THE MINUTES OF THE 619TH STATED MEETING OF THE PHILADELPHIA HISTORICAL COMMISSION

FRIDAY, 14 MARCH 2014
ROOM 18-029, 1515 ARCH STREET
SAM SHERMAN, CHAIR

PRESENT
Sam Sherman Jr., chair
Richardson Dilworth III, Ph.D.
Dominique Hawkins, AIA, NCARB, LEED AP
Michael Fink, Department of Licenses & Inspections
JoAnn Jones, Esq., Office of Housing & Community Development
Rosalie Leonard, Esq., Office of City Council President
John Mattioni, Esq.
Sara Merriman, Commerce Department
Joseph Palantino, Department of Public Property
R. David Schaaf, RA, Philadelphia City Planning Commission
Betty Turner, M.A.

Jonathan E. Farnham, Executive Director
Randal Baron, Historic Preservation Planner III
Kim Broadbent, Historic Preservation Planner I
Erin Coté, Historic Preservation Planner II
Laura DiPasquale, Historic Preservation Planner I

ALSO PRESENT
Mark Merlini, Brickstone
John Connors, Brickstone
David Capelli, Stantec
Caroline Boyce, Preservation Alliance for Greater Philadelphia
Ben Leech, Preservation Alliance for Greater Philadelphia
John Andrew Gallery
Leonard F. Reuter, Esq.
Tony Forte, Esq., Saul Ewing
Andy Kaplin, 220 Race
Marc Kaplin, 220 Race
Richard Villa, Ambit Architecture
Neil Rodin, IFC
O. Nash, IFC
Will Schwartz, INTECH Construction
Matt McClure, Esq., Ballard Spahr
David Gest, Esq., Ballard Spahr
Peter Angelides, Econsult Solutions
Paul Safran, iPic Gold Class
Hamid Hashemi, iPic Gold Class
Meg Sowell, Real Estate Strategies
Stephen Kazanjian, Real Estate Strategies
Richard Gelber, spg3 Architects
Janice Vacca, Harman Group

Travis Alderson, Alderson Engineering
Eric Farrell, Stantec
Christian Busch, 20th Century Preservation
Susan Milner, Jefferson Hospital
Lawrence Weintraub, Martin Jay Rosenblum, Architects
Mark Feinstein
Cindy Feinstein
Daniel Harkins, Brickhouse Developers
Marcio Tavares, The Architectural Team
Taya Dixon, Epsilon Associates
Howard Haas, Friends of the Boyd (FOB)
Andrew Repasky McElhinney
Emma Wiggins
Zachary Darrup
J. Matthew Wolfe, FOB
Christine Sincavage, FOB
Katherine O'Brien, FOB
James Farmer, FOB
Kathy Dowdell, AIA/Preservation Alliance
Sharon Pinkenson, Greater Philadelphia Film Office
Inga Saffron, Philadelphia Inquirer
Gabriel Gottlieb
Robert Bender, FOB
Noah Burd, FOB
Roseanne Kozlow
Mark Lunden, O'Donnell & Naccarato
Nelda Horwitz, FOB
Nancy Colman, FOB
David Brownlee, University of Pennsylvania
Rich Heimlich, Slashcomment.com
Richard Tyler
Vincent Feldman, University of the Arts
Larry Pitt
Phyllis Melock
Denis Cormier
Peter Hearn, Esq.
Dane Wells, CCRA
Charles Goodwin, CCRA
David Rose, William Penn House
Matt Grubel, FOB
Robert Powers, Powers & Co.
Mark Wheeler, Philadelphia City Planning Commission
Richard Gross
Kathryn Gay
Henry Hauptfuhrer, FOB
John Nelson, FOB
Mike McLoone, FOB
Herb Moskovitz, FOB
Carole Maher

CALL TO ORDER

Mr. Sherman, the chair, called the meeting to order at 9:10 a.m. Commissioners Dilworth, Hawkins, Fink, Jones, Leonard, Mattioni, Merriman, Palantino, Schaaf, and Turner joined him.

MINUTES OF THE 618TH STATED MEETING OF THE PHILADELPHIA HISTORICAL COMMISSION

ACTION: Ms. Hawkins moved to adopt the minutes of the 618th Stated Meeting of the Philadelphia Historical Commission, held 28 February 2014. Mr. Schaaf seconded the motion, which passed unanimously.

THE REPORT OF THE ARCHITECTURAL COMMITTEE, 25 FEBRUARY 2014

Dominique Hawkins, Chair

CONSENT AGENDA

Mr. Farnham introduced the consent agenda and explained that it included two applications: 4624-42 Walnut Street and 118 Kenilworth Street. Mr. Sherman asked if any Commissioners had comments on the Consent Agenda. No one offered comments. Mr. Sherman asked if the audience had comments on the Consent Agenda. No one asked any questions.

> **ACTION:** Ms. Merriman moved to adopt the recommendations of the Architectural Committee for 4624-42 Walnut Street and 118 Kenilworth Street. Ms. Jones seconded the motion, which passed unanimously.

AGENDA

ADDRESS: 200 W WASHINGTON SQ

Project: Install ADA entrance
Review Requested: Final Approval
Owner: St. James Associates Joint Venture
Applicant: Eric Farrell
History: 1869; PSFS Building, York Row, St. James; Addison Hutton, architect; Adds. and alts.by Hutton and Furness Evans & Co.
Individual Designation: 5/28/1957
District Designation: Society Hill Historic District, Significant, 3/10/1999
Staff Contact: Kim Broadbent, kim.broadbent@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval of the application with the new ADA entrance on Walnut Street, provided the interior layout is reconsidered to allow for use by other building tenants and future tenants, with the staff to review details, pursuant to Standards 2, 5, and 9.

OVERVIEW: This application proposes to construct an ADA compliant entrance for a new urgent care facility that will occupy the northeast corner of the former PSFS building. The application offers two options for location of the ADA entrance. The first of these options modifies the existing window immediately to the west of the main entrance. The second of these options modifies the first existing window around the corner from the main entrance, on West Washington Square. The modifications to the windows in both options involves cutting down the masonry opening to the level of the sidewalk, removing an existing basement window and a section of spandrel cladding, and modifying the lower half of the existing double hung window above, along with portions of the original wrought iron window grille. The proposed ADA entrance door for both options is a single, glass and raised-panel door with decorative jambs, head and transom, matching the original extant design of the historic main entrance. Also included in the proposal is a modest sloped awning over the new entrance.

There is an existing ADA compliant entrance at the rear of the building along Saint James Street that should be considered for this purpose, in order to alleviate the need to modify an existing window opening on the highly significant historic building.

DISCUSSION: Mr. Sherman announced that the Historical Commission would consider this application out of order at the request of the architect, who needed to travel to Virginia as soon as possible. Ms. Broadbent presented the application to the Historical Commission. Architect Christian Busch and attorney Tony Forte represented the application.

Ms. Hawkins asked the applicants if they were able to reduce the size of the entrance vestibule, as had been requested by the Architectural Committee. Mr. Busch responded that they looked at several scenarios for the entrance vestibule, but owing to interior constraints, were not able to move it towards the wall. He also noted that they considered a different directional opening for the elevator cab, but they could not make that scenario work for the interior either. Ms. Hawkins provided background as to the Committee's recommendation, noting that there is an existing ADA entrance from Saint James Street, and the multiple tenancy of this building could result in future tenants requesting permission to modify the façades further for additional entrances. She explained that the Committee's recommendation of approval of the new Walnut Street entrance was based on a request that the new entrance be accessible to other tenants, to alleviate the need in the future to cut new openings. Ms. Hawkins further explained that the West Washington Square entrance option was more noticeable, and the Walnut Street entrance option provides a more dignified entrance for users. She also reminded the Commission that there is an existing ADA entrance on Saint James Street. Mr. Busch responded that the proposed interior circulation would allow other tenants to use the new Walnut Street entrance in the future. He explained that their preference of a Walnut Street ADA entrance is predicated on its proximity to the historic main entrance to the building, and its ease of use and clarity for a visitor to the building who needs to utilize the ADA entrance. He also noted that the existing ADA entrance on Saint James Street results in a much longer walk around the building for someone who is dropped off at the main entrance. Finally, he noted that the tenant has a long-term lease and will utilize this entrance for a long period of time.

> **ACTION:** Mr. Schaaf moved to approve the application with the new ADA entrance on Walnut Street, with the staff to review details, pursuant to Standards 2, 5, and 9. Ms. Merriman seconded the motion, which passed by a vote of 9 to 1. Mr. Mattioni dissented. Ms. Hawkins abstained.

ADDRESS: 701-39 MARKET ST
Project: Construct residential tower
Review Requested: Final Approval
Owner: Independence Center Realty LP
Applicant: Mark Merlini, Independence Center Realty LP
History: 1859; Lit Brothers Store; various buildings, 1859-1906
Individual Designation: 5/26/1970, 6/30/1970
District Designation: None
Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval, provided the bridge over Filbert Street and the copper bridge are preserved, owing to the proposed tower's footprint, its large setbacks from the primary facades of the very large historic structure, and to the development of the historic structure, which grew and changed over time; with the staff and Architectural Committee to review details; pursuant to Standards 9 and 10.

OVERVIEW: The Mellon Independence Center, formerly the Lit Brothers Department Store, is an enormous structure occupying an entire city block. It consists of a series of interconnected buildings and additions bounded by Market Street, 8th Street, Filbert Street, and 7th Street. This application proposes to construct a 35-story, 400-foot-tall residential tower within the footprint of the existing building along Filbert Street, a service alley. A section of the interior and roof would be removed and the tower would be constructed within the existing building behind the six-story Filbert Street façade. The ground floor of the Filbert Street façade, which has been altered many times, would be altered to accommodate entrances and loading dock for the tower. Two historic bridges, one spanning Filbert Street connecting the former department store to the warehouse and the other spanning a loading entrance to the east along Filbert, would be retained. The tower would be setback at least 150 feet from the primary facades on 7th and 8th Streets and 180 feet from the front façade on Market Street.

DISCUSSION: Mr. Farnham presented the application to the Historical Commission. Developers Mark Merlini and John Connors, and architect David Capelli represented the application.

Mr. Connors commented that the Melon Independence Center sits on a large parcel of land approximately 140,000 square feet, and the proposed tower will take up approximately 12,000 square feet, or less than 10% of the total land area. Owing to the prescribed floor area ratio (FAR), the property can be developed by right to about two and a half million square feet of space, while the existing building comprises roughly 700,000 square feet. The new tower will add approximately 350,000 square feet, still well below that allowed by the FAR.

Mr. Connors noted that the current building is an amalgamation of at least 13 to 17 structures combined over 50 or 60 years. When they undertook the redevelopment of the building beginning in 1986, he continued, they had to reorganize the parcels so that today the structure is organized into three buildings, which they call A, B, and C buildings. "A" building runs along 7th Street, north to south, "B" building comprises the middle, and "C" building runs along 8th Street. The buildings are further divided into north-south sections, creating six separate legal occupancies within the city block footprint. The proposed tower would be located in the north central piece, which operates independently from the other portions of the building, which are serviced by independent cores and mechanical systems. He noted that, when they purchased the building, there was an existing Part II of a historic tax credit application that had made an application for 109 residential units in the same area.

Mr. Connors stated that worked hard to find the location in the building for the tower that would have the least impact visually, with the proposed tower being set back 180 feet from Market Street and a minimum of 150 feet from 7th and 8th Streets. He added that the Federal Courthouse tower immediately to the east is actually closer to the building line than the proposed tower. The proposed tower limits the amount of material disturbance of the existing building, with only minor modifications at street level along Filbert Street for loading docks and a secondary entrance. The primary entrance, he noted, would be through the building core and accessible to 7th Street, 8th Street, Market Street, and the subway concourse.

Mr. Connors continued that they had always anticipated constructing a tower in the future, but that he would not have guessed it would be residential. He noted, however, that market forces have driven the project that way, and the proposed tower joins at least seven other conceptual towers along east Market Street.

Mr. Sherman asked when construction would begin on the project, pending the outcome of the meeting. Mr. Connors replied that considerable work still needed to be done, and that Historical Commission approval was the first step prior to Zoning and Civic Design Review. Once those reviews have been conducted and the developer has received feedback, Mr. Connors noted that it would take approximately two years to construct the building.

Ms. Hawkins noted that that Architectural Committee was in favor of the project conceptually, but did not feel that the design was in keeping with the context in which the building is located, and thus had recommended that the applicant consider alternative designs for the exterior skin of the tower and return to the Committee. Ms. Hawkins added that, in her opinion, the level of detail in this application regarding materials and other elements is not what is normally presented to or accepted by the Committee and Commission. She suggested that, if there is a favorable action by the Commission, the Committee conduct an additional review. Mr. Connors acknowledged Ms. Hawkins concerns, stating that one of the Committees' comments had been that the proposed tower was inappropriately bland, and noting that that had actually been done on purpose. Their interpretation of compatibility, he noted, was different than that of the Committee, but in response to the criticisms proffered the Committee, they subsequently revised the drawings to include a significantly different exterior wall comprised primarily of glass. Mr. Capelli presented the revised drawings to the Commission. The revised façade is composed of an aluminum panel and glass window wall system in a grid formation that picks up two units vertically in a single frame. The colors include a charcoal building frame with light grey framework and an aluminum finish on the window system, creating a modern look more in contrast with the historic structure.

Mr. Connors commented that they still must go through the Civic Design Review process, and are unsure what sort of feedback they will receive there. He noted that they are various opinions about the relative appropriateness of the two designs, but commented that the latter design represents a more contemporary look they feel is responsive to the Committee's comments by adding glass elements and removing the pronounced verticality of the original proposal.

Mr. Mattioni opined that his personal opinion was that the revised design had moved backwards in terms of appropriateness and compatibility. He felt the new proposal looks too much like the conversion of a factory building.

Mr. Schaaf asked the applicant to show where the proposed tower would be located on the roof plan, particularly in relationship to the existing skylight. The applicant clarified the relationship to the skylight, and Mr. Schaaf asked if the proposed tower would touch the Filbert Street façade, which the applicant noted it would, but minimally.

Mr. Sherman opened the floor for public comment. Caroline Boyce, Executive Director of the Preservation Alliance for Greater Philadelphia, distributed a letter that the Preservation Alliance submitted to the Architectural Committee, which concurred with the Architectural Committee recommendation. She emphasized that the Preservation Alliance is particularly concerned with the preservation of the pedestrian bridge known as the "Bridge of Sighs." She further noted that, while the Alliance believes that improvements have been made to the revised design, the proposed design still lacks the architectural distinction befitting the Lit Brothers Building.

Mr. Dilworth questioned whether, given the discussion about the design of the tower, an approval in-concept would be appropriate. Ms. Hawkins stated that, in her opinion, it would be. Mr. Sherman noted that the applicant is asking for final approval, and that he assumes the applicant still needs to secure financing. The applicant noted that, in order to move forward with the zoning process, they need to have approval from the Historical Commission, and then proceed with the Civic Design Review process as well. Mr. Schaaf clarified that the Civic Design Review process is advisory only. Ms. Hawkins reminded the Commission that the proposed project is still a 35-story building that will have an impact on one of the more notable buildings on Market Street, and that, in her opinion, final approval is not warranted unless the Architectural Committee has the time and opportunity to review and comment on the newly proposed design.

> **MOTION:** Ms. Hawkins moved to deny the final approval of the application, but to approve it in-concept. Ms. Leonard seconded the motion.

