suit, claiming that a New Orleans law designating the Vieux Carré historic district was unconstitutional because it resulted in an uncompensated taking of her property. The court determined that there was no uncompensated taking because the owner had not demonstrated that the sale of the property was impracticable, that commercial rent could not provide a reasonable rate of return, and that other potential uses of the property were foreclosed. The following year, 1976, the Pennsylvania Commonwealth Court applied the Maher criteria in its decision of the *First Presbyterian Church of York vs. York City Council*, bringing that hardship criteria into Pennsylvania common law. In that case, the property owner appealed a decision to deny a building permit application to demolish a building, claiming that the denial resulted in a taking without just compensation. On review, the appellate court affirmed the Court of Common Pleas using the Maher criteria, ruling that the owner had failed to show that the sale of the property was impracticable, that commercial rent could not provide a reasonable rate of return, and that other potential uses of the property were foreclosed, and had therefore failed to show that the denial constituted a taking without just compensation. The Maher criteria were incorporated verbatim into the Philadelphia historic preservation ordinance in 1985. Prior to 1985, the Historical Commission did not have the legal authority to deny demolition applications, but only to delay demolitions. With the new authority to deny demolitions in 1985 came new responsibility. To avoid the takings claim and the concomitant constitutional challenge, the Commission's hardship process must be reasonable and must allow for the demolition of a historic building, regardless of its significance, when the denial of the demolition permit would deprive the owner of any reasonable economic value. Unreasonably requiring the retention of a historic building, for example, because of its outstanding architectural significance, would constitute a taking without just compensation, thereby violating the owner's constitutional rights and placing the preservation ordinance in legal jeopardy. The task facing the Historical Commission and its advisory committees with this application is to determine whether the denial of the application and required retention of this building would deprive the owner of any reasonable economic value.

In its application, the property owner and its developer partner claim that the forced retention of this historic building would result in a financial hardship. The applicant has provided documentation to support that claim. The Historical Commission has retained a consultant, Real Estate Strategies, Inc., to evaluate the financial and real estate aspects of the application. The consultant's report is included with the application materials.

If the Commission finds that the building cannot be used for any purpose for which it is or may be reasonably adapted and approves the complete demolition, it must then consider whether the proposed construction meets the various review criteria and standards.

STAFF RECOMMENDATION: The staff defers to the Historical Commission's independent consultant on the financial hardship portion of the application and does not offer a recommendation regarding the claim that this property cannot be used for any purpose for which it is or may be reasonably adapted.

If the Commission finds that the building cannot be used for any purpose for which it is or may be reasonably adapted and approves the demolition, the staff recommends final approval of the new construction, pursuant to Standard 9.

DISCUSSION: Mr. Farnham presented the application to the Committee on Financial Hardship. David Hollenberg, Paul Sehnert, and Esaul Sanchez of the University of Pennsylvania, developers Jonathan Weiss and Pete Staz and architects Sam Olshin and Paul Avazier represented the application. Meg Sowell and Stephen Kazanjian of Real Estate Strategies, the Historical Commission's consultants, attended the meeting to provide their independent assessment of the application.

Mr. Hollenberg stated that the University of Pennsylvania has owned the property for nearly 10 years. Over the last 10 years, the University has sought ways through four distinct efforts to restore and reuse the property. Following those four separate efforts, the University concluded that the property cannot be feasibly adaptively reused. After arriving at that conclusion, it submitted the application that is before you today.

The property was troubled and blighted and being used in unsafe ways when the University purchased it. After purchasing the property in 2003, the University commissioned architects Becker & Winston to explore residential reuses with and without the non-historic additions. The Becker & Winston study showed that the University would have to rent the resulting residential units in the rehabilitated property for twice the going rate in the neighborhood. The University concluded that rehabilitating the property with or without the non-historic additions for residential use was infeasible.

Between 2004 and 2006, the University considered internal, academic reuses. Mr. Hollenberg explained that the University requires deans and program directors at the University to fund their own development projects through fundraising. No University organization was willing to consider reusing this property, because of the cost to rehabilitate and because of its remote location. Moreover, the prior University president entered into an agreement with the community that precludes the University from relocating academic facilities west of 40th Street. Therefore, the University determined that there is no institutional reuse for this property.

In 2006, the University issued a Request for Proposals (RFP) seeking a partner to redevelop the property. The RFP proposed a ground lease of a length sufficient to be considered equivalent to a sale and to qualify the developer for the federal historic preservation tax credits. The University received five responses to the RFP, three of which were deemed to be responsive to the terms of the RFP. Of the three, two proposed demolition, while one proposed rehabilitating the historic house. The University chose the rehabilitation proposal, an extended stay hotel, which the Commission reviewed about one year later. Mr. Hollenberg reported that the only time prior to the current application that the University considered demolition was when the hotel developer requested that the Commission rescind the designation in 2007. The developer pursued the rescission because he could not believe that the Commission had intended to designate the building given its numerous adverse alterations. The Commission denied the rescission request, but recommended at that time that the University find a way to fund the rehabilitation of the historic house with some new construction at the site.

In 2008, the Commission approved a proposal to rehabilitate the house and construct an extended stay hotel at the site, as the Commission had advised during the rescission hearing. The hotel project did not receive the requisite zoning approvals and the developer abandoned it.