Mr. Sherman asked whether, given the timeline the applicant is trying to follow, the applicant would be able to appear at the next Architectural Committee review. Mr. Farnham noted the deadline for submission to the next Architectural Committee meeting had already passed, which would push the applicant to the following month's meeting in May. The applicant noted that a May decision would further delay the zoning process. Ms. Hawkins noted that, given the Architectural Committee's recommendation that revised plans must be resubmitted, it would have been prudent for the applicant to have prepared the appropriate documents for resubmission. Mr. Farnham offered a compromise, noting that the Commission routinely provides final approval with the staff to review details, and, on occasion, the staff and the applicant disagree about the details, in which case, the staff forwards the application on to the Architectural Committee and Commission for a second review. The recommendation from the Architectural Committee, Mr. Farnham noted, was for approval with the staff and the Architectural Committee to review details, making it possible for the project to receive a final approval today, but be reviewed again by the Architectural Committee at a future date. If the Architectural Committee was unhappy with the ways in which the issues had been resolved, it could once again refer the application to the full Commission for resolution.

> **WITHDRAWAL OF MOTION:** Ms. Hawkins and Ms. Leonard withdrew their motion to deny the final approval of the application, but to approve it in-concept.

ACTION: Ms. Hawkins moved to adopt the recommendation of the Architectural Committee and approve the application, provided the bridge over Filbert Street and the copper bridge are preserved, owing to the proposed tower's footprint, its large setbacks from the primary facades of the very large historic structure, and to the development of the historic structure, which grew and changed over time; with the staff and Architectural Committee to review details; pursuant to Standards 9 and 10. Ms. Leonard seconded the motion, which passed unanimously.

ADDRESS: 4624-42 WALNUT ST
Project: Rehabilitate building, install ADA entances, aluminum-clad windows
Review Requested: Final Approval
Owner: Breslyn Limited Partnership
Applicant: Brett Meringoff, Breslyn Limited Partnership
History: 1913; Breslyn Apartments; Frederick C. Michaelsen, architect
Individual Designation: 11/4/1982
District Designation: None
Staff Contact: Laura DiPasquale, laura.dipasquale@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval, with the staff to review details, pursuant to Standard 9.

OVERVIEW: This application proposes the exterior and interior rehabilitation of five existing apartment buildings, to be undertaken as a historic rehabilitation tax credit project subject to review and approval by the National Park Service. Proposed exterior work includes exterior masonry cleaning, repair and repointing; replacement of existing windows and doors; and the installation of new ADA accessible entrances.

The application proposes to replace existing aluminum replacement windows with new historically-appropriate aluminum clad wood windows with historically-appropriate brickmolds and trim to match historic material. It also proposes to replace existing double doors on all front elevations with new metal doors with glazed panels to match existing, and to replace existing front elevation balcony doors and single-leaf doors on 47th Street with new solid core wood doors with panels and glazing to match existing, as well as to replace existing exterior aluminum storm doors with new aluminum storm doors.

The application further proposes new accessible entrances at 4628-30, 4636-38, and 4640-42 Walnut Street to be created by modifying existing window openings, and a new accessible enclosed vestibule to be installed below the east elevation metal fire balcony at 4640-42 Walnut Street. ADA accessibility would also require modifications to site grading and the installation of at-grade concrete ramps and stairs with railings. All work for ADA entrances would occur at side and rear elevations inconspicuous from the public right-of-way.

The application also proposes the relocation of the existing metal gate between 4636-38 and 4640-42 Walnut Street, and the removal of the existing gate and replacement with a new gate on the Farragut Street elevation at 4624-26 Walnut Street, as well as the removal and replacement of the existing aluminum and PVC downspouts with new dark bronze aluminum downspouts and scuppers. Additional work includes the removal of the existing roof and repair of deteriorated decking followed by the installation of new insulation and a rubber membrane roofing system, and the location of mechanical equipment on the roof.

ACTION: See Consent Agenda.

ADDRESS: 1515-17 N 16TH ST
Project: Construct apartment building
Review Requested: Final Approval
Owner: 17 Street Development LP
Applicant: Hyon Kang, KCA Design
History: vacant lot, ID building demolished in 1999
Individual Designation: 7/1/1982
District Designation: None
Staff Contact: Laura DiPasquale, laura.dipasquale@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval, provided that the plans are revised to include articulation of the base, middle, and top of the building, a treatment over the main entrance, and the continuation of brick through the fourth floor façade and around the first bay of the side facades, with the staff to review details, pursuant to Standard 9.

OVERVIEW: This application proposes the construction of a nineteen 19-unit apartment building on a currently vacant lot. The proposed structure will be four stories in height, with the first three stories to be composed of burgundy/red/brown brick façade with brick quoins and the fourth story of stucco. The proposed windows on the 16th Street façade will be aluminum clad or composite, with trim to be of brick or cast stone.

The former structure at this location was individually designated in July 1982, but was demolished in May 1999 after it was deemed imminently dangerous. The Historical Commission approved the demolition without conditions. The property is not located does not fall within a historic district. The only remaining historic resource on the lot is a rear garden wall, which the applicant has agreed to retain.

DISCUSSION: Ms. DiPasquale presented the application to the Historical Commission. Architect Hyon Kang represented the application.

The Commissioners reviewed the revised application and agreed that it satisfied preservation standards.

ACTION: Ms. Hawkins moved to approve the revised application as presented to the Historical Commission at its meeting of 14 March 2014, pursuant to Standard 9. Mr. Schaaf seconded the motion, which passed unanimously.

ADDRESS: 118 KENILWORTH ST
Project: Construct third-floor addition
Review Requested: Final Approval
Owner: R. G. Woodstock Associates
Applicant: Dan Harkins, Brickhouse Developers, LLC
History: 1767
Individual Designation: 6/24/1958
District Designation: None
Staff Contact: Randal Baron, randal.baron@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval, provided the stair house to the deck is as low as possible, more of the rear wall is retained if possible, an appropriate transom is installed over the front door, the pent eave is roofed with wood shakes, and appropriate windows are installed on the front façade, with the staff to review details, pursuant to Standards 6, and 9.

OVERVIEW: This application proposes to construct an addition on the rear ell of this eighteenth-century three-story structure. The rear ell is not visible from the public right of way. However, the building is very old and significant. The addition would demolish the roof of the ell and part of the rear slope of the main block. The staff contends that the design of the rear addition should be modified to avoid demolishing or connecting to the rear slope of the roof of the main building. The rear addition could gain additional space by replacing the hipped roof with a roof that extends to the rear of the rear ell. The application provides no details for the proposed restoration of the front façade, but the staff could work with the applicant to develop the appropriate details.

ACTION: See Consent Agenda.

ADDRESS: 417 S CARLISLE ST
Project: Construct roof deck and pilot house
Review Requested: Final Approval
Owner: Mark & Cindy Feinstein
Applicant: Martin Rosenblum, Martin J. Rosenblum & Associates
History: 1855
Individual Designation: 9/28/1965
District Designation: Rittenhouse Fitler Residential Historic District, Contributing, 2/8/1995
Staff Contact: Randal Baron, randal.baron@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted 3 to 2 to recommend approval, provided the deck railing is a cable wire railing and is reduced in height to 36 inches, the entire structure is lowered by cantilevering, the structure is invisible from the public right-of-way, and chimneys are not raised. Mr. McCoubrey and Ms. Pentz voted in opposition.

OVERVIEW: This application proposes to add a roof deck and pergola on the main block of this house and a stair house on the rear ell. The Architectural Committee reviewed a similar application one month ago, in February 2014, and recommended denial. The earlier application proposed a deck on the front and rear slopes of the main roof of the rowhouse; the current application shifts the deck and stair house toward the rear, but the deck still stands on the rear slope of the main roof. The Commission typically approves roof decks on rear ells, but does not typically approve decks on main, gable roofs. This house is part of an exceptional row of houses, which have a consistent height. A staff member is scheduled to view a mock-up before the Architectural Committee meeting.

DISCUSSION: Mr. Baron presented the application to the Historical Commission. Architect Lawrence Weintraub, property owners Mark and Cindy Feinstein, and attorney Leonard Reuter represented the application.

Mr. Baron explained that he visited the site twice to determine the visibility of the proposed deck and stairhouse from the public right-of-way. The first one involved the proposal as seen by the Architectural Committee on 25 February 2014 with the deck set at the ridge line of the roof. At that time, all three elements of the structure were visible from the public right-of-way, mostly from the south along Lombard Street.

Mr. Reuter stated that they had revised the plans to make the deck and stairhouse either invisible or barely visible from the public right-of-way. He claimed that this assertion was confirmed by Mr. Baron's second site visit. The reduction in public visibility was accomplished by pulling the deck back four feet behind the ridge and lowering the structure of the stairhouse. The stairhouse would sit on the rear ell. Mr. Reuter said that a deck on the rear ell would not get sufficient sunlight. Mr. Baron displayed an aerial photograph that proved that the rear ell received direct sunlight. Mr. Reuter disputed the capacity of the photograph to accurately represent the sunlight at the level of the deck. Additionally, he asserted that the view from the rear ell would be unattractive.

Mr. Weintraub reported on the results of the site visit and explained that the pergola had been removed from the application.

Denis Cormier, the neighbor to the north, explained his and his neighbors' opposition to the deck on the main roof of the house. He submitted a petition from the neighbors objecting to the proposal.

> **ACTION:** Ms. Merriman moved to approve the application as presented at the Historical Commission meeting of 14 March 2014, provided no chimneys are altered, with the staff to review details. Mr. Mattioni seconded the motion, which passed by a vote of 9 to 2. Ms. Hawkins and Mr. Schaaf dissented.

ADDRESS: 1219 LOCUST ST
Project: Legalize aluminum window
Review Requested: Final Approval
Owner: Rose Andrea Kozlow
Applicant: Rose Andrea Kozlow
History: 1890; Furness, Evans & Co.
Individual Designation: 7/5/1984
District Designation: None
Staff Contact: Randal Baron, randal.baron@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend denial, pursuant to Standard 6.

OVERVIEW: This application proposes to legalize the installation of aluminum windows installed without a permit. The illegal windows do not match the historic multi-pane windows, which are known from historic photographs. The applicant contends that the illegal windows match later non-historic replacement windows. The Commission has always required restoration to the original design unless the later alteration has acquired its own significance. The one-over-one windows used as the basis for this replacement have no historical significance and should not have been used as models. A letter from the applicant asserts that damage from Hurricane Sandy resulting in one broken window necessitated the replacement. The owner is familiar with the Historical Commission's processes, having applied for permits in the past for the first-floor window and a rear garage.

DISCUSSION: Mr. Baron presented the application to the Historical Commission. Property owner Rose Andrea Kozlow and contractor Tim Maloney represented the application.

Mr. Maloney explained that he has done work for Ms. Kozlow over many years. He said that he repaired the building after it sustained damage from Hurricane Sandy. The work included repair of a perilously hanging cornice as well as a broken window. He said that while they had the scaffolding up they determined that it was wise to replace the windows. Mr. Maloney said that he had the window manufacturer make up windows over a weekend and they installed them quickly. He reported that he thought that he could apply for the permit after the fact. Ms. Kozlow presented a letter to the Commission which she said showed that the Commission had previously approved similar windows for this building. Commission members examined the letter from her lawyer and said that this letter did not come from the Commission and did not demonstrate a previous approval of the windows. Ms. Kozlow said that the whole façade had been changed in the twentieth century, rendering it different from the one next door. Mr. Baron explained that the first floor had been altered but that the upper floors were largely original except for the windows. The Commissioners concurred with the members of the Architectural Committee that the windows do not satisfy historic preservation standards.

> **ACTION:** Mr. Schaaf moved to adopt the recommendation of the Architectural Committee and deny the application, pursuant to Standard 6. Ms. Leonard seconded the motion, which passed unanimously.

ADDRESS: 230-40 RACE ST
Project: Construct eight townhouses
Review Requested: Review and Comment
Owner: 220 Race Street Associates, LP
Applicant: Andrew Kaplin, 220 Race Street Associates, LP
History: vacant lots
Individual Designation: None
District Designation: Old City Historic District, Non-contributing, 12/12/2003
Staff Contact: Erin Cote, erin.cote@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE COMMENT: The Architectural Committee voted to comment that the proposed buildings are incompatible with the surrounding streetscape and historic district. They may be contemporary in style, but should be completely redesigned to comply with Standard 9.

OVERVIEW: This application proposes to construct eight four-story, single-family townhouses on a vacant lot in Old City. The lot is considered an "undeveloped site" and the Commission's jurisdiction is Review-and-Comment only. The proposed townhouses would be constructed in two rows running south from Race Street with a center driveway. The facades facing the driveway would be clad in brick and metal panels and have windows. The north or Race Street elevations would be mostly solid, with walls clad in brick and cast stone panels. The Race Street elevations would have few windows, mostly at the upper floors.

On this block and throughout the Old City Historic District, the buildings were historically used for light manufacturing, storage, and commerce and often had storefronts at the first floor. Many buildings have been converted to residential use, but retain vestiges of their former commercial uses. Residential townhouses are not typical of the main streets of Old City. The proposed buildings, especially with the first floor garages and mostly solid walls facing Race Street, are incompatible with the surrounding streetscape and district. Also, the size, scale, and proportions of the proposed buildings and their components such as windows overwhelm the two historic buildings that would flank the complex. Finally, the palette of materials is incompatible with the historic district.

DISCUSSION: Ms. Coté presented the application to the Historical Commission. Developers Mark and Andrew Kaplin and architect Richard Villa represented the application.

Mark Kaplin stated that they have owned this lot since about 2004. Mr. Villa described the proposal. Mark Kaplin pointed out that the two houses on Race Street have their entrances on Race Street, not the center drive. He also noted that the facades on Race Street have lots of glass. He stated that a large glass building will be constructed at 205 Race, practically across the street from this site. He stated that he and his partner considered ten-story and five-story buildings for this property, but decided that a taller building would not fit in. He stated that they wanted to propose a townhouse project that would be compatible in massing and scale with the surrounding neighborhood. He stated that he read the minutes from the Architectural Committee meeting and was unable to understand the Committee's comments. He stated that he felt like the Committee suggested that they undertake a completely new design. He stated that they constructed a similar building at 22 Front Street with the same motif. He stated that they just do not understand the comments about this project. He showed the Commission before and after photographs of 22 Front Street as well as photographs of what is being built at 110 Walnut Street. He stated that they spent significant time trying to determine how to best redevelop this rather ugly parking lot and stay true to the context of the neighborhood.

Ms. Hawkins stated that the examples that Mr. Kaplin cited are different from this proposal. She stated that the Historical Commission's authority over this application is limited to review and comment only and it cannot reject the application. She opined that the design of proposed townhouses does not fit the context of the Old City Historic District. She stated that the windows are at the roofline on Race Street and do not address the street-level context.

Mr. Kaplin opined that the buildings that once occupied this site were not attractive. He stated that he is uncertain what the Commission is asking him to replicate. Mr. Sherman stated that, in his experience, the Architectural Committee offers some basic suggestions to follow. He reminded the applicant that this review is advisory only. He stated that the new design should pick up the cadence of the surrounding buildings and streetscape and not present itself as a Modernist design. Ms. Hawkins stated that the there were two concerns at the Committee meeting. The first was the thirty-foot wide parking drive that creates a void in the street frontage; the Committee suggested spanning the drive on the upper stories to create some street frontage on Race Street. She stated that the Committee also suggested adding more windows at the pedestrian level of the buildings. Ms. Jones stated that the windows at the perimeters of the buildings do not replicate the rhythms of the windows in the surrounding historic buildings. Mr. Kaplin pointed out that Bread Street has a thirty-foot opening. He stated that small alleys off the main streets can be found throughout the neighborhood. He stated that they could install a gate at the drive entrance, but he could not think of another gated street in the area. He stated that the windows cannot be placed at street level on the front because it conceals a garage; the design has as much glass facing out as it possibly can. He stated that although this is an advisory review only, he wanted the Commission to understand his design.

> **ACTION:** Ms. Hawkins moved to adopt the recommendation of the Architectural Committee and comment that the proposed buildings are incompatible with the surrounding streetscape and historic district. They may be contemporary in style, but should be completely redesigned to comply with Standard 9. Ms. Turner seconded the motion, which passed unanimously.

OLD BUSINESS

THE REPORT OF THE ARCHITECTURAL COMMITTEE, 28 JANUARY 2014
Dominique Hawkins, Chair
THE REPORT OF THE COMMITTEE ON FINANCIAL HARDSHIP, 28 JANUARY 2014
Sam Sherman, Chair
THE REPORT OF THE COMMITTEE ON FINANCIAL HARDSHIP, 27 FEBRUARY 2014
Sam Sherman, Chair

ADDRESS: 1910 CHESTNUT ST
Project: Demolish auditorium, restore front façade, construct addition
Type of Review Requested: Final Approval
Owner: Live Nation Worldwide, Inc.
Applicant: Matt McClure, Ballard Spahr, LLP on behalf of iPic Gold Class Entertainment LLC and Live Nation Worldwide Inc.
History: 1928, Hoffman & Henon, architects, Boyd Theater, Sameric Theater
Individual Designation: 8/9/2008
District Designation: None
Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660
ARCHITECTURAL COMMITTEE RECOMMENDATION: The Architectural Committee voted to recommend approval of the architectural segment of the application, provided the Sansom Street façade is better articulated, with the staff to review details including the front façade restoration details, pursuant to Standards 6 and 9.
COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION: Ms. Jones moved that the Committee on Financial Hardship recommend, pursuant to Section 14-1005(6)(d), that:

1. the application for the property at 1910 Chestnut Street has demonstrated that the building cannot be used for any purpose for which it is or may be reasonably adapted;
2. that the owner has demonstrated that the sale of the property at 1910 Chestnut Street is impracticable;
3. that commercial rental of the property at 1910 Chestnut Street cannot provide a reasonable rate of return; and,
4. that other potential uses of the property at 1910 Chestnut Street are foreclosed.

Ms. Hawkins seconded the motion, which passed by a vote of 3 to 0. Mr. Sherman and Ms. Merriman abstained.

OVERVIEW: The Boyd Theater is an Art Deco movie palace located at 1910 Chestnut Street, on the south side of the street. The theater was constructed in 1928 and operated until 2002. The building has been vacant since 2002. It is an L-shaped building with an entry arcade and lobby running south from Chestnut to an auditorium, which runs east-west along Sansom Street. The Art Deco front façade is clad in limestone and includes art glass windows. The marquee is not original, but is a later replacement. Behind the front façade, the exterior of the building is clad with brick. The auditorium facades, which face Sansom Street, rears of buildings, and a surface parking lot, are unornamented and include fire escapes, flush metal doors, and windows.

The Historical Commission individually designated the Boyd Theater as historic on 9 August 2008. The designation authorizes the Commission to regulate the exterior envelope of the building only. The Commission has not designated the interior of the building as historic and has no authority to regulate any interior features, except where alterations to those interior features would impact the exterior.

This application proposes to retain and restore the Chestnut Street façade and the entry arcade, demolish the auditorium and lobby sections, and construct an addition that would house a movie theater complex. The application contends that the demolition is necessary because the building cannot be used for any purpose for which it is or may be reasonably adapted.

Section 14-1005(6)(d) of the City's historic preservation ordinance expressly prohibits the Commission from approving demolitions of historic buildings such as the demolition proposed in this application in all but two instances. The Commission may approve a demolition after determining that:

- the demolition is necessary in the public interest; or,
- the building cannot be used for any purpose for which it is or may be reasonably adapted.

Section 14-1005(6)(d) of the ordinance elaborates, stating 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.

Section 9.4 of the Commission's Rules & Regulations further elaborates, stipulating 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."

The application materials consist of a cover letter introducing the application, a building permit application, photographs and plans of the property, architectural drawings documenting the proposed demolition, renovation, and new construction, and an affidavit with supporting exhibits providing:

- information on the property ownership and leasing structures,
- deeds for the property,
- information on easements and restrictions at the property,
- appraisals and assessments of the property,
- an accounting of income and expenses related to the property,
- assessments of the condition of the property,
- information on the marketing of the property for reuse,
- analyses of potential reuses of the property.

The application seeks to prove that the property has been marketed for reuse for many years, but, although several have tried, no one has devised a feasible reuse project of the property. The application also seeks to prove with financial analyses that potential reuses including a Broadway-style theater, multipurpose live entertainment venue, single-screen movie, restaurant and movie theater, and a retail space would be financially infeasible and are therefore foreclosed. The application concludes that the theater cannot be used for any purpose for which it is or may be reasonably adapted.

The Historical Commission has retained an independent consultant, Real Estate Strategies, Inc., with significant expertise in financial analyses of potential real estate projects to assess the application and assist in determining whether the Boyd Theater can be used for any purpose for which it is or may be reasonably adapted. The consultant has issued a report, which concludes that the income generated by any of the potential new uses of the Boyd addressed herein is not sufficient to cover the costs associated with the rehabilitation of the property and the ongoing expenses associated with maintenance and operations.

Several interested parties have submitted documents to the Historical Commission expressing various opinions on the application.

DISCUSSION: Mr. Farnham presented the application to the Historical Commission. Attorneys Matthew McClure and David Gest, architect Richard K. Gelber, consultant Peter Angelides, iPic executives Hamid Hashemi and Paul Safran, engineer Janice Vacca, engineer Travis Alderson, and contractor and cost estimator Will Schwartz represented the application.

Mr. Farnham advised the Commission to consider all of the evidence and then determine whether the building can or cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that it cannot 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. The Commission must determine whether the building's compulsory preservation would deny the owner of all economically viable use of the property, thus creating a financial hardship. If it does, Commission must relax its regulation and approve a project that will restore some value to this property. Please bear in mind that the financial resources of the current owner or any particular potential owner are irrelevant. The Commission must determine whether any reasonable owner, not merely the current owner or a particular prospective owner, could feasibly reuse the property. In other words, the Commission must determine whether the property itself, not any particular owner, suffers from an insurmountable deficiency - poor condition, configuration, or location - that renders any adaptive reuse infeasible. The relative historical significance of the property is irrelevant. The hardship test is the same whether the property is of greater or lesser significance. The Commission must determine whether the property can be reasonably adapted for a new use. Reasonable adaptations might include repair and rehabilitation of existing fabric, interior fit-out, replacement of mechanical systems, additions of service spaces such as loading docks and fire stairs, and additions of relatively small occupied spaces such as penthouses. However, the construction of a large addition or new structure such as a residential or hotel tower to create significant new space that would subsidize the historic structure is more than a reasonable adaptation. Likewise, the complete reconstruction of this building with an excavated basement, new structural system, new floors, new windows and skylights, and a large addition is more than a reasonable adaptation. Simply stated, if the structure itself is unable to be rendered financially self-sufficient with upgrades and improvements, it cannot be reasonably adapted. The Commission cannot require an owner to invest without expectation of return. On the other hand, the Historical Commission need not permit a demolition to allow an owner to achieve the maximum rate of return on a property. The Commission's regulation can legitimately prevent a property owner from putting a property to the highest and best use and from attaining the maximum return as long as the regulation allows for a reasonable rate of return. In the end, the Commission must decide whether the Boyd Theater can or cannot be used for any purpose for which it is or may be reasonably adapted.

Mr. Farnham reported to the Commission that the Architectural Committee reviewed the application on January 28 and recommended that the Commission approve the architectural segment of the application, provided the Sansom Street façade is better articulated, with the staff to review details including the front façade restoration details, pursuant to Standards 6 and 9. He noted that the applicants have revised the design of the Sansom Street façade as recommended by the Architectural Committee and displayed the revised architectural drawings, which were provided to the Commissioners in advance of today's meeting.

Mr. Farnham reported that the Committee on Financial Hardship reviewed the application on January 28 and February 27 and, by a vote of 3 to 0 with two abstentions, recommended, pursuant to Section 14-1005(6)(d), that:

1. the building at 1910 Chestnut Street cannot be used for any purpose for which it is or may be reasonably adapted;
2. the sale of the property is impracticable;
3. commercial rental cannot provide a reasonable rate of return; and,
4. other potential uses of the property are foreclosed.

Mr. Sherman asked Mr. McClure to state his case succinctly because several interested parties would also like to comment on the application. Mr. Sherman observed that he wants "to make sure that everybody gets equal time."

Mr. McClure stated that he represents iPic Gold Class Entertainment, LLC, the sub-ground lessee and redeveloper, and Live Nation Worldwide, Inc., the property owner. Mr. McClure introduced his clients and consultants. He reported that Clear Channel, Live Nation's predecessor, purchased the property in March 2005, more than three years before it was designated as historic in August 2008. He asserted that the section of the building along Chestnut Street includes the character-defining features of the building: the limestone façade, art glass windows, and decorative parapet. The auditorium along Sansom Street has blank brick walls without ornamentation. The interior of the building is not designated as historic. The Commission has jurisdiction over the exterior only. The building suffered from decades of chronic underuse before its closure in May 2002. The building is bordered by empty lots, vacant buildings, and parking lots even though the neighborhood has generally been revitalized. The blighting influence of the building is apparent and has been attested to by the neighbors, elected officials, and business community. He highlighted letters from Council President Clarke, State Representative Sims, State Senator Farnese, and Independence Visitors Center director James Currato and noted that they all mention the blighting influence of this property as well as the many futile attempts to redevelop it. He also cited the letters from the near neighbors. He stated that the costs to rehabilitate the building for any reasonable reuse would be very high, yet the revenue that could be generated would be relatively low. He asked the Commission to approve the financial hardship application. He stated that iPic would fully rehabilitate the headhouse on Chestnut Street, which would enliven the area. iPic would demolish the rear section of the building and construct "a modern-day movie palace, returning the building to its historic use." He acknowledged the historical significance of the building, but contended that his clients are entitled to relief under the financial hardship provision of the historic preservation ordinance, Section 14-1005(6)(d). The building cannot be used for any purpose for which it is or may be reasonably adapted. He stated that he has submitted a lengthy affidavit with exhibits, which describes the many past attempts to sell and redevelop the property.

Mr. McClure summarized the affidavit. He reported that Sameric added three theaters to the Boyd to the west in the 1980s in an effort to boost attendance for the theater. He reported that the effort to generate more revenue was unsuccessful. In 1988, United Artists purchased the building from the Sameric Company. Seven years later, United Artists attempted to enter into an agreement of sale with developers Neil Rodin and Ralph Heller to convert the building for retail use. The deal never closed because they could not find an end user. Eventually, United Artists entered into a sale-lease back transaction with an entity controlled by the Goldenberg Group. In 2002, after United Artists filed for bankruptcy, the movie theater was closed.

Mr. McClure explained that, before 2002, Goldenberg began exploring adaptive reuses for the theater. Goldenberg worked with the Nederlander Company, a major owner of performance venues across the country, to redevelop the theater, but Nederlander dropped out, citing project costs. Goldenberg also explored rehabilitations for dinner theater and catered events with two potential operators. Goldenberg also discussed rehabilitating it for the Trocadero and the Pennsylvania Ballet, but neither proceeded owing to project costs. In September 2003, Goldenberg announced that it had made a deal with Clear Channel Entertainment to rehabilitate the building as a Broadway-style theater. They conceded, however, that the project would require substantial public funding including tax credits as well as a $11.5 million Redevelopment Assistance Capital Program (RACP) grant from the Commonwealth of Pennsylvania and $6.4 million in tax increment financing (TIF), which would require a change in state law to permit amusement taxes to be used for TIF. On 19 November 2003, the Philadelphia City Council held a lengthy hearing to discuss the Boyd and TIF. At that time, despite great support, the City Council and School District declined to approve the TIF. Also, the Commonwealth failed to move forward with the RACP grant.

Mr. McClure recounted that Clear Channel purchased the property in 2005 with the intention of rehabilitating it for Broadway-style musicals, without public subsidies. At that time, Goldenberg retained the adjunct theaters. Also at that time, easements were put in place to allow for the reuse of the Boyd Theater. Mr. McClure noted that he worked as an attorney on the transaction. The property was purchased for about $8 million plus transfer tax. Clear Channel proposed to demolish the existing stage house and replace it with a larger one with a fly tower and it obtained the necessary City permits. However, soon thereafter, Clear Channel spun off Live Nation and sold off its entire theatrical division. Before abandoning the project, the costs had ballooned to nearly $49.7 million. The cost of the project simply could not be justified.

According to Mr. McClure, Live Nation began to market the property for sale in 2006, listing it with CB Richard Ellis (CBRE). CBRE marketed it locally and nationally. Marketing materials were created. After more than one year of active marketing, CBRE found no appreciable interest in the property. In 2008, Live Nation issued a request for proposals (RFP) to find a redeveloper. The Preservation Alliance for Greater Philadelphia and the National Trust for Historic Preservation worked hand-in-hand with Live Nation to identify potential purchasers. The proposed sale price was $6.7 to $7.3 million, which is significantly less than the acquisition cost of $8 million plus costs. Live Nation was willing to sell it for a loss. Live Nation proposed a restriction in which the new owner would be not be allowed to host live musical acts except Broadway-style shows and comedy acts for seven years. Live Nation required bidders to submit plans for the renovation or preservation of the historic building. The 2008 RFP was sent to many including live theater owners and managers across the nation including Broadway Across America, the ACE Theatrical Group, Bowtie Partners, and the Golden Eye Group. The Preservation Alliance for Greater Philadelphia and the National Trust for Historic Preservation were offered the property for sale. Neither chose to bid on the property. Hal Wheeler of ARC/Wheeler submitted the only bid. In August 2008, Wheeler signed an agreement with a purchase price of $6.8 million. The agreement included an arrangement with Live Nation for 60 live music events annually, approximately the same number of shows as the Tower Theater in Upper Darby, Pennsylvania, which is a Live Nation property. The Wheeler proposal included a 28-story hotel addition and the rehabilitation of the theater. Even with income from the 28-story hotel and related improvements, the Wheeler project needed substantial public assistance on top of federal tax credits. Mr. Wheeler sought $15 million in state grants and spent nearly two years seeking the release of funds with the assistance of the Preservation Alliance and Friends of the Boyd. However, only $1 million had been released at the time of Wheeler's death in 2010. The agreement between Live Nation and ARC/Wheeler, which had been extended five times, expired in 2010.

After the Wheeler project collapsed in 2010, Mr. McClure explained, Live Nation explored converting the building to a live music venue. No formal financial analysis, cost estimates, or architectural drawings were generated, but Live Nation decided that the project would generate a negative rate of return and abandoned the endeavor. In January 2011, Live Nation signed an agreement of sale with a group called 1910 Chestnut LP, headed by Scott Isenhart and Greg Gray. The parties had worked together for more than one year to develop the agreement to sell the property for $5 million, well below the Live Nation acquisition cost or appraisal value. Live Nation would have provided financing for half the purchase price. After several extensions of the purchase agreement, the project collapsed in September 2011. The agreement never went to closing because the developer did not move forward with the funds necessary to close. Mr. McClure explained that Live Nation entered into the current agreement of sale for $4.5 million in October 2012.