In 2010, the University issued a new RFP that requested proposals for a project that would require the fewest variances and would be economically viable. The RFP was intended to solicit ideas about the property from the development community. The University received several proposals; some suggested restoring the building while other proposed demolishing it. The current developer responded, proposing restoring the house and constructing a seven-story residential building on the site, and was selected. The residences were targeted at graduate students and were intended to be affordable. The developer was chosen because he has an excellent track record, qualifications, and design team. Mr. Hollenberg explained that the Historical Commission approved the current developer’s proposal for rehabilitating the house and constructing a seven-story building in 2011. At the Commission meeting at which the approval was granted, no one in the audience spoke in favor of the project and numerous parties including many from the preservation community spoke against it. He noted that most of those people spoke in favor of the demolition of the historic building, which would allow for the construction of a shorter building that they claimed would be more appropriate to the neighborhood. Mr. Hollenberg noted that the opponents of the project repeatedly asserted that the historic character of the neighborhood would be better preserved with the demolition of the historic building. Even though the Commission approved the seven-story building with the rehabilitation of the historic house, the neighbors continued to oppose it and the project was abandoned as not being feasible owing to the opposition.

The University is now proposing the demolition of the historic building and the construction of a five-story residential building because it has concluded that there is no feasible project at the site that includes the rehabilitation of the historic house and the construction of a building less than seven stories. The University has submitted the hardship application because it has concluded that no rehabilitation project is economically viable with a new building of less than seven stories. Mr. Hollenberg assured the Committee that, if the Commission approved the project, no demolition would be undertaken until all other approvals and financing had been obtained. Mr. Hollenberg noted that, because the new building would be targeted at students, it needed to be completed and opened in a July to be ready for the ensuing academic year. Therefore, the scheduling is critical.

Mr. Weiss explained that he would summarize the economics of the various projects. He stated that he would happily answer any questions the Committee might have, but would not review every number on every pro forma. He stated that he had proposed the seven-story building with the rehabilitation of the historic house, which was economically viable, but the neighbors had opposed it and a zoning approval for it was not feasible. He stated that they considered a new building of less than seven stories with the rehabilitation of the house, but it was not economically feasible. Mr. Weiss stated that his team had developed a viable plan that included the demolition of the house and the construction of a five-story building, which he was happy to share with the Committee. Ms. Hawkins suggested that he save the presentation of the new construction until the Architectural Committee meeting later that morning. Mr. Sherman asked if the unit counts were similar in the seven-story building plus historic house scheme and the five-story building without historic house scheme. Mr. Weiss stated that they were almost equivalent. Mr. Weiss stated that there are three “levers” associated with economic analysis of the project: the construction costs, the income generated, and the expenses. He contended that, as the building is made smaller, the income decreases proportionally but the construction costs and expenses do not because of some fixed costs.

Mr. Sherman asked Mr. Weiss asked about the costs to restore the house in the earlier seven-story scheme. Mr. Weiss responded that the rehabilitation costs were between $3 and $4 million. Mr. Hollenberg added that the rehabilitation costs of the historic house were a large part of the budgets for the earlier projects. He reminded the Committee that the Commission’s advice to the University, which it followed, had been to develop a project that generated a sufficient income stream to support the costly rehabilitation of the house. He stated that the seven stories is a breakpoint. Mr. Weiss stated that a building smaller than the seven-story building does not provide enough economic value to support the restoration. Mr. Sherman asked about the derivation of the purchase price for the property in 2003. Mr. Sehnert explained that the purchase price was based on the fair-market value. He added that it was an arms-length transaction. He stated that the University purchased the property to remove the blight and negative use from the neighborhood. Mr. Sehnert stated that the building was vacant when the University purchased it. The former owner, who ran it as elderly housing, was involved in a legal action and lost her license. It has been mothballed since the purchase.

Ms. Jones asked the University to explain how it has paid the operating expenses for the property since the purchase. Mr. Sehnert responded that it has paid operating expenses out of the University’s Real Estate Department cash flow. Ms. Jones asked about the University’s position on subsidizing housing for graduate students. Mr. Sehnert explained that the University only houses about 5% of its graduate students today, in the Graduate Towers. The Student Housing Department sets the rates. He stated that the University hopes to develop more graduate housing using market forces. He explained that the University purchased the property with the hope that it would be developed for graduate housing. Ms. Jones asked Mr. Sehnert if the University anticipated that its graduate students could afford market-rate housing. Mr. Sehnert responded that the University has been seeking to redevelop the property with housing that would cost $900 per bed, which it has determined is within the means of its graduate students. He noted that the University has worked with developers to create housing up and down the price-point spectrum. He stated that the Hub is the most comparable project to the one currently proposed; it is targeted at graduate and professional students. Rents at the Hub average $909 per bed. Of the University’s 13,000 graduate students, 3,600 live in Center City and 3,300 in West Philadelphia. There is a clear need for graduate student housing in West Philadelphia. However, it is difficult to develop it at the right price point. Ms. Hawkins asked about rents in Center City. Mr. Sehnert responded that rents in the 38th to 50th Street area range from $850 to $950 per bed. Ms. Hawkins stated that the proposed building should command higher rents because it will be new. Mr. Sehnert countered that the Hub, which is brand new and comparable, rents at $909 per bed. Ms. Hawkins noted that she attended the University and contended that the 40th and Pine address is much more desirable than the 40th and Chestnut address, where the Hub is located. She claimed that this address should garner higher rents. Mr. Sehnert disagreed. He stated that University City has changed greatly in the decades since Ms. Hawkins completed her studies. The Chestnut Street location is very desirable. Mr. Hollenberg added that the Hub filled as soon as it opened and there is now a waiting list, testifying to its desirability. Ms. Hawkins asked if 40th and Pine is worth $1,000 per month. Mr. Sehnert pointed out that Pine Arms, which is across the street from the property in question and which offers much larger units than are proposed for this site, rents at $1,070 per bed. He contended that, given those rents for bigger units, their estimate for the subject property is accurate. He suggested, however, that the Committee hear from its independent consultants, who can verify the University's assertions. Mr. Staz stated that the graduate market seeks mainly small studios. He stated that the Hub, which he manages, rents such studios for $875. He stated that they are projecting $915 for studios at the project in question. He added that the Pine Arms, across the street from the site in question, rents a comparable studio for $790. He reported that 3,000 rental beds are slated for the University City market over the next three years. That number of new beds will create absorption problems and potentially drive rental prices down. Mr. Staz concluded that their rent projections are realistic. Mr. Weiss added that their projected rents are competitive. He stated that the University City rents are strong and are almost equal to Center City rents. He concluded that, as investors, they need to project rents accurately because their capital is at risk.

Mr. Haak stated that the financial "wherewithal" of the property owner, the University, has some bearing in this case. He asked the University representatives to explain the relationship of OAP, Inc. to the University. Mr. Sehnert stated that OAP, Inc. is a shell corporation; it is the University. Mr. Haak observed that the property owner is an entity with a very large endowment that makes investments in its neighborhood. Mr. Haak asked the applicants to comment on the fact that the property owner is a non-profit with significant resources, yet is requesting that the Commission judge this application based on its profit-making capacity or lack thereof. Mr. Hollenberg responded that the historic preservation ordinance and Rules & Regulations require the Commission to consider the viability of the property without respect to the resources of the particular property owner. In other words, the Commission cannot require a property owner to make a bad investment simply because the owner has resources at hand. Mr. Hollenberg explained that the University has a long history of developing partnerships with third-party money to enrich the areas on the perimeter of its campus, while utilizing its own resources for the campus itself. He stated that the program to encourage private investment in facilities around the campus is longstanding and has been a great success. Mr. Hollenberg described numerous examples, new construction and rehabilitation, in which the University has enlisted third parties to ground lease and develop its holdings around the edge of the campus.

Mr. Sherman asked the developer if he has obtained the financing for the project. Mr. Weiss stated that he has "verbal term sheets and pending term sheets with a number of banks." He said that four banks are "very interested" in financing the project. He added that the banks were willing to finance the seven-story building with the retention of the house and are willing to finance the five-story version without the house. Mr. Weiss explained that such financing is not easy to obtain these days, but the banks like the location and projections. He stated that the interest rate is in the 5% to 6% range. He stated that equity investors are requiring about a return in the 11% range, which is lower than before the downturn. Mr. Sherman asked about the source of the equity. Would it be provided by the University? Mr. Weiss answered that it would not. The principals would provide some; the remainder would come from outsiders. The project requires 20% equity. Mr. Sherman asked Mr. Weiss to confirm that the financing had been obtained for the approved seven-story project. Mr. Weiss responded that it was obtained, pending all approvals, some of which were not forthcoming. Mr. Hollenberg clarified that Zoning Board of Adjustment denied the 11-story project; the seven-story project was not presented to the Board owing to community opposition. Mr. Weiss added that he is committed to finding a solution that satisfies the community; therefore, they did not push forward with the seven-story option. Mr. Hollenberg noted that the community had, in fact, pushed for demolition.

Meg Sowell and Stephen Kazanjian of Real Estate Strategies, the Historical Commission's independent consultants, testified. Ms. Sowell stated that her company was incorporated in 1991. She explained that she and Mr. Kazanjian have worked together since 1989. Mr. Kazanjian's background is as a banker. Ms. Sowell explained that she was a government official and managed Urban Action Grants. Ms. Sowell explained that her company is adept and experienced at undertaking the types of financial and real estate reviews encountered during the review of financial hardship applications. Mr. Kazanjian added that he ran a community development corporation that built affordable housing and was once a resident of the neighborhood in question. He pointed out that, years ago, 40th and Pine was a better location than 40th and Chestnut, as Ms. Hawkins had contended, but now they are about equal.

Ms. Sowell walked the Committee through their analyses. She stated that she and Mr. Kazanjian toured the property to better understand it and the high rehabilitation cost estimates that appear in the application. She stated that the cost estimates made sense after seeing the building, which is in "difficult condition" and will be very costly to renovate. She noted that the non-historic alterations and additions have severely compromised the building.

Ms. Sowell stated that they gathered a great amount of data and undertook a series of analyses. She reported that Mr. Kazanjian visited several comparable apartment complexes in the neighborhood to better understand the proposed rents in their context. She directed the Committee to page 5 of her analysis, where she compared a project to rehabilitate the house and construct a five-story building against a project to demolish the house and construct a larger five-story building. Ms. Sowell stated that the projected rental income is a key component to the analysis. She stated that they identified three complexes that are closely comparable to the building proposed in this application: the Hub, Chestnut Hall, and Pine Arms. Table 3 on page 6 of her report provides a breakdown of the rents at those three properties. She explained that, unlike some of the high-end properties like Radian and Domus, the building proposed in this application is a relatively modest project. The proposed building would not have the amenities of the higher-end properties. She also noted that the complexes with the amenities typically cater to undergraduates; the proposed building would cater to graduate students, who concentrate on their studies and prefer privacy. Mr. Kazanjian noted that only the smaller units at Chestnut Hall are comparable; the larger are not. Ms. Sowell explained that Radian, Domus, Left Bank, and Old Quaker School are not comparable. Mr. Kazanjian added that the site in question is not large enough to construct an apartment complex with significant amenities; therefore, a high-end building like Domus is not possible at this site. He explained that they conducted their analysis by determining how much higher the rents would need to be pushed than projected in the application to provide the 11% return on equity for the investor. He stated that the analysis on page 9 in Table 5 shows the conclusions as well as the assumptions. The analysis also assumes that the rehabilitation project would be eligible for the federal tax credit and that the tax credits could be sold for 95 cents on the dollar, which is an aggressive number. Ms. Hawkins agreed that the tax credit assumption was aggressive; they might not be worth that much. Mr. Kazanjian concluded that the rents would need to be increased by more than 20% from what is projected in the application to make the project feasible or profitable. Table 4 provides a summary. The average rent per bed would need to be $1,143 to make the project feasible. Mr. Kazanjian stated that the market would not support those kinds of rents for this project at this location. Mr. Haak asked if this pro forma, which shows only one year, was stabilized. Ms. Sowell stated that it was the projection for one year after the projected had stabilized. She stated that this is based on an industry-standard 5% vacancy. The first years of the project would be less profitable, when the vacancy rates were higher as it moved toward lease-up. She also noted that the scheduling for this project would be key to profitability. If it was not ready for tenants before the start of the semester, it would be even less profitable. Ms. Sowell concluded that the rents needed to support the 5-story project with the rehabilitation of the house cannot be reasonably expected. To make the project profitable, they would need to be above the market rate. Therefore, the project that saves the house would not be feasible.