Mr. McClure concluded that there has been a steady, continuous, and good-faith effort to adaptively reuse the building or find a purchaser who would do so since the closing of the building in May 2002. He noted that Section 9.4 of the Commission's Rules & Regulations stipulates 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. The purpose behind this provision is to ensure that the property is exposed to the market. The building has been exposed to the market since 1995. During that time, the property was conveyed twice to private parties, Goldenberg and Clear Channel, who spent substantial resources attempting to reuse the building. The owners entered into numerous other agreements of sale and extensions thereof, with Heller and Rodin in 1995, Wheeler in 2008, 1910 Chestnut in 2011, and IFC/Rodin in 2012. Even seller financing and sale at a loss were not enough to allow a redevelopment to take place. He concluded that there has been good-faith market exposure. He added that their documentation shows that there was broad knowledge that the building was for sale. Mr. McClure pointed the Commission to a letter from Katherine Timko, a retail consultant of the Riddle Company. The Center City District engaged Ms. Timko to market properties in Center City for retail redevelopment between 2010 and 2013. Ms. Timko states that there has been general knowledge of the availability of the Boyd. He noted that the president of the Friends of the Boyd observed in a *USA Today* article in 2012 that the building was for sale.

Mr. McClure introduced Mr. Angelides, who is a consultant with Econsult Solutions, which provides consulting services on real estate, economic development, and public policy, and is also a faculty member at the University of Pennsylvania in the city planning program and the Fels Institute of Government. Mr. Angelides presented his conclusion first, stating that there is no use to which the Boyd Theater may reasonably be adapted, given the cost to renovate and the revenues the renovated building would generate. He stated that the cost to renovate and the potential revenues generated are the "two key pillars." He summarized the history of the building and noted that a renovation would include the replacement of all systems as well as some structural work. He observed that the building is mid block with the entrance on Chestnut and the bulk of the building on Sansom. He also observed that a long narrow entranceway runs from Chestnut to the main interior space at the rear. He showed a Powerpoint presentation, which included plans of the interior spaces of the building. He noted that the lack of sufficient headroom under the balcony limits the building's reuses. He stated that he was charged with exploring potential reuses for the building. To undertake this task, he conducted interviews, examined data, some specifically prepared for the project and some industry standard, looking at comparable venues, and then conducting financial analyses. He stated that Will Schwartz of Intech prepared the construction cost estimates. He stated that he included all as-of-right tax incentives in his analyses including the Philadelphia property tax abatement and state and federal historic tax credits. He stated that he also considered the revenues as well as operating costs in his analyses. He stated that he used realistic to generous assumptions regarding costs and revenues. He stated, for example, that they based the projected revenues of the Boyd on the Kimmel, which includes the Academy of Music, Merriam, and Forrest Theaters. He contended that the actual revenue would likely be much less. He stated that this scenario represents a large increase in the market for Broadway-style shows in Philadelphia, which is a very generous assumption. He stated that he also based his financing estimates on the construction costs, which is very generous. In the real world, financing would be based on the actual value of the renovated building, which would be much less. The assumptions about financing are much more generous than one would see in reality.

Mr. Angelides stated that the Boyd Theater is a highly specialized space that was built for one specific use and is not easily converted to other uses. The building has a long narrow entranceway running south from Chestnut to a very large, windowless box at the back. The configuration is not conducive to office, hotel, or residential uses. He stated that potential reuse scenarios for this building are limited by its configuration in a way that, for example, the Victory Building was not. He stated that the Boyd Theater cannot be reasonably adapted to office, hotel, or residential uses for configuration reasons.

Mr. Angelides explained that they have developed financial analyses of five reuse schemes, a Broadway style theater, performance venue, movie palace, retail space, and restaurant and cinema combination. He stated that he also evaluated a plan for reuse put forth by the Friends of the Boyd. He explained that the first three reuse scenarios they considered, the Broadway-style theater, concert/live performance venue, and single-screen cinema, are entertainment reuses similar to the original use. The other two are retail and restaurant/cinema reuses. He displayed a Powerpoint slide that summarized the estimates of redevelopment costs and incentives for the potential reuses. He explained that, to make financial sense, the redevelopment costs minus the incentives, or net costs, must be less than the value of the building after the renovation. He stated that the net cost varies from $30 to $45 million for the schemes. Any reuse must generate enough revenue to service the debt on $30 to $45 million.

Mr. Angelides explained the Broadway-style theater conversion first. He stated that the existing stage house would need to be removed and replaced with a larger stage house with fly tower. The building would be renovated according to historic preservation standards. It could then house productions like *The Lion King* or *Mama Mia*. Such shows are currently staged at the Academy of Music and Merriam and Forrest Theaters. He stated that they used two revenue numbers, 126% and 85% of the Kimmel revenue, which includes the three venues. He contended that the actual revenue would likely be much less. He stated that this scenario represents a very generous assumption. With those generous assumptions, the Boyd would produce $1.6 million annually under the 85% scenario and $2.6 million annually under the 126% scenario. He stated that these revenues would not support the project. Under the 85% scenario, the net present value would be -$17.6 million and, under the 126% scenario, it would be -$8.5 million. The revenues would not fund the redevelopment. In both cases there is no internal rate of return, much less a reasonable rate of return. Mr. Angelides concluded that it would not be economically feasible to redevelop the Boyd Theater for Broadway-style shows, even with the generous assumptions.

Mr. Angelides explained the performance venue conversion next. He stated that this type of renovation would support live music, plays without large sets, comedy shows, movies, and other events. This would require a renovation, but no expansion of the stage house. He explained that they assumed a very generous 180 shows per year at the Boyd, even though the Keswick and the Tower stage only 60 to 125. Using his Powerpoint presentation, Mr. Angelides reported that the model predicts that the Boyd would a net annual operating income of $0.7 million, which would not support the $40 million plus development cost. Under this scenario, the net present value would be -$18.9 million and the internal rate of return would be undefined because there would be no return. The performance venue would not be a feasible use.

Mr. Angelides explained the single-screen movie theater project next. This project would restore the theater to its original use. He noted that no one is building single-screen movie theaters today and it was a four-screen theater when it closed. He stated that they used the highest per screen annual revenue in the area, $472,877 at the Rave University Six, and then increased it by 150% for their modeling. Mr. Angelides reported that, the most generous revenue projections, the model predicts that the Boyd as a single-screen movie theater would generate total revenue of $1.2 million annually and have total operating expenses of $1.2 million, for a net annual operating income of $30,000. He stated that that net income does not justify the investment. Under this scenario, the net present value would be -$24.3 million and the internal rate of return would be undefined because there would be no return. The single-screen movie theater would not be a feasible use. It would barely break even on an operating basis and would not support the cost of the renovation.

Mr. Angelides explained the retail conversion next. He stated that the building would have about 21,600 sf of retail space. He noted that their model is based on a generic vanilla box space. He stated that the interior renovation would be more extensive. For example, the floor would need to be leveled. He noted that the building is not on a corner of the block, the street frontage is narrow, the entrance is lengthy, and there would be steps to the selling space. All of these aspects of the configuration limit the retail appeal of this site. He stated that most retail rents in the area are in the $20 to $50 per sf range. He stated that the best comparable is 1700 Chestnut, which will rent 40,000 sf to Nordstrom Rack for $50 per sf. He stated that the location is better than the Boyd, the building is on the corner and has lengthy street frontage, and was built for retail use. Another retail space on the market now near the Boyd is being marketed at $26 per sf. He showed photographs of retail spaces in the area. He again noted that spaces on corners and with wide frontages are considered better; this has neither. The 1900 block of Chestnut is not a prime location and the interior of the Boyd has an odd layout for retail. The Boyd also has more space than most retailers want. He contended that a generous retail rent for the Boyd is between $30 and $40 per sf. The total project cost would be about $30 million. Mr. Angelides stated that, with net development costs of $30 million and a capitalization rate of 7%, an annual revenue of $2.1 million would be needed to support the project. With 21,600 sf of rentable space, if all space is rented, the rent would need to be $98 per sf to sustain the project, more than double and about triple the predicted achievable rent. He noted that the Commission's independent consultant believes that $98 per sf is too low and even additional rent would be needed to make retail viable. The project would need a rent of $98 per sf, but could only achieve about $30 per sf. He concluded that the retail use is not feasible.

Mr. Angelides then described the restaurant and movie theater conversion. He explained that the restaurant would occupy the entirety of the main floor, 17,600 sf, which would need to be leveled, and the single-screen movie theater would be located in the balcony. He stated that he assumed a rent of $50 per sf for the restaurant, which is very high. He stated that he estimated the revenues of the theater to be equivalent to one screen at the Rave University Six mentioned earlier. He stated that, assuming that the restaurant would rent for $50 per sf, the restaurant would generate $880,000 per year. He noted that $30 or $40 was a more likely rental number, but they used $50 to be generous. He reported that the cinema portion of the project would earn $210,000 per year for a total net operating income of $1.1 million. He explained that, to be feasible, the project would need an annual revenue of between $4 and $4.5 million to support the nearly $40 million in renovation costs. He concluded that the restaurant and movie theater project would not be feasible.

Mr. Angelides explained that his numbers could be interpreted in a different way to test his conclusions. He showed a Powerpoint slide entitled “Alternate Approach.” He stated that one could compare the value being generated by each reuse scenario with the net development cost for that scenario. He considered six scenarios, the Broadway-style venue with 85% of the Kimmel profit, the Broadway-style venue with 126% of the Kimmel profit, the performance venue; the single-screen movie house, the retail, and the restaurant-cinema. Every scenario produces a significant negative net economic value, from -$19 million to -$35 million. None of the scenarios is feasible. The gap between cost and value created is enormous, at least $19 million. Mr. Angelides concluded that the Boyd Theater cannot be used for any purpose for which it is or may be reasonably adapted.

Mr. Angelides next considered the Friends of the Boyd (FOB) claim that the Boyd could be converted to a five-screen movie theater. The scenario would require constructing two new screens on the parking lot, converting the balcony to two screens, and rehabilitating the main theater for one IMAX screen. A restaurant would be added in the basement. The total net development cost would be $45 million and the total net operating income would be $910,000 annually. An annual net revenue of $4.5 and $5.3 million would be needed to justify the investment. Clearly the $0.91 million projected income would not support the project. Mr. Angelides concluded that the project proposed by the FOB is not feasible.

Mr. Angelides concluded that there is no use to which the Boyd Theater may reasonably be adapted, given the costs to renovate and the revenues those uses would generate.

Mr. McClure introduced Mr. Schwartz, co-founder and co-owner of Intech Construction. He stated that his company has been in business for 29 years and has completed numerous rehabilitations of historic buildings in Philadelphia. He listed several prominent preservation projects his company has undertaken in Philadelphia. He stated that his company excels in accurately predicting, evaluating, and estimating costs of construction. He stated that his firm has been involved with the Boyd Theater since 1999. His company worked with the Goldenberg Group on the Broadway-style theater renovation that was eventually abandoned. In 2005 and 2006, his company submitted a bid on the Clear Channel project for the Boyd. He stated that his construction cost estimates for the Boyd Theater were based on a fully completed set of architectural, structural, electrical, and mechanical bid drawings. He noted that the project was fully permitted. He reported that he was one of four bidders on the project and was awarded the construction contract as the low bidder at a cost of $32 million. He explained that they were then asked to look for cost savings in the project and were able to reduce their original construction cost estimate to $29 million. However, even at the reduced cost, Clear Channel determined that the project was not financially feasible and abandoned it. Mr. Schwartz continued to tell of his involvement with the Boyd Theater, stating that he worked with Hal Wheeler on his hotel scheme in 2008 and 2009. In 2010 and 2011, he worked with 1910 Chestnut Street LLC to consider numerous reuses for the theater.

Mr. Schwartz stated that he provided the construction cost estimates for the five financial analyses prepared by Mr. Angelides. Each scheme involved more than 40 pages of detailed cost analysis. He stated that they used the budgets developed for earlier projects, for example the 2005 Clear Channel project, and escalated the costs to 2013 dollars. He stated that he used reasonable rates of escalation. Mr. McClure asked Mr. Schwartz to assess the accuracy of his estimates within a reasonable degree of professional certainty. Mr. Schwartz stated that his estimates were accurate to plus or minus 5%. Mr. McClure asked Mr. Schwartz if he had reviewed a letter by Robert Powers, a board member of the Preservation Alliance, dated 7 March 2014. Mr. Sherman asked Mr. McClure to speak clearly into the microphone so that the audience members could hear his question. Mr. McClure repeated his question into the microphone. He asked Mr. Schwartz to comment on the letter by Mr. Powers addressing the rehabilitation costs at the Queen Theater in Wilmington. Mr. Schwartz stated that Mr. Powers reported that it cost $14 million to rehabilitate the Queen in 2010. Mr. Schwartz stated that he is very familiar with the Queen because Hal Real, who operates the World Café Live at the Queen, asked him to assess its condition before the renovation. Mr. Schwartz noted that his company also renovated the Philadelphia branch of the World Café Live for Mr. Real. Mr. Schwartz stated that he concurs with Mr. Powers that the Queen cost $14 million to renovate in 2010. He stated, however, that the Boyd in 2014 and the Queen in 2010 are not comparable. The Queen is 24% smaller than the Boyd. He stated that there has been about 5% escalation in construction costs annually since 2010. He noted that Wilmington is a non-union construction market; Philadelphia is a union market. There is a 35% to 40% premium to build in Philadelphia over Wilmington, owing to labor costs. Extrapolating the Queen costs to estimate costs for the Boyd, adjusting for the size of the building, inflation over time, and the differences in labor costs in the two locations, the estimated Boyd costs for a Queen type renovation, which is not a restoration, would be $28 to $29 million.

Mr. McClure asked Mr. Schwartz if he had reviewed the National Trust Community Investment Corporation letter dated 6 March 2014, which the Preservation Alliance submitted to the Commission. He also asked Mr. Schwartz to comment on the letter's claim that the new fly tower contemplated for the Boyd would only cost $2 million. Mr. Schwartz stated that he had reviewed the letter and found that it incorrectly estimated the cost of the fly tower. The correct cost for the fly tower would be $7.5 to $8 million, not the $2 million that the letter claimed. He stated that the caissons alone for the 100-foot tall fly tower would cost $800,000. The pre-cast panels for the fly tower would cost $2 million. The National Trust Community Investment Corporation letter is incorrect. Mr. Schwartz stated that he stands by his cost estimates.

Mr. McClure introduced Mr. Alderson of Alderson Engineering, a plumbing, mechanical, electrical, and fire protection engineering company. He stated that his company has been working in the Philadelphia area since 1990. He stated that his company conducted an assessment of the building's mechanical, electrical, and plumbing (MEP) systems. He reported that the HVAC system is original to the building and therefore 86 years old; the life expectancy is approximately 30 years. It is in disrepair and has not functioned in many years. The air handler is original to the building. It is in disrepair and cannot be reused. The existing heating system is missing components and in disrepair. The piping is corroded. In general, the components of the HVAC system are either missing or 50 years beyond the end of their life expectancy. The two-phase service electrical system is antiquated and not fully supported by PECO; it would need to be completely updated. There is no electrical distribution system in building; all wiring has been removed. The emergency generator is in disrepair and submerged in water. There is no life safety system including no fire alarm or smoke evacuation system. The cast iron sanitary system is not able to be reused. The surviving plumbing fixtures are damaged, do not meet code, and cannot be reused. The sprinkler system is in disrepair and cannot be reused. The piping is corroded. The fire pump has been disconnected and cannot be repaired. In summary, Mr. Alderson stated that the existing MEP systems are missing or in complete disrepair, cannot be reused, and have no value.

Mr. McClure introduced Ms. Vacca, the project's structural engineer. He stated that she provided a structural report, which was included with the application materials. Ms. Vacca stated that she is a principal with the Harman Group and is a registered professional engineer. Ms. Vacca explained that she explored the structural implications of removing the balcony for a potential reuse project. She stated that the building is a fairly tall structure. She stated that the balcony is steel framed and is clear-spanning from the north wall to the south wall without intermediary supports. The balcony is supported by structural steel columns that are embedded within the exterior brick walls. The supporting columns are integral to the stability and support of the building. The brick walls are slightly deteriorated at the base and in fair condition. Ms. Vacca stated that the removal of the balcony would require the addition of supplemental structural steel to stabilize and maintain the integrity of the masonry façade and building. Mr. McClure asked Ms. Vacca to provide additional explanation of the implications of removing the balcony to insert other spaces into the interior of the building. He asked her to confirm that it would essentially require building a new building with the walls of the auditorium. Ms. Vacca stated that one would need to add a structure to provide stability for the exterior walls as well as the building as a whole. Mr. McClure asked Ms. Vacca if he had ever seen anyone go to such lengths to save some unremarkable brick walls. She responded that she has worked on several projects in which interior structure was removed and the exterior walls were supported and stabilized, but is unaware of any project in which effort and money was expended to preserve "a brick wall of this visual, aesthetic appearance, but I'm not an architect either."

Mr. McClure introduced Mr. Gelber, the project architect. Mr. Gelber used a Powerpoint presentation to accompany his testimony. He stated that he has 45 years of experience as an architect and that his firm, SPG3, which is 40 years old, has extensive experience with movie theaters. His firm has also been involved with many renovation and rehabilitation projects. He displayed images showing the current conditions of the exterior facades of the building. He showed images of the proposed rehabilitation of the Chestnut Street façade and entry arcade including the marquee. He noted that they are proposing exactly the same rehabilitation work that the Commission reviewed and approved in 2008 for the Hal Wheeler project. He noted that they would fully comply with the Secretary of the Interior's Standards and coordinate with the staff for the work. Mr. McClure clarified that they would rehabilitate the first 55 feet of the building back from Chestnut Street including the entry arcade. He displayed a plan of the existing building and identified the line where the demolition would begin. He displayed images of the revised designs of the proposed Sansom Street façade of the new addition. He stated that the revisions are intended to respond to the Architectural Committee's recommendation. The Committee requested additional articulation at the Sansom Street façade. He added that he would happily continue to refine the design with the staff's guidance.

Mr. McClure stated that he has been involved with attempts to redevelop the Boyd Theater for 10 years, since 2004. He thanked the Friends of the Boyd and others for their efforts to find an adaptive reuse for the building. He stated, however, that the application is not about the Friends of the Boyd, Preservation Alliance, City, or the applicant; it is about the building. He stated that the fundamental question before the Commission is whether there is a financially feasible adaptive reuse for the building. Can this building be used for any purpose for which it is or may be reasonably adapted? He noted that Mr. Farnham advised the Committee on Financial Hardship in January that the applicant need not seek a benefactor who would invest unreasonably without expectation of return. At the February meeting of the Committee on Financial Hardship, the Friends of the Boyd announced that it had obtained a $4.5 million grant to acquire the building. He stated that the Friends of the Boyd have not made an offer to purchase the building, but have instead come forward with a benefactor who would invest without expectation of return. Mr. McClure reminded the Commission that one of the three subtests for determining whether there is a new use set forth in the ordinance is whether the sale of the property is impracticable. He asserted that this subtest is not set forth in a vacuum, but is instead intended to assist in determining whether there is a reasonable adaptive reuse for the property. The purpose of the subtest is to ensure that the property is exposed to the market. This property has been exposed to the market. The test asks whether a market participant would invest in the property with a reasonable expectation of return. By definition, a benefactor is not a market participant seeking a financial return on investment. The fact that the Friends of the Boyd was compelled to find a benefactor, in and of itself, evidences hardship. It is an acknowledgement of hardship. Mr. McClure stated that, "put simply, this is not a sale as contemplated by the ordinance." He pointed out that the property has changed hands many times since its original designation in the 1980s, to United Artists, to Goldenberg, and to Live Nation. He noted that the Royal Theater presents a similar circumstance. "A mere transfer of title does not eliminate the financial hardship that is endemic to this property." Mr. McClure stated that many people from various realms support this application. Mr. McClure stated that several politicians including Councilman Clarke, Senator Farnese, and Representative Sims all support the project. He also noted that the Center City District, Philadelphia Retail Marketing Alliance, Rittenhouse Row, the Greater Philadelphia Film Office, Center City Residents Association, the William Penn House Cooperative, 1920 Chestnut Street Condominium Association, Independence Visitors Center, and many businesses and residents support the project. Sharon Pinkenson and James Curato, who have worked in the past to save the Boyd Theater, support the project. The supporters all have a history with and knowledge of the building. They have expressed frustration with the blighting influence the Boyd has on the surrounding area. They want something to happen at this site, which has sat dormant. He contended that, in the context of a financial hardship application, as opposed to a standard alteration application, evidence of the blighting influence is germane. Mr. McClure stated that the property is privately owned; it is not a public building. It is not an office building; it is not easily reused. It is a single-purpose structure. This application proposes to restore the front section of the building and restore the historic use. This application would save and rehabilitate the important exterior section of the building and restore its historic use. He agreed with Council President Clarke, who said that the proposal strikes the right balance between historic preservation and economic viability. He asked the Commission to approve the application.

Mr. Sherman invited Meg Sowell and Stephen Kazanjian of RES Advisors, the Commission's independent consultant, to present their analysis of the application. He asked them to ensure that the microphone was on so that everyone in the audience could hear the discussion. Ms. Sowell stated that Mr. Kazanjian developed the spreadsheets to analyze the various potential reuse projects. He has significant experience as a real estate lender in evaluating real estate development projects. She stated that their conclusion is summarized on page three of their report. She stated that, based on their interviews and analyses, "the redevelopment of the Boyd is not economically feasible without significant public subsidies and significant private-sector subsidies." She stated that the adaptive reuse of the Boyd would require funding that would not expect a return on investment. Ms. Sowell stated that they reviewed all of the materials that were provided to the Commission by the applicants and interested parties, they inspected the building inside and out, investigated the surrounding area, and interviewed many people including representatives of the Preservation Alliance, Friends of the Boyd, government officials, developers, operators, architects, and other involved with the Boyd in the past. She stated that they asked everyone they interviewed whether anything was missing from the analysis of the reuse of the theater. She stated that they looked into every potential scheme to save the theater. She stated that they thought that they had found a feasible reuse in the plan set forth by the 1910 Chestnut group; she reported that, after investigating the reuse scheme, they learned that the developers had never been able to obtain financing. She also noted that they were originally told that the group was pursuing a restaurant and theater scheme, but later learned that the group had tried but were unsuccessful in developing various reuse schemes. She stated that the developer, who refused to provide his name, also considered condominiums and a hotel. Ultimately, 1910 Chestnut was unable to accomplish anything at the Boyd and is no longer pursing a project at the Boyd.

Ms. Sowell informed the Commission that she and her colleague did not accept the application materials including the analyses of Econsult at face value, but instead questioned and verified every assumption and assertion in the application. She stated that they requested the restaurant and retail analysis, which the applicant undertook. She stated that they investigated the marketing of the property and sought and obtained the testimony from the retail consultant who had marketed the property for retail use for three years. She stated that, for example, the retail consultant explained that a brew house and cinema company considered the Boyd and rejected it because an analysis should that its investment would not provide an adequate rate of return.

Ms. Sowell stated that they tested all of Econsult's economic models for the potential reuses with sensitivity analyses. Mr. Kazanjian stated that they tested the assumptions built into Econsult's economic models. For example, the model used an acquisition price of $8 million, the actual acquisition price, but the current appraised value is $6.6 million and the current purchase price is $4.5 million. He stated that used the two lower prices to determine if they produced different results; they did not. He stated that they also tested the estimates of the historic tax credits for accuracy. They verified the costs for renovation and new construction and estimated the new construction at $8.6 million, which supports the $7 to $8 million number used by Mr. Schwartz, the applicant's construction cost estimator. Mr. Kazanjian explained that his estimate for the historic tax credit number was only about $40,000 more than that of Econsult, a very small deviation, which demonstrates that Econsult's analysis is accurate.

Mr. Kazanjian stated that his background in real estate lending tells him that lenders will not lend based on the amount of the construction costs, but instead on the income generated. Lenders will look for an acceptable debt coverage service ratio and for an acceptable mortgage amount that can be covered by that debt service. He stated that they used that methodology as well as Econsult's more generous methodology based on construction costs and derived negative net present values for every scenario. None of the projects would be feasible. Mr. Kazanjian noted that Econsult generated an eight-year discounted cash flow and stated that he tested that by generating a ten-year discounted cash flow, but the extra two years of cash flow did not make the projects economically viable.

Mr. Kazanjian stated that they considered New Market Tax Credits, which is not an as-of-right program, but are used to assist commercial projects in distressed areas. He noted that, surprisingly, the Boyd is located in census tract that qualifies for New Market Tax Credits even though it is in an affluent neighborhood. He stated that they included New Market Tax Credits in the modeling, yet still derived negative net present values for all of the reuses. Even with New Market Tax Credits, the projects were not feasible. He then discussed his sensitivity analyses. They ran the models with 20% reductions to the construction costs, but the projects still were not feasible. He stated that even though they considered the revenue projections in the Econsult analyses to be generous, they ran the models with 10% and 20% increases to the revenues and discovered that the projects still were financially infeasible. "Each time we looked at this, no matter how we sliced and diced the projects, we still came up with negative net present values."

Ms. Sowell stated that she wanted to address some issues raised by others in their testimony. She first noted the claim that the rehabilitation costs of the Queen Theater in Wilmington, Delaware indicate that the applicant's projected costs to rehabilitate the Boyd are too high. She stated that Mr. Kazanjian discussed the Queen project with Hal Real, the operator of the World Café Live in the Queen Theater. Mr. Real informed him that the Queen Theater is smaller than the Boyd Theater. The theater itself at the Queen is much smaller and only occupies two floors of a six-floor building. At the Queen, two-thirds of the balcony was leveled for tables. The total Queen redevelopment costs were $25 million. According to Mr. Real, the interior finishes were left in place and were not restored at the Queen. Mr. Real contended that a full restoration would have cost twice as much. Ms. Sowell noted that the other floors at the Queen are used for office and event space. She stated that, according to Mr. Real, the tenant in the Queen, the comparison of the Queen to the Boyd is "apples to oranges." Mr. Kazanjian reiterated that the construction costs at the Queen were $14 million and the total development costs were $25 million.

Ms. Sowell noted that some have claimed that there are discrepancies in the application related to the size of the Boyd Theater. Some claim that the application lists it at 51,000 sf in places and 29,000 sf in others. She stated that there is not a mistake in the application. The larger number is the gross sf in the building. The smaller is the net usable sf in the building. The building is not efficient; it has much unusable space. Construction costs are based on gross area; rents are based on net usable area.

Ms. Sowell stated that they investigated the conflicting claims from the applicant and some interested parties about Redevelopment Assistance Capital Program (RACP) funding for the Boyd. She stated that money that some claimed is available is, in fact, not currently available. The applicant is correct regarding RACP funding. One could reapply for RACP funding, "but the money is not sitting there waiting for the Boyd to submit an application and use it."

Ms. Sowell stated that they analyzed the financial feasibility of the five-screen theater proposed by the Friends of the Boyd at the January meeting of the Committee on Financial Hardship. She stated that their calculations demonstrated that the five-screen theater proposed by the Friends of the Boyd is not financially feasible. Mr. Kazanjian elaborated, stating that they discussed the design of the five-screen theater with an architect, who observed that there is no easy way to provide a second means of egress from some of the theaters that would be carved out of the large theater. The plans suggested for the five-screen theater do not adequately account for emergency egress.

Ms. Sowell stated that they have done many other analyses of the Boyd that they have not had time to report on, but they would be happy to answer any questions Commissioners might have. She concluded that they have looked at every possible scenario for reuse for the Boyd Theater and have been unable to identify a feasible reuse scheme. Ms. Merriman asked the consultants if they had reviewed the letter, dated 6 March 2014, by the National Trust Community Investment Corporation, which the Preservation Alliance submitted to the Commission. Ms. Sowell replied that they have reviewed the letter and also thoroughly investigated the potential use of New Markets Tax Credits at the Boyd. She stated that they discussed the matter with the Philadelphia Industrial Development Corporation and the Reinvestment Fund, both of which allocate New Markets Tax Credits for projects in the city and region. She added that the Reinvestment Fund had indicated at one time that it might be interested in New Markets Tax Credits for the Boyd. Ms. Sowell stated that New Markets Tax Credits are a very inefficient subsidy. One garners about $0.27 in equity for every $1.00 of tax credits. She stated that the Boyd would need New Markets Tax Credits in the amount of $30 million, which is extremely large. She stated that she spoke with a representative of the Reinvestment Fund yesterday, who informed her that its largest New Markets Tax Credits allocation to date was only $12.6 million, for the Wissahickon School. She observed that the Boyd is not located in a severely distressed community and therefore only meets one of the two criteria used in evaluating New Markets Tax Credits applications. She stated that, in theory, one could obtain allocations from three or four community development entities, the organizations that provide New Markets Tax Credits, to create a credit as large as that needed by the Boyd, but it would be highly unlikely that one would be successful, especially in light of the fact that the Boyd is not in a severely distressed community. Mr. Kazanjian added that they also spoke with a consultant who specializes in obtaining New Markets Tax Credits in Philadelphia and that consultant observed that most projects awarded New Markets Tax Credits in the area have an educational or medical component and are in highly distressed neighborhoods. He asserted that New Markets Tax Credits are not intended for projects like the Boyd. He stated that the providers of the tax credits need to be able to demonstrate that the credits are benefitting low-income households and communities. With the exception of creating jobs, a Boyd project would not satisfy this test. Mr. Kazanjian stated that the Philadelphia Industrial Development Corporation reported that even if it elected to participate in a Boyd project, it would never provide more than $10 million in New Markets Tax Credits, which would provide $2.7 million in equity. He concluded that his financial analysis demonstrated that New Markets Tax Credits would not create a financially feasible project.

Mr. Kazanjian then addressed the assertions regarding historic tax credits in the letter by the National Trust Community Investment Corporation. He reported that the author of the letter wrongly assumed that only $2 million in construction costs would ineligible for the credit. In fact, the project would include $7 to $8.6 million in new construction that would not be eligible for the tax credit, as was confirmed earlier today in the testimony of Will Schwartz, the construction cost estimator. He concluded that the calculations of the historic tax credit in the National Trust Community Investment Corporation letter are inaccurate and do not reflect the circumstances at the Boyd.

Mr. Sherman stated that the Commission would take a five-minute break and then reconvene. He asked Howard Haas, the president of the Friends of the Boyd, if he would like to address the Commission when it reconvenes. Mr. Haas responded that it was the chair's prerogative to determine the order of speakers and he would speak when called upon. Mr. McClure commented that the Commission does not hold adversarial hearings and the public should not be divided into opponents and proponents.

Upon reconvening, Mr. Sherman called upon Mr. Haas, who stated that he represents the Friends of the Boyd (FOB), an all-volunteer organization committed to the preservation of the Boyd Theater. Mr. Haas asked his supporters in the audience to raise their hands. Several people raised their hands. Mr. Haas recounted that, after the FOB organized, it quickly gathered almost 5,000 signatures and gave them to Mayor Street, asking for his help to save Philadelphia's greatest Art Deco interior and our last surviving premiere movie palace. He reported that the FOB raised so much concern that the owner at that time reached out to Clear Channel, which then operated theaters. Clear Channel purchased the Boyd to fully restore the Boyd as a live performance venue. Unfortunately, after Clear Channel began preliminary renovations at the Boyd, the company decided to focus on billboards and radio stations and divested all their theaters into a new company, Live Nation, which had a different focus and put the Boyd up for sale. Mr. Haas continued, stating that, as the Boyd was endangered again, in 2008, the National Trust for Historic Preservation placed the Boyd on its list of America's 11 Most Endangered Historic Places. National, state, and city organizations such as the League of Historic American Theaters, Preservation PA, the Preservation Alliance for Greater Philadelphia, and Philadelphia AIA have all highlighted the local and national significance of the Boyd Theatre.