Ms. Sowell explained that they next considered condominium conversion at this site. She noted that the University has supported a condominium conversion at 42nd and Pine Streets, two blocks to the west. She noted that that site to the west had several advantages. Both the building and the site were larger. She also explained that the demographics change significantly in the two blocks that separate the site. The site at 40th and Pine is surrounded by rental student housing. Just two blocks west, at 42nd and Pine, there are many more and a higher proportion of owner-occupied buildings. She handed out two maps, based on 2010 census data, showing owner-occupied housing and student density in the neighborhood. She stated that the maps show that the 40th and Pine site is almost entirely surrounded by rental housing and that the renters are primarily undergraduate-student aged. There are fewer students and more homeowners at the 42nd and Pine site. She observed that site in question at 40th and Pine would not be attractive to homeowners, who would not want to invest in an area dominated by young students. She also explained that the historic house is not very large, but the rehabilitation costs would be very high. She stated that the building could be divided into four condominium units, which would not support the hard construction costs, much less the other costs associated with a conversion. She suggested that the rehabilitation cost projected for graduate housing would be less than that for condominiums because the condominium owners would want high-end kitchens and bathrooms. She concluded that the 40th and Pine site would not be conducive to renovation as condominiums. She added that it was not worth the time to prepare a financial model for condominiums because it was clear that the numbers would not work. A condominium project would not be feasible.

Ms. Sowell then discussed the possibility of affordable housing at the site. She stated that they considered the possibility of retaining the house and constructing a new five-story building. She noted that the zoning limits the height of a new building to 35 feet, so even the five-story building would require a variance. She directed the Committee to Table 6 on page 11. She stated that the rents for the affordable housing were calculated at 50% using the Philadelphia area median income. The Pennsylvania Housing Finance Agency also requires that 10% of units are provided at 20% of area median income. Mr. Kazanjian explained their analysis and explained that they sought to identify the funding gap in an affordable housing project, if the project took advantage of all housing and preservation tax credits. He stated that, after factoring in all of the potential subsidies, the project would still face an $800,000 funding gap. Ms. Sowell remarked that the analysis uses the 9% low-income tax credits, which are available only until September. After that, the number will float, probably to about 7.25% to 7.5%, making the project even less feasible. Therefore, the scenario is very optimistic. Mr. Kazanjian added that he does not find this site conducive to senior housing, owing to the numbers of students in the area. Also, at five stories, the proposed building is not conducive to affordable family living; current practice suggests that each family should have its own exterior door, which this site could not provide. Ms. Sowell added that full-time students cannot occupy subsidized affordable housing, unless they have a spouse who qualifies. Therefore, the site is not appropriate for affordable housing, even if the unit configuration would be acceptable for seniors. Affordable housing is not feasible.

Ms. Sowell investigated commercial use at the site. She explained that commercial rents in the neighborhood are $17 to $18 per square foot annually, triple net, meaning that tenants pay for insurance, taxes, management, maintenance, and utilities. The zoning at the site is residential. She stated that, when you factor in the rehabilitation costs for the house, rents at that level would not support a feasible project. Ms. Sowell stated that commercial use at this property "does not make economic sense." She added that she did not investigate the conversion to a hotel because she found the 11-story proposal approved by the Commission but rejected by the neighbors to be conclusive. She did not think that a hotel would be feasible without the construction of a very large building. Ms. Sowell concluded that "none of these options that we looked at that involves saving the historic structure made any economic sense."

Ms. Jones noted that many universities have developed retirement facilities that provide opportunities for the retirees to participate in university life. She asked Ms. Sowell if this site could be redeveloped by the University in such a way. Ms. Sowell stated that she has experience with several such facilities. She stated that, in this instance, the problem is that the building "is not fish or fowl." She stated that the historic building is too large for a single-family house and too small for any feasible multi-family housing. Ms. Jones asked if the site would be feasible for such a use with the five-story addition. Ms. Sowell responded that she does not believe that the site is large enough for a new building with the amenities that such a facility would require. She stated, for example, that those types of facilities always have a community dining room and this site is not large enough for such a room if the height limit is to be maintained. The parcel is question is one-half acre, which is not large enough for that type of facility unless you build significantly above five stories. Mr. Kazanjian again stated that, from a demographic standpoint, this site is not appropriate for senior housing. This location, surrounded by 100% rental housing for students, is not appropriate for seniors. Ms. Jones asked Mr. Kazanjian to identify the age group he had in mind. He stated that he was thinking of 62 and older, but that he had also developed some 55 and older housing.

Ms. Hawkins asked the developer to explain how the rehabilitation cost estimate for the house was derived. Mr. Weiss stated that Blue Rock Construction prepared the cost estimate. Ms. Hawkins asked if Mr. Weiss had hired an independent cost estimator to determine the cost of rehabilitating the historic building. Mr. Sehnert responded that Blue Rock is independent. He explained that the construction cost estimates were developed outside the auspices of this application and have been well tested. He contended that the cost estimates are reliable. Mr. Weiss stated that the numbers that they have presented are "lean." He contended that they have been very aggressive in their cost estimating in their attempts to define a feasible project. He noted that the house would be restored within the context of constructing a larger building. Therefore, the project will be a union project, which will drive up costs. He stated that the house might be able to be rehabilitated alone, without a new building, with non-union labor, thereby reducing the cost slightly. However, for the sake of this analysis, the union labor cost numbers must be used because the work would be done as part of a larger construction project. Mr. Sherman noted that the cost estimates were about $200 per square foot. Ms. Sowell agreed that they were tight. Mr. Sherman stated that the numbers were optimistic. He contended that the cost would, in fact, be more, meaning that the project is even less feasible than is shown by the application. Mr. Weiss stated that they will use modular techniques and other advanced construction techniques to push costs down, but he agreed that their numbers were very aggressive. He conceded that it might cost more to build than they were estimating. He stated that they are "bending and contorting" to do this project as cheaply as possible. However, their construction cost estimates might be low. If the costs are low, the project is even less feasible than the analysis shows.