Mr. Haas informed the Commission that, in 2009, local developer Hal Wheeler came forth with his plan to fully restore the Boyd and combine it with a hotel. The Historical Commission approved his plans which he was still working on when he suddenly died prematurely in 2010. So, the Boyd Theatre has not languished without hope for 12 years as there it really was twice going to be fully restored, Mr. Haas declared.

Mr. Haas claimed that there was much discussion at the Committee on Financial Hardship hearing about giving the applicant due process. He stated that, as a lawyer, he appreciates concern about due process. Yet, this whole process of historic designation, review of changes, and the rare instances when buildings must be let go was designed to protect our historic resources. The Historical Commission is charged with ensuring the protection of those buildings, which cannot speak for themselves. Mr. Haas reported that the Friends of the Boyd and other supporters of historic preservation across the region were astounded by the findings of the Committee on Financial Hardship, because, he claimed, the rigorous requirements have not been met. He contended that the Friends of the Boyd have made a valid offer of purchase, thereby nullifying the requirement that a sale is impracticable. Mr. Haas noted that Mr. McClure stated that his client needs relief; Mr. Haas asserted that the purchase will provide that relief. Mr. Haas claimed that there was much flawed discussion at the Committee on Financial Hardship that, as a non-profit organization, the FOB does not require a rate of return on investment, thus our potential ownership and management of the theater cannot meet the terms of the hardship rules and regulations. That is preposterous and would set a terrible precedent for preservation, he opined. It would effectively gut the process, he contended. The process requires that all three requirements be met: that a sale is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed. Mr. Haas claimed that the FOB's offer of purchase establishes that a sale is possible.

Mr. Haas relayed to the Commission that he met in late December with a director of a local foundation. Until the news reports about iPic's application to demolish the Boyd, the director was not aware the Boyd was at threat of being lost and for sale. To the FOB, that verified the testimony that Live Nation had not adequately marketed the property. After consideration of the matter, the foundation issued a 12 February 2014 letter committing to the Friends of the Boyd the $4.5 million purchase price of the Boyd that is specified in Point 47 of the application's affidavit, as was testified to at the last meeting. He noted that the grant is unconditional, except that it is only to be used for the purchase. Mr. Haas informed the Commissioners that they would hear more about the grant shortly.

Mr. Haas recounted that the Friends of the Boyd has communicated to the Historical Commission that once it purchases the Boyd Theatre, the FOB will not demolish it. Mr. Haas stated that he communicated directly with Live Nation's in-house legal counsel, but he rejected the FOB offer because Live Nation has a contract to sell the Boyd to developer Neal Rodin, who would lease it to iPic. That's not hardship, Mr. Haas claimed. And, whatever costs that iPic has invested in their plans is also not hardship, Mr. Haas claimed.

Mr. Haas asked: What would Friends of the Boyd do with the Boyd if Live Nation sells it to FOB? First, the FOB would address the neighbors' concerns by immediately improving the appearance of the Chestnut Street facade, and, if the applicant Live Nation has really failed to remove dead animals or exterminate for rats, then the FOB would immediately remove the dead animals and exterminate. The Friends of the Boyd would also ensure that the Boyd is fully Code compliant, Mr. Haas promised.

Mr. Haas noted that the Friends of the Boyd has always stated that the Boyd should be fully restored as a multipurpose entertainment venue with an occasional film program. After obtaining the purchase-price grant, the FOB met with David Anderson of Ace Theatrical Group. Mr. Haas informed the Commission that Mr. Anderson regrets that on short notice he could not be here today as had a commitment to be on the other coast working on a theater project. Mr. Anderson was in charge of Clear Channel's theater division when that company purchased the Boyd to restore it and reopened it as a theater for touring Broadway musical shows such as *The Lion King* and for many other kinds of shows. Refurbished with modern seating needs in mind, the Boyd would have 2,350 seats. Mr. Haas opined that expensive shows need more than 2,000 seats and only one other Philadelphia theater, the Academy of Music, has that many seats and a large enough stagehouse. Many U.S. cities have more than one 2,000 seat theater for stage shows, and Ace believes that there is a market here for multiple performance venues, just as there is a market in Pittsburgh, Boston, Washington D.C., Chicago, Cleveland, and many other cities across the country. Philadelphia is a large and great city and will have more choices and more entertainment as a result, Mr. Haas declared.

Mr. Haas reported that David Anderson has 35 years experience operating theaters. His company Ace Theatrical operates theaters nationwide and is eager to oversee the Boyd's restoration and to operate the Boyd Theatre. Ace would accommodate community programs including the FOB film program so people would again have the opportunity to experience movies in a real movie palace. Mr. Haas claimed that Ace operates their theaters "in the black" without any public subsidy and pointed out that Mr. Anderson's letter in the written submission is emphatic on that point. To accomplish that, the FOB would need to first raise the rehabilitation funds.

Mr. Haas acknowledged that the Friends of the Boyd and David Anderson agree that approximately $35 million would be needed for hard construction costs for the Boyd to be fully restored, state of the art, and capable of hosting all kinds of popular entertainment that appear at ex-movie palaces nationwide. Mr. Haas explained that at least $10 million of that would be obtained from a combination of federal historic tax credits, New Market Tax Credits, and easement donation funds. He then acknowledged that New Market Tax Credits may not be available for the Boyd project. He noted that the FOB would need to raise $25 million in cash for the rehabilitation. He remarked that the Friends of the Boyd is working to obtain that amount through fundraising. He assured the Commission that the FOB "will make it happen. And, we have not asked for public subsidies." Mr. Haas then stated that he would like to show the Commission a Powerpoint presentation so that the Commissioners can see what the Boyd looked like and will look like again. Mr. Haas conceded that the Commission does not have jurisdiction over the interior, but then asserted that the Commission should not "totally ignore and pretend that the interior doesn't exist." He asked Mr. Sherman for permission to show the Powerpoint slides even though the Commission has no jurisdiction over the interior. Mr. Sherman agreed to allow him to show the photographs of the interior. Mr. McClure objected, stating that it has not been established that the photographs are current. Mr. Haas responded that the photographs are historic, showing the interior in its original condition and how it will look after it the FOB has restored it.

Mr. Haas displayed a photograph of the exterior in 1928 and stated that the FOB would restore the vertical sign as well as the marquee. He claimed that the FOB would restore the interior to its 1928 elegance. He showed photographs of the lobby and auditorium. He displayed historic photographs as well as photographs taken in 2005 and 2006. He showed details of mirrors and a mural. He showed a photograph of the 1953 marquee.

Mr. Haas asserted that the owner has a "permit to gut the interior," which is an over-the-counter, by-right permit not subject to the Historical Commission's review. He asked the owner not to act on that permit until the review has been completed. He stated that he wanted to refute some other aspects of the hardship findings. The hardship application includes a letter from 2008 regarding the marketing of the building to a limited number of developers. He asked: "Why 2008?" He noted that, when his own clients call him and start to tell him about what happened to them in 2008, he tells them that's ancient history. He observed that he asks them: "What is the problem now?" He objected to the claim that Mr. Rodin had interest in the property in 1995; it is ancient history. A hardship application is supposed to include "all listings of the property for sale or rent, price asked, and other offers received." How has Live Nation marketed the property since 2008? Mr. Haas observed that they say they have tried, but their proof consists mostly of press clippings from the Preservation Alliance, the National Trust, and the Friends of the Boyd. Mr. Haas claimed that the applicant has not established that it sufficiently marketed the property by quoting him. He asked: "Are they admitting that preservationists have tried harder than they have to find a new owner?"

Mr. Haas stated that it seems clear to the FOB that iPic did not adequately study the use of the building for film. The FOB has presented a concept for IMAX usage and smaller screens similar to the iPic proposal. As discussed at the Committee on Financial Hardship, iPic seems to only have studied this option after the FOB proposal was submitted to the Historical Commission. The applicants have looked at our plans, but did not study it on their own. It is incumbent on them to demonstrate that no use is possible, but they have not done so. Mr. Haas claimed that there are plenty of examples of theatres like this being renovated for film. For example, one of iPic's competitors, Alamo Drafthouse, is now doing this with a long closed San Francisco movie palace, the New Mission Theatre. Alamo is placing additional auditoriums into the balcony, but the original proscenium arch will be restored.

Mr. Haas contended that there was confusion at the Committee on Financial Hardship as to the legal standard to apply. He claimed that there was even discussion that the Historical Commission could not measure the "rate of return" to a foundation of its donation. Mr. Haas stated that he would like to clarify what should be determined today. There is a would-be purchaser who will save rather than demolish the building, and can go to closing and maintain the building. He claimed that that's all he needs to establish to defeat the hardship. It is true that an applicant for hardship must prove there's no feasible use of the building. But, an applicant must also prove that there is no one else willing to acquire the property, Mr. Haas asserted. Legally, an owner of a historic building must maintain it to code, but does not need to have an expectation of return on investment. Mr. Haas asserted that it is not the Historical Commission's job to review the FOB's confidential business plans to see if the Commission's agrees that the Boyd would operate in the black. For that matter, the Commission's duty is not to review iPic's business plans either, Mr. Haas contended. iPic's business plans have never been presented to the Commission and there is no guarantee of success. The Historical Commission is not a redevelopment agency or a zoning commission, Mr. Haas remarked. The Historical Commission is not choosing as to which plan would do better for the neighborhood, he stated. A bona fide purchase that would save the Boyd has come forth, and that should defeat the hardship. That said, the Friends of the Boyd will not purchase the Boyd because it wishes it to remain vacant. The FOB has provided a handout with a list showing that almost every U.S. city has restored and reopened a downtown movie palace. That's what the FOB will do here, he asserted. It will fully restore and reopen the Boyd, with a world-class theater operator overseeing and managing it. There is no city in the nation, or ever in the world, that has regretted saving a movie palace.

Mr. Haas asked everyone to be clear about what iPic is applying for. He observed that iPic would demolish everything but the Chestnut Street facade and the outdoor area. The rest of the building would be gone. The Art Deco interior that was built in 1928 would be demolished. The vestibule lobby, the grand lobby, the auditorium, the foyer, the upstairs foyer, the lower lounge, the projection booth, backstage and dressing rooms would all be gone. Mr. Sherman reminded Mr. Haas that the Historical Commission has no jurisdiction over the interior. Mr. Haas reported that iPic has a website just for the Boyd project. The banner headline on the website reads: "Let's Make History." Mr. Haas opined that that is "incredible doublespeak" because iPic would destroy history by demolishing almost all of the city's last movie palace. And, he asked, what would be left? The facade fronting a new multiplex would survive. This project is not restoration. It is not even historic preservation, Mr. Haas asserted.

Mr. Haas concluded that future Philadelphians will not understand, and will not forgive, if the Historical Commission allows the Boyd's demolition. He recounted that, it was in the 1980s when the Boyd became the last Center City movie palace to survive and the Historical Commission on its own initiative designated the Boyd as historic. Mr. Haas asserted that "no historic building has been the subject of such public focus over these last few decades. The Boyd is our last example of how so many people experienced entertainment in the twentieth century and it can again host Hollywood-style premieres and film festivals in addition to wonderful live shows. The Friends of the Boyd have the purchase fund commitment to acquire the Boyd." Please deny the application, Mr. Haas advised.

Mr. Haas introduced Peter Hearn and Robert Shusterman. Mr. Hearn stated that he is an attorney with more than 30 years experience and has been the chancellor of the Philadelphia bar. He acknowledged the $4.5 million grant that an anonymous foundation has provided to the Friends of the Boyd to purchase the Boyd Theater. He explained that he was appearing before the Commission today as the "attorney and spokesperson for the foundation's most interested board member." He assured the Commission that it is a "respected, local foundation that has committed these funds." He stated that the "foundation is well-known to me and the philanthropic community and has assets sufficient to cover the grant. The foundation often makes anonymous donations in order to best fulfill its mission." Mr. Shusterman stated that he is the legal counsel for the Friends of the Boyd. He asserted that the FOB has a firm commitment for the purchase funds. The foundation will also pay for the closing costs. He noted that the FOB is a non-profit and is exempt from transfer taxes. He asserted that the FOB would also be exempt from City of Philadelphia real estate taxes. Ace Theatrical will maintain the theater if the FOB can acquire it. He asserted that the offer to purchase "constitutes a legal bar to any claim of hardship by the applicant."

Mary Foote, the executive director of the Colonial Theater in Phoenixville, Pennsylvania, addressed the Commission. She recounted the history of the revitalization of the Colonial Theater and noted that downtown Phoenixville is vibrant. She stated that the theater had not been altered when it was purchased for rehabilitation. It retains its historic interior and is a landmark in Phoenixville.

Kathy Dowdell, an architect and former board member of the Preservation Alliance, introduced herself. Ms. Dowdell stated that she had a "little, quick study" of a plan prepared by architect Shawn Evans to convert the Boyd to an IMAX theater. She showed a Powerpoint presentation with the plan for the converted theater. The converted Boyd would have an IMAX theater in the main auditorium and four smaller screening rooms, two in the balcony and two in an addition to the west. She said that it is a conceptual scheme, not all of the details are worked out. She stated that Grauman's Chinese Theater in Los Angeles was converted in a similar fashion. It is larger than the Boyd. She showed images of Grauman's Chinese Theater after conversion for IMAX. She noted that the main seating floor was made steeper, as is common today. Mr. Evans overlaid the Grauman's plan on the Boyd and determined that such a conversion would be possible. She showed where the projection booth would be located. She showed plans for the theaters in the balconies, with a wall dividing the balcony in half. Mr. Sherman asked if the Friends of the Boyd had prepared a financial analysis to demonstrate that this plan would be financially feasible. Mr. Haas stated that the FOB did not prepare a financial analysis of the plan. Ms. Dowdell agreed that no cost estimates had been completed, but acknowledged that the costs would be in the range of those predicted by others because the converted building would require all new mechanical systems, electrical equipment, some structural work, and other work. She stated that the cost would be comparable to those already presented for the building. Mr. Haas stated that the FOB was presenting this plan "as evidence that the hardship application has not been met and is something that could successfully reuse the building and would, perhaps, even be suitable to all of the parties, perhaps." Mr. Haas stated that he has worked very closely with the Preservation Alliance, but before introducing the Alliance, he would like to have David Brownlee address the Commission. Mr. Farnham stated that Mr. Angelides, the applicant's consultant, presented a financial analysis of the FOB's IMAX plan earlier today that contended that the plan is not financially feasible. Mr. Farnham asked Mr. Haas whether he agreed or disagreed with the conclusion that the plan is not financially feasible. Mr. Haas acknowledged that Ms. Dowdell, an architect, had just agreed that the applicant's cost estimates for the conversion were accurate, but he contended that the applicant's estimates were not accurate. He said that "it sounds too high. And we'd love to see some itemized cost deduction please." Ms. Dowdell responded: "I think that those costs, again, are probably fairly accurate. I think what's different is that I don't think that this scheme would assume that it is all market rate. There would have to be some subsidy, perhaps public money." She concluded that, "if you are looking purely at market rate with no assistance, the numbers are the numbers." Mr. Haas stated that the FOB would defer to Ms. Dowdell's architectural and cost estimating expertise. Mr. Haas again asserted that the FOB has the funds to purchase the building and would seek additional funding from foundations and corporations.