Ben Leech of the Preservation Alliance stated that his organization has submitted a letter, which he will summarize. He stated that the application is "premature." He noted that the Historical Commission has approved the seven-story project, which everyone agrees is feasible. He stated that the developer should pursue that option. He contended that the Commission should not assume that the zoning variance for the seven-story option would be denied simply because the community opposes the project. He suggested that the developer should seek the variance, despite the community's objections. He stated that the Preservation Alliance would support that project because it would save the historic house. Mr. Leech also noted that the University has significant resources that could support a project that would otherwise be infeasible. He suggested that the Commission must scrutinize the financial numbers very carefully because the property owner has access to large amounts of money. Mr. Leech also contended that the application should be rejected because it is based on a financial analysis that is almost a decade old. He also contended that the acquisition cost for the property was too high and therefore should not be factored into the analysis as it has been. Mr. Leech questioned whether the University's goal of providing below-market-rate housing is worth deference when reviewing the application. He also pointed out that "characterizing community opposition [as a basis for financial hardship] will prove to be a slippery slope." He acknowledged that some people from the community have advocated for the demolition of the building, but asserted that there is no consensus among community members. The Commission should not base its decision on what it perceives as the community opinion because the opinions in the community are diverse. Mr. Hollenberg objected to Mr. Leech's claim that the analyses were based on a ten-year-old pro forma. He stated that they used estimate numbers from the redevelopment projects in 2008 and 2011, which were very similar. Mr. Sehnert objected strenuously to Mr. Leech's contention that the numbers are out of date, and stated that the rental income numbers, which are based on rents of $915, $1350, and $1675, are 2012 numbers. He added that the rehabilitation number takes into account the federal rehabilitation tax credit. Mr. Sehnert also explained that they developed a ten-year discounted cash flow, as suggested by the Preservation Alliance letter, and, to no one's surprise, found that it does not change the answer from the stabilized cash flow analysis. The changes to the analysis suggested by the Preservation Alliance do not "miraculously" produce a feasible project. Regardless of the analysis, using today's costs and income, the project still produces a less than 2% return on equity.

Guy Laren, a developer and adjacent property owner, claimed that he has renovated four historic buildings and developed 100 to 150 projects like the building proposed in this application. He stated that he is opposed to the removal of this building from the Historic Register. He stated that the area is very vibrant and there have been many renovations in the area recently. He stated that all of the projects in the area have been successful. He stated that he does not understand why the University needs to erect a large building to offset the cost of rehabilitating the historic building. He stated that the "core issue" is the cost to renovate the 11,000 to 14,000 square-foot building. He asserted that it would cost "mid hundred bucks a foot to $200 a foot" to renovate the historic structure. He claimed that Mr. Weiss had estimated the renovation cost before being coached by the University at a "low hundred dollar a foot," which translates to a renovation cost of "about a million five." He observed that others estimate the cost at $200 per square foot. He claimed that the University has estimated the cost at $300 per square foot. He objected to any $300 per square foot estimate. He stated that the University and Campus Apartments partnered on a project two blocks away at an historic building, where they sold the units at $300 per square foot. He stated that he did not know the construction costs for that project, but was certain that they were significantly below $300 per square foot if the units sold for $300 per square foot. He suggested that the University should consult with Campus Apartments about construction costs. He stated that people are buying and renovating houses like this one as single-family residences. He stated that non-profits are buying buildings such as this one and rehabilitating them. He stated that the University's analysis is flawed. He asserted that the University has only provided "a bunch of numbers and calculations." He objected to the Becker & Winston proposal because he was claimed that it was based on false assumptions. He objected to the Historical Commission's consultant's commercial analysis. He claimed that he rents commercial properties nearby for $25 to $35 per square foot. He claimed that Mr. Weiss rents commercial spaces for $50 per square foot. He suggested developing a 13,000 square-foot commercial building with ample parking at the site. He claimed that the applicant's analysis is not specific enough.

Magali Larson stated that she is a senior citizen who loves the area. She declared that she is a prominent sociologist and an award-winning author on architecture. She stated that she is representing the Woodland Terrace Homeowners Association, for which she read a statement.

> Whereas, The University of Pennsylvania through its representatives and developer has proposed in a recent application to the Philadelphia Historical Commission the demolition of the mansion at 40th and Pine Streets and the construction of an apartment building on the site consisting of a five story building with 122 units intended to be occupied by University students; and
>
> Whereas, The proposed demolition would continue the destruction of the City of Philadelphia's architectural heritage, remove a historically significant building from a street occupied exclusively by other residential buildings built in the same era, put pecuniary advantage over historical preservation, and would not appear to meet the requirements for financial hardship contained in the current rules and regulations; and
>
> Whereas, Although the proposed height of the building is less than the 11 story and 7 story buildings previously proposed, the height of the building exceeds current zoning requirements, and significantly, the proposed density far exceeds the density requirements of the residential neighborhood in which the building is to be located disturbing not conforming to the neighborhood character, even exceeding the density in previous proposals; and
>
> Whereas, The absence of dedicated on-site parking will put a strain on an already difficult parking and traffic situation in the area; and
>
> Whereas, The demolition of a historically designated building, such as those on Woodland Terrace, and the construction of a high density building would create a negative precedent for other University City areas; now, therefore,
>
> Be It Resolved by the Woodland Terrace Homeowners Association:
>
>> The Association opposes the current proposal by the University of Pennsylvania and its representatives to demolish the mansion at 40th and Pine Streets and the construction of an apartment building of five stories in height with 122 units, for the reason cited in the preamble of this resolution.
>
> Adopted 4/22/2012