Mr. Farnham noted that the FOB submission dated 6 March 2014 included a letter from Ace Theatrical dated 14 February 2014 that referenced "sample revenue and expense pro formas" for the Boyd Theater converted for Broadway-style shows. Mr. Farnham observed that the FOB submitted the letter but not the attached pro formas. He remarked that the pro formas would have been helpful to the Commission as it evaluated the Econsult financial analysis of the Broadway-style theater, which likewise projected costs and revenues for the converted theater. Mr. Haas stated that another Ace letter addressed maintenance costs and was presented to this Commission. He asserted that the 14 February 2014 letter in question with the pro formas was not produced for the Commission, but was produced for FOB internal discussions with foundations. He acknowledged that the letter included three spreadsheets and said "we would again suggest that you do not need to get to that analysis, that they are proprietary, that other theaters, you know, shouldn't be seeing those." Mr. Haas stated that the Commission meeting was called with short notice and David Anderson was unable to attend; he offered to have Mr. Anderson review the spreadsheets with the Commission at a later date. Mr. Farnham then asked Mr. Haas how he determined that $4.5 million was the appropriate amount to offer for the property in light of the fact that the most recent appraisal indicates that the value of the property is $6.6 million. Mr. Haas responded that the FOB offered $4.5 million "because it is the sale price." "It seemed logical to match the existing, actual, black-and-white, definitive sale price." Mr. Sherman noted that every time the theater is sold, it sells for less money than the previous sale. He suggested that that fact alone indicates that the property suffers from a financial hardship. Mr. Haas replied that "Other numbers aren't really our business."

Mr. Mattioni observed that Section 14-1005(5)(b)(.6) of the historic preservation ordinance requires the property owner to submit as part of a financial hardship application "any consideration by the owner as to profitable, adaptive uses for the property." He noted that the ordinance says "profitable adaptive reuses" and observed that Mr. Haas has contended that consideration of profit is not valid. He stated that he disagrees with Mr. Haas and asked him to explain his position. Mr. Haas stated that he believes "in free enterprise as everybody else does, for absolutely sure; however, I will point out that there are non-profit theaters and non-profit buildings all throughout our great city, non-profit institutions, a great deal of what makes Philadelphia great, whether the universities, hospitals, theaters, and all sorts of other buildings are non-profit. A great deal of our landmarks have been saved and are being used in any which fashion such as Eastern State Penitentiary by non-profits. If you are going to insist otherwise, that would be turning the law on its head. We are talking about historic preservation law. I am not an expert."

Richard Gross introduced himself as a resident and vice president of the condominium association of the building at 1920 Chestnut Street, adjacent to the Boyd Theater. The condominium association supports the approval of the iPic application. He stated that he is also the managing director of a real estate finance company that finances historic renovations. His company, BW Realty Advisors, has financed the historic renovations of the City Hall in Washington, DC and Penn Station in Newark, New Jersey. In each instance, they were the largest historic renovations undertaken in the country that year. He stated that he is an expert in historic renovation and preservation and knows what it takes to create a financially feasible project. He contended that the funding that the Friends of the Boyd and others had suggested would be available for this project simply would not be available. “If wishes were horses, beggars would be kings.” He stated that he is also a Broadway producer who won the Tony Award for *Who’s Afraid of Virginia Woolf* in 2013. He stated that he is an expert in the economics of Broadway-style theater and the facilities needed by traveling Broadway shows.

Mr. Goss questioned the claims of the Friends of the Boyd and others regarding the availability of historic preservation tax credits and New Markets Tax Credits for the Boyd. He asserted that investors would not be interested in the tax credits for the Boyd because they would not be assured that there would be a revenue stream that would protect the asset for five years. If the project fails owing to a lack of revenue, the credit must be returned to the federal government. He stated that the tax-credit renovations that he has been involved with have all had solvent tenants who had an unquestioned ability to pay the rent. In Newark, it was New Jersey Transit. In Washington, it was the City Council and the federal government. With rock-solid tenants, investors were willing to invest in the tax credits generated by the project because income over the five years was assured. He contended that he has heard no proposal for the Boyd that would guarantee an income stream and convince investors to participate. “In my view, this property is not going to receive or utilize an historic tax credit in the renovation without a very substantial, high net worth tenant willing to ensure that the rent will be paid.” He stated that the property may be eligible for New Market Tax Credits, but the opponents of the iPic proposal appear to have no comprehension of the New Markets process. To qualify, you must be an active, low-income community business. It is enormously difficult to qualify for the credits and enormously difficult to find investors who will participate in the project. He stated that, given his experience with assembling New Markets Tax Credits for much better projects than the Boyd, he stated that he has “absolutely no confidence that the New Markets Tax Credit would provide any money” for the Boyd project. He concluded that, in his substantial experience, neither tax credit program will be able to provide funds for this project.

Mr. Gross turned to his expertise as a Broadway producer. He offered some definitions to the Commission: a Broadway show is a show in New York at a theater with 500 or more seats; an Off-Broadway show is one in a theater with 100 to 499 seats; an Off-Off-Broadway show is one in a theater with less than 100 seats. Theaters like the Boyd with 2,300 seats are unheard of in New York and are not the venue for Broadway shows. *The Lion King* was produced in a 1,200-seat theater; *Spider Man*, which cost $78 million, was staged in a 1,100-seat theater. Broadway producers would be reluctant to undertake the obligation to fill a 2,300-seat theater. Broadway producers use the Forrest, Merriam, and Prince Theaters in Philadelphia and those theaters have plenty of available, unused time not taken up by shows; additional theater space is not needed. Broadway producers like venues that are 1,000 seats or less so that the houses are always filled. Also, producers like theaters with large facades for advertising; the Boyd does not have such a façade. “The bottom line is that the Boyd is not by size, by configuration, or by location a realistic or likely site for anyone to ever put a Broadway show in. … I would not put a Broadway show in a renovated Boyd Theater. It would be financial folly.”

Mr. Gross asserted that he is very concerned about the blighting influence the vacant, dilapidated property has on the neighborhood. He stated that the Boyd attracts unwanted people and behavior. He noted the rats and urine. He showed the Commissioners a photograph of a dead rat at the Boyd, which he took two weeks ago. He asserted that the building causes a hardship on the block. The 1900-block of Chestnut Street is the most blighted block of Chestnut Street in Center City. He contended that seven businesses on the block have shut down recently because of the blighting influence of the Boyd. The Boyd, an "aging hulk, is the source of blight, and vermin, and misconduct that must be answered."

Mr. Gross stated that the Boyd Theater is only one in a long line of buildings that stood on the site. Before 1928, the Aldine Hotel stood at the site. He showed a photograph of the hotel. It was the most beautiful and luxurious hotel in the city. Abraham Lincoln stayed at the hotel. Ty Cobb and Babe Ruth stayed there. It cost $5 per night when the weekly wage in Philadelphia was $2.50. It was an expensive hotel. Eventually, it fell out of fashion and became dilapidated. It became obsolete and it was an economic hardship to maintain it. It closed, was demolished, and replaced by the Boyd Theater. One hundred years later, there is no feasible use for the Boyd, as a theater, a Broadway theater, or anything. Things move forward. Cities grow and develop. The iPic Theater is consistent with the history of this block, is consistent with ending the blight, and is consistent with the mission of the Historical Commission.

David Brownlee introduced himself and stated that he is a professor of architectural history at the University of Pennsylvania and an expert on architecture of the 1920s, and was a member of the Historical Commission for 16 years. Mr. Brownlee noted that he was beginning his comments with a "smile." Mr. Brownlee claimed that the City Charter mandates that the Historical Commission "shall," which he emphasized, "preserve buildings, structures, sites, and objects that are important to the education, culture, traditions, and economic values of the City," and "afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of historic buildings." He contended that the Commissioners must bear these two mandates in mind, even if they have other concerns and desires. He contended that persons interested in historic buildings have the "right" to acquire them. These requirements should make the Commissioners "friendly" to the Boyd, if not "Friends of the Boyd." It is your "charter responsibility," he asserted. He declared that the building, which the Commission should be "befriending, is of really great supreme historical importance." He recounted that Philadelphia made itself into a post-industrial city in the 1920s. The Benjamin Franklin Parkway and its cultural and educational centers all opened in the 1920s. The Boyd is the popular culture dimension of that phenomenon. Philadelphia was a hub of the movie industry. Jules Mastbaum was an industry leader. The movie industry in Philadelphia in the twentieth century was as important as the railroad industry in the nineteenth, Mr. Brownlee argued. Architect Paul J. Henon was the favorite of the movie moguls and designed more than 100 movie theaters including the Boyd. Mr. Brownlee maintained that we are lucky to have the Boyd today. Tearing down the Boyd would be equivalent to demolishing Penn Station in New York in the 1960s. The Boyd is the great monument of our twentieth-century achievements. Finally, you are here today to judge a financial hardship application, he observed. Historic buildings are expensive to operate, but you are bound by the "Charter" to preserve historic buildings and to afford opportunities to organizations to acquire such buildings, he contended. Such an opportunity is before you today. Before the applicant is granted an approval, he must demonstrate that the sale is impracticable. It is not, Mr. Brownlee declared. And the Commission may not ignore private philanthropy when it evaluates practicability. Mr. Brownlee concluded that "those who are friendly to the Boyd, small 'f,' can smile today and have a success."

Ralph Yaffe, the owner of the Boyd's clothing store on the 1800-block of Chestnut Street, introduced himself to the Commission. Someone in the audience asked him to speak into the microphone, which he proceeded to do. He stated that his clothing store has been located on this block of Chestnut for 24 years. It was located at 1217 Market Street prior to moving to Chestnut when its former building was demolished for the Marriott Convention Center Hotel. He stated that he is generally in favor of historic preservation, but the Boyd Theater is a blight on the neighborhood and has been that way for 12 years. He reported that Howard Haas of the Friends of the Boyd was quoted recently saying that the FOB has the $4.5 million to purchase the building, but it may take 10 or 15 years to raise the money to renovate the theater. "The place is rat-infested; it is a disgrace. I try to walk to nice restaurants at nights and there are bums urinating out front." He claimed that the Boyd Theater will not change in the near future. iPic has a bona fide project that will be great for Philadelphia. Mr. Yaffe stated that he has been to iPic theaters in California and Florida, which were very nice. He stated that the 2,300-seat Boyd Theater was great in its day, but it does not work anymore. He advocated for the Historical Commission's approval of the application and stated that he looked forward to the completion of the iPic project.

Sharon Pinkenson of the Greater Philadelphia Film Office addressed the Commission. She stated that she is a lifelong Philadelphian and an advocate of the city's economy and culture. She stated that she is a businesswoman and has been in the film business for 30 years. She is the area's film commissioner. She stated that the area is successful as a location for films because of its "loving protection of historic buildings." She stated that she won an award for historic preservation from the Preservation Alliance. She noted that she lived on the 1900-block of Chestnut Street, across from the Boyd, and has seen films at the Boyd going back to 1958. She stated that she held the premiere of the movie *Philadelphia* at the Boyd in 1993, but it was very dilapidated. She formed the Committee to Save Boyd in 1995; the group later became the Friends of the Boyd. She stated that she left the FOB a few years ago after their efforts became "futile and unrealistic." The state of the building is "abominable." She noted her efforts to save the Civic Center in West Philadelphia as a sound stage. Before being the demolished for a cancer research center, the sound stage contributed greatly to Philadelphia's economy. She stated that she is a preservationist and her decision to support the iPic proposal "does not come lightly." She asserted that there is little or no hope of restoring the Boyd to a single-auditorium use. Current movie-goers do not want to sit with 1,000 other patrons to watch a film. Technology has changed the movie experience. We only visit theaters, she claimed, when the movie experience exceeds that which we can get on our own devices in our own homes. Movie goers demand luxury like that offered by iPic. Movie goers of the 1920s and 1930s had different tastes and requirements. The iPic team will restore the front façade to its 1928 appearance and bring new life to the block, all without public money. She claimed that a restoration of the theater as the FOB is proposing is unlikely at best. Philadelphia's other theaters are struggling and require donor-based support. The city's theaters cannot operate without outside support. Philadelphia's theaters are suffering or getting lots of help, she claimed. She advocated for the approval of iPic's application. She asked the Commissioners to consider the residents, business people, and shoppers who "cringe at the eyesore" that is the Boyd. She claimed that the theater hurts property values and businesses in the area. She claimed that the iPic project would rejuvenate the area. She again asked the Commission to approval the application.

Larry Pitt addressed the Commission. He stated that he is "just a member of the public," not appearing on behalf of any organization. He reported that he lives at 1918 Pine Street. He stated that he has great admiration and respect for Sharon Pinkenson, but he disagrees with her. He claimed that the current owner has a responsibility to maintain the property; if the building is blighting, it is the fault of the owner. He noted that Live Nation had assets of $5.08 billion and $5.38 billion in revenues in 2011. He concluded that the blight arguments are illegitimate. He claimed that Live Nation is guilty of demolition by neglect. Mr. Pitt stated that, if the owner sells the building to the FOB at a loss, it may be able to take a tax deduction because the FOB is a non-profit. He stated that this review might attract national press. He stated that "everyone in the room understands that you do not have jurisdiction over the interior of the building," but you cannot remain blind to the implications of your decision. He noted that there have been many attempts to reuse this building from 2002 to 2012. He stated that some have come close to saving the building. The Wheeler plan with its hi-rise hotel came the closest in 2008 to 2010, during the recession, Mr. Pitt reported. Someone will eventually restart the Wheeler plan and restore the theater while building a tower above it, he claimed. Philadelphia is the country's most historic city and we have an obligation to preserve our historic structures. Philadelphia celebrates the underdog; Rocky is an example. Mr. Pitt noted that he attended the premiere of *Rocky III* and reminded the Commission that *Rocky III* co-starred Mr. T. He asked: "What would Rocky Balboa say about the Boyd? What would Sylvester Stallone say about the Boyd?" Mr. Pitt responded that they would reply that we do not give up. The Boyd is priceless and irreplaceable. The FOB plan with the IMAX theater is viable. The Commission should grant the FOB one year to see if their plan can succeed. "One year will not make a difference," he claimed. He noted a tremendous growth in interest in classic films and listed several television networks that show such films. "In my opinion, the destruction of the Boyd interior is nothing less than a cultural atrocity," Mr. Pitt contended and concluded.

Josh Silver of the Friends of the Boyd noted that he had not cleared his statement with Howard Haas, but asked the Commission to discount the report of Richard Gross that the historic Aldine Hotel was demolished for the construction of the Boyd Theater. He asserted that "there was relatively no preservation ethos 86 years ago."

Caroline Boyce, the executive director of the Preservation Alliance for Greater Philadelphia, introduced herself and Leonard Reuter, an attorney, Robert Powers, the president of the Preservation Alliance board, and Benjamin Leech, the Alliance's advocacy director. Ms. Boyce read a prepared statement:

> The application before you today claims that the Boyd Theater represents a financial hardship, and that the only viable option for the property requires its demolition. The Historic Preservation Ordinance includes this so-called "hardship exception" for one reason—to protect the ordinance from a constitutional takings claim. That is, to protect against the claim that historic designation of a property would deprive its owner of all value. If there is a party willing to buy the property from the current owner, at the current owner's asking price, how is the designation of this property a taking? Where is the financial hardship?
>
> The Philadelphia Historical Commission exists to protect the public's right to the preservation of historic resources. This right is embedded in the City's ordinance, as well as the Constitution of the Commonwealth of Pennsylvania. The first purpose of the preservation ordinance, defined in Chapter 14-1001(1) is to: "Preserve buildings, structures, sites and objects that are important to the education, culture, traditions, and economic values of the City." Nobody can dispute that the Boyd Theater is important to Philadelphia. Another purpose, 14-1001(4) is also significant. To quote: "Afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to

arrange for the preservation of historic buildings." That is a defined responsibility of the Historical Commission. That opportunity is before you today.