Ms. Larson stated that two developers responded to the University's first request for proposals with reasonable projects, for 26 and 28-unit residential developments. The current project proposes 122 units. She asked rhetorically for the Committee to help her understand what had changed between 2006 and today that required such a dense development. She stated that the 2010 request for proposals was issued to 10 potential developers, giving them two weeks to respond. She claimed that the pool was not broad enough and the response time was too short. She asked: "When did the Historical Commission scrutinize the marketing of the property as its mandate stipulates?"

Richard Tyler addressed the Committee. He stated that "graduate life has changed a great deal. I never aspired to have a pool room or anything as a graduate student. I found great delight living in a little redwood cottage designed by Julia Morgan." He read a statement:

> I am Richard Tyler; I live about three blocks for 400 South 40th Street.
>
> Despite the many pages submitted to the Historical Commission and this committee to justify the demolition of 400 South 40th Street on the basis of financial hardship as set forth in the Historic Preservation Ordinance at 14-2007(7)(f) and (J) and the Commission's Rules and Regulations at Section 9, it lacks the ten year pro forma and other information that the Commission may require at Section 9.2. More egregiously the submission slights Section 10, Financial Hardship and Non-Profit Organizations, particularly at Sections 3 – 10.
>
> In view of the deficiencies or incompleteness of this submission and the concerns of the community, I urge that this Committee "direct the staff to return the entire application" as provided at 9.3.
>
> Thank you.

Paul Boni introduced himself as a land-use attorney. He stated that he believes that he represents Matt Grubel, who lives in the neighborhood, and Guy Laren, who testified earlier. He stated that he thinks he may also represent some other people, but he is not sure. He stated that some interested parties were unable to attend the meeting, owing to Election Day activities. Mr. Boni submitted a letter from Greg Oliveri, a resident of West Philadelphia, who is opposed to the demolition. Mr. Boni stated that, preliminarily, he would like to mention, assert, and submit that to approve the demolition of a historic building is irreversible and should require an application that is unquestionable because of the severity of the result. He questioned the application and asserted that it should be denied on its face. He stated that the University is a "very wealthy non-profit" and the non-profit analysis should not be applied separate from the property owner. He stated that the real question is not whether the property suffers from a financial hardship, but whether the property owner suffers from a financial hardship. He suggested that the Commission should inquire about the financial condition of the University and the impact this project would have on that condition. He stated that the University's mission is not to make a profit. He stated that he would assert and assume that many of the University's buildings are not profitable in and of themselves. He stated that libraries, sports fields, and parks are not profitable, yet the University invests in them because they improve the image of the University. He stated that the University wants to control this property and dictate its uses because they have a need for graduate housing in the vicinity. He contended that the University should rehabilitate this property, even if it is financially infeasible, because the University should not be measuring its activities solely by numerical rates of return. Restoring this property would "increase the enjoyment of the graduate students," but that value will not be found on a balance sheet. He claimed that the applicant had not demonstrated a financial hardship. The application merely provides “self-serving analyses.” It is not objective. He questioned the 11% return on equity. He quoted from the Rules & Regulations that the applicant has a good-faith affirmative obligation to attempt the sale of the property. There has been no attempt to sell the property. It has not been marketed broadly. No for-sale sign has been placed on the property. He stated that there may be a wealthy individual, who does not care about rates of return and is willing to buy the property. He claimed that the Rules & Regulations require the owner to seek a benefactor, who is not limited by profit motive. Mr. Boni asserted that the Board of License & Inspection Review opinion in the Church of Assumption case stipulates that the Commission is required to offer the property broadly for sale and to leave that offer standing for a sufficient period of time. Mr. Sherman corrected Mr. Boni, noting that the Commission is not involved in marketing properties; property owners sell properties, not the Commission. Mr. Boni stated that the University has not tried to sell the property. He asserted that the University’s request for proposals gave potential respondents two weeks to respond. Mr. Boni concluded that the University “has access to vast sums of funds” and therefore should not be judged by the “normal” standard; it should attempt to sell the property; and the application is insufficient.

Mr. Sherman asked Mr. Farnham to respond to Mr. Boni’s testimony. Mr. Farnham disagreed with Mr. Boni and contended that the financial resources of the property owner are never germane in the review of a financial hardship application. The hardship relates to the property, not the property owner. He stated that, in this case, the Commission should come to the same answer to the hardship question whether the property owner is the University or an individual of modest or substantial means. He stated that the question before the Commission is whether the property, regardless of owner, could feasibly be adaptively reused. The test is not whether the University has sufficient funds in its endowment to pay for the restoration of this house, but whether any owner would be able to adaptively reuse the property feasibly or reasonably. Mr. Farnham then addressed Mr. Boni’s claim that the Commission must defer to the Board of License & Inspection Review’s interpretation of what constitutes a good-faith effort to sell a property. He stated that the Commonwealth Court was very clear in its decision in the Turchi case. The Court decided that it is the Historical Commission’s prerogative, not the Board’s, to interpret the preservation ordinance and Rules & Regulations. He stated that the Court empowered the Commission, not the Board, to interpret terms like reasonable, feasible, and good-faith. He also noted that the Board does not set precedent; therefore, any interpretation of the ordinance or Rules by the Board is relevant only for that case under appeal. The Board’s interpretations are not applicable generally to all subsequent cases. Mr. Farnham advised the Committee that it could ignore Mr. Boni’s statements regarding the Board’s definition of what constitutes a good-faith effort to sell a property.

Mr. Sehnert also responded to Mr. Boni. He stated that Mr. Boni was incorrect in his claim that the request for proposals only allowed two weeks for developers to respond. In fact, the request provided eight weeks for responses. Mr. Sehnert also noted that the request for proposals was sent to Guy Laren, who testified earlier. If Mr. Laren thought that there was a feasible project, he could have submitted a proposal.

Ben Chesluk, a member of the Spruce Hill Community Association Board of Directors and Zoning Committee, presented a statement on behalf of the Association. He was accompanied by Ed Halligan and Mark Wagenveld. He stated that, after a lengthy involvement with this property, the Association has concluded that it is not possible to redevelop this site in an appropriate way with the retention of the existing building. Therefore, the Association has taken a position of non-opposition with regard to the removal of the building from the site. Moreover, after meeting with the developer, the Association has determined that proposed five-story building is acceptable in terms of size and scale. The Association has found that any building taller than five stories is unacceptable. Mr. Chesluk stated that the Association has not endorsed the proposed development, but will continue to work with the developer through the community zoning process to find an agreeable solution. He concluded that they have determined that it will not be possible to find a project that will garner broad community support with the existing structure on the site. Mr. Halligan, the current president of the Association, and Mr. Wagenveld, the most recent past president, stated that they are homeowners in the neighborhood and confirmed that the position as stated by Mr. Chesluk is the Association's unanimous position.

Mr. Haak asked Mr. Farnham to reiterate his point about the Board of License & Inspection Review. Mr. Farnham explained that the Commission approved a project for the developer John Turchi for the Dilworth House site on Washington Square. The decision was appealed to the Board, which overturned the Commission's approval. That reversal was appealed to the Court of Common Pleas and then Commonwealth Court. Mr. Farnham stated that the importance of the Commonwealth Court's decision relates not to the specifics of the Turchi case, which was remanded back to the Board, but to the broad decision of the Court, which stands regardless of the eventual decision in the Turchi case. The Commonwealth Court determined that the Board must defer to the Historical Commission's interpretations of its ordinance and Rules. He elaborated, stating that the Commonwealth Court mandated that the Board must defer to the Commission's interpretations of terms such as appropriateness, demolition, and alteration. He advised the Committee that it is its prerogative and that of the Architectural Committee and Commission to interpret terms like feasible and reasonable in the ordinance and Rules, not the Board's. Disagreeing with Mr. Boni, Mr. Farnham stated that it is the Commission's prerogative to determine what constitutes a good-faith effort to sell a property. The Board cannot dictate to the Commission a definition of good-faith effort; therefore, Mr. Boni's advice to the Committee regarding the Board's definition of that term can be ignored.

Mr. Haak stated that he is not convinced that issuing the requests for proposals for the property constituted a good-faith effort to sell the property. Ms. Hawkins suggested that the Committee should consider the potential for redevelopment at this site in light of the University's investment in the property. Ms. Hawkins stated that the owner should not be required to sell the property at a loss. She asked the applicants to explain their investment in the property. Mr. Sehnert stated that they paid about $1.7 million for the property and invested approximately $150,000 in its upkeep annually for the last ten years. Ms. Hawkins suggested that the Committee consider the reuse potential if a new owner were to pay $1.7 million for the property and then invest anywhere from $1.5 to $3 million to make the property viable. She stated that, at a minimum, the property would require an investment of at least $3 million between acquisition and rehabilitation. She stated that the property need not be actually marketed to determine whether a sale is impracticable; one could make that determination by examining the circumstances and finances. She stated that she is not one to come to the conclusion to allow a demolition lightly. She asked her fellow Committee members if there is a viable or feasible use for the historic building, given that the minimum investment would be at least $3 million dollars. Mr. Haak stated that there has been significant testimony presented that indicates that there is no feasible reuse for the property, but the distinct language in the Rules may not have been met. Mr. Sehnert disagreed and stated that the material at Tab 7 addresses the question precisely. The analysis shows that there is no feasible reuse for the historic building and that a sale is impracticable.

Ms. Larson, a neighbor who testified earlier, stated that this property is in the Sadie Alexander Elementary School catchment area, which makes it very desirable to families. Mr. Sanchez of the University stated that the University owned a Horace Trumbauer-designed mansion at 42nd and Pine Streets. He explained that the University attempted to sell the property for years, but no one wanted a mansion in that location. Eventually, the University divided the house into condominium units. He stated that that property and neighborhood at 42nd Street are much more desirable than the one in question and it is in the school catchment zone, yet it was very difficult to market the property. He added that his claim is corroborated by the Commission's own financial consultants.

Mr. Farnham explained that the Commission has determined in the past that a good-faith effort to sell does not necessarily require a for-sale sign to be hung on the property. For example, in the 10 Rittenhouse case at 18th and Walnut Streets, the Commission accepted the developer's analysis that showed that there was no market for the properties as sufficient proof that a sale was impracticable. He again advised the Committee that it is its and the Commission's prerogative to interpret the ordinance and Rules.

Mr. Laren, who testified earlier, questioned Mr. Sehnert, asking if he was claiming that the documents at Tab 7 in the application were the basis for the University's case. Mr. Sehnert responded that that was not his claim. He stated that he was simply saying that the documents at Tab 7 answer the question in the negative that Ms. Hawkins had asked earlier: Could the building be feasibly adaptively reused for a single-family home or similar use? Mr. Laren stated that the analysis at Tab 7 predicts rehabilitation construction costs at $200 per square foot. He asserted that that estimate may or may not be accurate. Mr. Laren therefore objected to the conclusions of the analysis because they are based on the cost estimate. Mr. Sherman countered that the applicant has presented a detailed analysis, while Mr. Laren has merely offered anecdotal evidence. Mr. Laren claimed he offered real proof, not merely anecdotal evidence. Mr. Laren stated that a developer partnered with the University recently on an 11,000 square foot building and sold his units for $250 per square foot. Therefore, his construction costs must have been less than $250 per square foot. Mr. Laren stated that he doubted the estimated construction costs of $200 per square foot offered in the University's application. Mr. Laren claimed that the University sold units in the Trumbauer mansion for $300 per square foot; therefore, the costs must have been less than $300 per square foot. He insisted that he was offering facts. Mr. Laren concluded that the University's analysis is based on estimates; his statements are based on facts. Mr. Sherman contended that Mr. Laren's assertions were not based in fact, but were approximations. Mr. Boni stated that the property should be marketed.

> **MOTION:** Mr. Haak moved to find that the property had not been marketed pursuant to the Rules & Regulations and to recommend that the Commission not approve the application at this point in time. Ms. Hawkins seconded the motion.

Ms. Hawkins stated that she did not agree with the motion, but seconded it to allow discussion to continue. Ms. Jones stated that she recognizes that, in the development world, the request for proposals process is a tool that is widely used. She opined that the University issued the request to the developers it believed were best positioned to respond appropriately. She stated that she discerned it as a broad effort. She stated that she does not question the marketing, but instead questions the expected rate of return in light of the University's mission. She stated that the University could subsidize the five-story scheme, but has apparently chosen not to. She stated that she is inclined to object to the application. Ms. Hawkins stated that the University purchased a blighted property, which it has offered for development, but it maintains an interest in how the property is developed. She stated that the University could consider its mission and invest in the neighborhood without requiring such a rate of return. Ms. Hawkins conceded that she is not a financial expert, but she questioned why the University is expecting such a rate of return in light of its mission. Ms. Jones stated that the University is arguing against itself; it has expended money to control this property, but it is not willing to subsidize a project. Mr. Sherman objected to the reasoning of Mses. Hawkins and Jones. He asserted that the University should not be held to a different standard simply because it has “deep pockets.” He stated that the Commission cannot base its hardship decisions on the financial resources of the property owner. If it did, that would mean that a poor church or non-profit could simply demolish its building. He insisted that the Commission cannot require the University to subsidize a project that does not make financial sense. The Commission must determine whether an adaptive reuse is feasible. Mr. Sherman stated that the University has tried several times to save the building through redevelopment schemes, but the community has objected. The University has demonstrated that it has attempted to save this building. Mr. Sherman noted that the Commission was unaware of the extremely altered state of the building when it designated it and then failed to review subsequent inappropriate alterations to the building. Owing to its failures in the 1970s, the Commission, in fact, is partly responsible for the condition of this building and the expense to rehabilitate it. He cautioned the Commission that it must proceed lawfully when reviewing this application and not make additional mistakes as it did years ago. He stated that the financial resources of the property owner must not factor into the decision. The question is: Can the building be feasibly adaptively reused? Mr. Sherman advised the Committee members to focus on the question at hand and not be distracted by the claim made by some that the University should be required to invest its funds unreasonably. Ms. Hawkins noted that the Commission considered and rejected a rescission request for the property in 2007. Ms. Jones asked Mr. Sherman to clarify his position. Mr. Sherman stated that the financial resources of the property owner are irrelevant. The hardship criteria stipulated in the ordinance relate solely to the building, not the building owner. Mr. Sherman stated that he is convinced that there is no feasible reuse for this building; the case has been made through the earlier applications. Mr. Farnham noted that the ordinance requires that the Commission determine that the sale of the property is impracticable before it can find that retaining the property would result in a hardship. He stated that the Rules & Regulations expand on the requirements and stipulate that the owner must make a good-faith effort to sell the property. Mr. Farnham stated that the Rules were written with the simple hardship case in mind, perhaps a rowhouse. He stated that the Rules does not account for the sophisticated financial tools and instruments that are employed today in real estate development. He contended that, if the Committee is having difficulty applying the various criteria stipulated in the ordinance and the Rules regarding the sale of the property, it should base its decision on the term “impracticable,” which is used in the ordinance and ultimately derives from a series of precedent-setting legal cases in New Orleans and then York, Pennsylvania in the 1970s. Mr. Farnham quoted from the pertinent section in the ordinance, which reads:

> In order to show that building, structure, site or object 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.

Mr. Sherman agreed that the property has not been placed on the open real estate market in the traditional sense, but a sale has been shown to be impracticable. Mr. Sherman asked the applicants if they ever intended to sell the property. They stated that they did not intend to sell the property; they did, however, intend to enter into a long-term ground lease, which is equivalent to a sale. Mr. Sherman stated that he believes that the University has demonstrated that a sale is impracticable. Mr. Haak stated that he does not believe that the applicants have complied with the terms of the Rules, which require a good-faith effort to market the property. He also noted that the Committee is merely advisory.

FAILED MOTION: By a vote of two to two, the motion offered by Mr. Haak and Ms. Hawkins to find that the property had not been marketed pursuant to the Rules & Regulations and to recommend that the Commission not approve the application at this point in time failed. Ms. Hawkins and Mr. Sherman dissented.

ACTION: Ms. Hawkins moved to recommend:

1. that the Commission find that the applicant has demonstrated 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;
2. that the Commission find that the building's required retention would result in a financial hardship for the property owner; and
3. that the Commission approve the demolition, pursuant to Section 14-2007(7)(j) of the historic preservation ordinance.

Mr. Sherman seconded the motion, which passed by a vote of three to one. Ms. Jones dissented.

ADJOURNMENT

The Committee on Financial Hardship adjourned at 11:28 a.m.

STANDARDS AND GUIDELINES CITED IN THE MINUTES

Section 14-2007(7)(j): No permit shall be issued for the demolition of an historic building, structure, site or object, or of a building, structure, site or object 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, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that building, structure, site or object 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.