The ordinance is unequivocal: Three things must be true for you to approve the hardship application before you. Sale of the property must be impracticable. Commercial rental will not provide a reasonable rate of return. Other potential uses of the property must be foreclosed. All three of these things must be true. At best, the applicant has proven only one—that commercial rental alone is unlikely to generate a reasonable return on private investment. How many historic buildings in Philadelphia are owned by non-profits or private owners with no expectation of profitable commercial return? Dozens? Hundreds? This is the reason that commercial return is only one of three necessary tests to a hardship claim, and not grounds alone to justify demolition.

In our testimony before the Financial Hardship Committee, we argued that the application itself is incomplete, regardless of the offer from Friends of the Boyd to purchase the property, we stand by this analysis, which was challenged by the applicant at the February 27 hardship committee meeting. We questioned the very low valuation of historic tax credits in the Econsult report, which were estimated using only 68% to 72% of total project costs. Comparable real-life theater projects routinely capture 90% of total costs, in this case a two million dollar difference. Does this change the bottom line on Econsult's conclusions? Maybe not. But it does raise flags for us about the thoroughness and accuracy of this analysis. The applicant explained its low valuation based on the percentage of new construction, which is typically ineligible for historic tax credits. We remain confused by this explanation, since the other two development scenarios in the Econsult report involve little or no new construction, but include even lower percentages of eligible costs than the scenario requiring new construction. In this light we do not think it unreasonable for the applicant to explain these atypically low numbers. Our conclusions are supported by the National Trust's John Leith-Tetrault, an expert in historic tax credits who is familiar with comparable theater projects nationwide. We have included in our materials his analysis of Econsult's numbers, which we encourage you to review. This letter also affirms the potential for up to $8 million in New Market tax credits, which were also ignored by the Econsult report.

We have also included in our materials a letter from Mary DeNadai, a nationally-renowned preservation architect who is intimately familiar with the Boyd Theater. She has explored the possibility of a phased rehabilitation approach, a strategy that was not addressed in the hardship application. We encourage you to review her analysis as well, which finds that the entire theater could be stabilized and the Chestnut Street wing rehabilitated and reused for substantially less than the $35-$50 million estimates included in the Econsult report. You will also hear the testimony of Robert Powers, whose involvement in a comparable restoration of the Queen Theater in Wilmington, Delaware raises questions about the high restoration costs cited in the hardship application.

I would also like to correct a statement made by Mr. McClure about my testimony on January 27. At that Hardship Committee meeting, I noted that the value of a historic preservation easement has not been factored into any of the Econsult or RES analysis, and I stand by this criticism. I was not referring to the value of air rights, as Mr. McClure contended. I was referring to historic preservation easement donations, which are very common development incentives that should have been included in the applicant's analysis. This is another potentially multi-million dollar source of funding that does not appear in any of the applicant's projections.

These are valid concerns, and support our conclusion that the hardship application as presented is at best flawed and incomplete. But the larger question, whether the Commission can find a hardship when there is a valid offer of sale on the table, is even more fundamental. If there is any doubt in your minds, your answer should be "no." To allow the demolition of any historic resource, you should be absolutely convinced that all other options have been exhausted. Were all options exhausted for the Victory Building? For Lit Brothers? For the Naval Home? For Reading Terminal Market? For Baptist Temple? No, and Philadelphia is a better city for it. We urge you to deny this application today. There is an affirmative obligation to attempt the sale of the property. There is a buyer. Case closed. At the very least, we urge you to invoke your power granted under 14-1005 (6)(a)(3), "Where the Historical Commission has determined that the purpose of this Chapter may best be achieved by postponing the alteration or demolition of any building subject to its review, the Historical Commission may, by resolution, defer action on a building permit application for a designated period not to exceed six months from the date of the resolution." The ordinance includes this power for the very situation before us today—a solution exists for saving the building. This solution requires more time, more patience, and more hard work, but one that is in the best interests of the City of Philadelphia. Philadelphia will be a better city if the Boyd is allowed to stand.

Mr. Reuter stated that he would like to address the legal standard being applied. He stated that the ordinance, on its face, as any reasonable person would agree, is free and clear of any ambiguity. He read Section 14-1005(6)(d) of the preservation ordinance in its entirety:

> No building permit shall be issued for the demolition of a historic building, structure, site, or object, or of a building, structure, site, or object located within a historic district that contributes, in the Historical Commission's opinion, to the character of the district, unless the Historical Commission finds that issuance of the building permit is necessary in the public interest, or unless the Historical 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.

He stated that it is not a policy; it is the law. He also cited Title 1, Chapter 19, Section 19.21.a of the Consolidated Pennsylvania Code: "Object and scope of construction of statutes. The object off all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." It also applies to local ordinances. "Unambiguous words control. When words of a statute are clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." He asserted that the ordinance requires an owner to demonstrate that the sale of the property is impracticable. The requirement cannot be ignored. He stated that he strongly opposes any other interpretation. Mr. Reuter stated that he wanted to answer Mr. Mattioni's question: Can the Commission legitimately consider profitable adaptive reuses proposed by the owner? He answered: Of course you can and should. He conceded that the applicants have considered adaptive reuses for the property that would not be profitable. He claimed, however, that the Commission need not consider whether the purchaser's project would be profitable. It is absurd to consider whether it would be profitable. If the Friends of the Boyd wish to operate the theater in the red, as long as they maintain it, that is there business.

He stated that the Commission must determine whether the owner has proved that the three pongs of the test have been met. The feasibility of the potential owner's project is irrelevant. He stated that the owner has not proved that a sale is impracticable. The Commission cannot find that there is a hardship in this case.

Robert Powers, a preservation consultant and president of the Preservation Alliance board, addressed the Commission. He stated that the wanted to provide the Commission with information about a comparable project, the Queen Theater in Wilmington, Delaware. He paraphrased a prepared statement.

Mr. Powers stated that numerous documents have been presented by the applicant that supported the claim that rehabilitation of the Boyd is so expensive that it is not financially feasible to reasonably develop the theater. Econsult cited construction costs of $37.7 million and a total development cost of $51.9 million in their analysis of the "Off Broadway Theater with Fly Tower" scenario and construction costs of $29.1 million and a total development cost of $41.5 million for the "Live Venue without the Fly Tower" option. As a professional involved in the rehabilitation of historic properties for more than 30 years including many in Philadelphia like the 30th Street Post Office, Mr. Powers question the estimated construction costs noted by Econsult which form the basis of the claims of financial hardship. He presented what he considers an extremely relevant and comparable project to the Boyd in which he was heavily involved as the project's preservation consultant.

Mr. Powers recounted that, originally constructed in 1872 as a hotel, the Queen was converted into a theater in 1915. It has 41,000 sf of usable space and a 2,000-seat main theater space. It included elaborate decorative painting and plasterwork above and around the stage. The theater was vacated and sold in 1967 and remained vacant until 2009. In 2009, the Buccini/Pollin Group, Inc. of Wilmington, DE purchased the Queen and embarked upon a renovation of the property into a live performance venue for World Cafe Live. It was a top-to-bottom renovation of the building. The scope of work at the Queen is far greater than would be required at the Boyd. World Cafe Live had very specific programmatic requirements which needed to be met in the conversion into a live performance venue. These requirements involved work which normally would not be associated with a more traditional straight theater renovation. The existing flooring and structural system was replaced in the Market Street section of the building. An entirely new canopy and marquee, echoing the appearance of the 1915 original, was custom manufactured and placed above the main front entrance on Market Street. A new basement level was added where previously only a partial basement existed. The balcony was modified extensively to accommodate a revised plan for dining and seating. Two restaurant kitchens were installed. Two full bars were installed. Two new elevators were installed. A new restaurant was built off of the Market Street entry. All of the historic finishes, including the plaster walls and moldings, a bas-relief plaster ceiling and cornice, limited wood moldings, brass railings, water fountains and mirrors were maintained and repaired as necessary. Instead of fully restoring the deteriorated decorative painting, however, the existing paint finishes were just stabilized and left intact to retain its unique appearance of age in keeping with the operator's desired aesthetic. They did not use a full-restoration approach. The massive, central plaster medallion was completely restored and painted the original colors.

Mr. Powers reported that, completed in 2011, the construction costs for the 41,000 sf facility renovation at the Queen were $14 million. These are real numbers from a recently completed project and not a hypothetical cost estimate of a possible renovation that has not been fully vetted by a construction and development team, he claimed. By comparison, in stark contrast to the Queen, the comparable scenario (Live Venue without the Fly Tower) for the Boyd as outlined In the Econsult Report, lists construction costs of $29.1 million and a total development cost of $41.5 million. This amount is more than double the actual Queen construction costs. Mr. Powers asserted that the Boyd is in much better condition than the Queen and does not require the structural work nor many of the other costly programmatic alterations required of the Queen renovation. Therefore, he opined, the accuracy of the Econsult construction numbers, which are more than double a recently completed, comparably sized, theater project in the Greater Philadelphia area, needs to be seriously questioned. Mr. Powers claimed that, using the Queen Theater as a comparable project, it seems reasonable to assume that the Boyd Theater could be rehabilitated in the $15 million range and certainly not for $29.1 million.

Mr. Powers claimed that both Econsult and RES failed to accurately acknowledge and assess the Queen project. Econsult "completely failed to even list or acknowledge" the Queen as a comparable case study. RES dismissed the comparison, saying that a "large percentage of the $25 million in construction costs to renovate the historic theater was provided by government and philanthropic sources." RES is incorrect in stating that the Queen Theater construction costs were $25 million, when they were actually $14 million. It is also unclear as to why RES did not compare the Queen's actual construction costs to what Econsult proposed for the Boyd, regardless of the funding sources, Mr. Powers asserted.

Mr. Powers concluded that the Queen has 41,000 usable sf; the Boyd has 29,000 usable sf. The Queen renovation was far more extensive than what would be required at the Boyd. The Queen had a 2,000-seat capacity, comparable to the Boyd. Mr. Powers agreed that labor costs would be more in Philadelphia than Wilmington, but asserted that the labor costs would not double the price.

Ms. Jones asked Mr. Powers if he had been in the Boyd Theater. He responded that he had not "walked through it lately." Ms. Jones noted that Mr. Powers had mentioned several projects that he had worked on in Philadelphia including the 30th Street Post Office and asked him what role he played on those projects. Mr. Powers responded that he was the historic preservation consultant on all of the projects he mentioned. Ms. Jones asked Mr. Powers if he had expertise in construction cost estimating. He stated that he worked with the construction teams on the projects. He then stated that he typically worked for the project owner and was involved in analyzing costs. Ms. Jones asked if he generated construction cost estimates for the projects. He stated that he did not. Mr. Powers stated that he has spoken with the "folks" who did the Queen cost estimates. Ms. Jones noted for the record that Mr. Powers, not the experts who undertook the construction cost analysis at the Queen, was testifying before the Commission. Ms. Jones asked Mr. Powers to comment on the performing arts market in Wilmington and to especially describe other performing arts venues with which the Queen competes. Mr. Powers responded "I don't know Wilmington and I don't know the other facilities in Wilmington." He added that he was only comparing construction costs at the Queen and Boyd. Ms. Jones responded that the lack of competing venues in Wilmington would have a bearing on the success of the Queen project. She asked Mr. Powers if he agreed. He stated that "it could, sure." Ms. Jones noted that Mr. Powers contended that the Econsult and RES analyses were deficient because they did not fully address the Queen, and then countered that other cities such as Boston, which was considered, may provide better comparisons because of the similarities of the markets. Mr. Powers stated that Wilmington is part of the greater Philadelphia area.

Ms. Hawkins asked Mr. Powers to state the gross square footage area of the Queen. He responded that it is 41,000 sf. She asked him to state the gross square footage area of the Boyd. He stated that the application indicates that it is 29,000 sf. Ms. Hawkins disagreed and asked him to state the gross square footage. He again said 29,000 sf. Ms. Hawkins corrected him, stating that it is more than 50,000 sf. She added that, as a restoration architect, she knows that one must rehabilitate the entire building and therefore construction costs must be based on the gross square footage, not the usable square footage. Ms. Hawkins stated that Mr. Powers was "not providing an apples to apples representation of these two projects, so I think that this is hard for the Commission to consider on its face. It is difficult for me personally and professionally to consider the information you've stated today."

Mr. Farnham observed that Mr. Powers had testified that the applicant's construction cost estimates for the two Boyd projects of $37.5 and $29.1 million were grossly inflated, and that he had asserted that $15 million to rehabilitate the Boyd would be more accurate. Mr. Farnham noted, however, that Howard Haas of the Friends of the Boyd testified earlier in the meeting that the hard or construction costs to rehabilitate the Boyd would be about $35 million. He asked Mr. Powers to explain the significant differences between his estimate of $15 million and the FOB estimate of $35 million. He asked Mr. Powers if Mr. Haas was simply wrong in his estimate. Mr. Powers stated that the difference between his estimate and that of Mr. Haas derives from the different levels of work contemplated for the Boyd. He explained that, at the Queen, the rehabilitation did not include a restoration of the plaster and paint; one could undertake such a rehabilitation project at the Boyd, which would cost about $15 million. However, Mr. Haas is proposing a rehabilitation that includes a full restoration of the interior plaster and paint finishes. That level of work is not necessary to reuse the theater. According to Mr. Powers, it would cost $15 million to do all the structural work, mechanical and other systems replacement, the stabilization of existing paint and plaster, tenant fit out, and other work to reuse the Boyd. It would cost an additional $20 million to restore the plaster and paint at the Boyd.

David Rose, who sits on the board of the William Penn House, a residential hi-rise across the street from the Boyd, and also sits on the board of the Center City Residents Association, introduced himself. He stated that he works regularly with the City's Department of Licenses & Inspections on blight. He stated that he has filed 17 active complaints with the Department regarding the Boyd this week. He stated that the Boyd is not only blighted itself, but it promotes blight in the neighborhood. Mr. Rose stated that the neighbors should have input into this decision and asserted that the redevelopment of the Boyd by iPic would be best for the neighborhood. He objected that the FOB proposal would take 15 or 20 years to implement. He claimed that the neighborhood is suffering now and needs relief from the blight engendered by the Boyd. He disputed the FOB's claims that the Boyd is an appropriate site for an IMAX theater. He stated that the neighbors do not want a business at the Boyd that will draw 2,000 customers at once, but prefer the iPic proposal, which will draw many fewer people. He objected to the claim that the Boyd could function like Grauman's Chinese Theater in Los Angeles. He noted the differences in the cities, Los Angeles is much larger and the center of the movie industry. He noted the differences in the buildings; Grauman's seats 900 while the lower level of the Boyd seats 1,800. He also noted that the IMAX theater at the Franklin Institute, six blocks away, is much smaller than the Boyd IMAX would be, yet still struggles. He concluded that the iPic project is a very reasonable compromise. It will allow for the retention of the historic façade and use and is feasible. Mr. Rose asked the Commission to think of the public's interest and support the application.

Gabriel Gottlieb stated that he is a real estate agent who had an office near the Boyd at one time. He claimed that the Boyd was not a magnet for undesirable characters, as some had asserted. Problems inside the building would be the responsibility of Live Nation, the owner, he contended. Mr. Gottlieb noted that there are many vacant buildings near the Boyd. The State liquor store was recently vacated for a larger store. The buildings to the east on the south side of Chestnut are vacant as Pearl Properties prepares for the redevelopment of the site. Residential demand is strong in the neighborhood. If the economy had not crashed in 2008, Hal Wheeler's project would have been successful. Mr. Gottlieb insisted that the rear wall of the Boyd, although "plain and ugly," is historically certified and in the Historical Commission's purview.

John Gallery introduced himself and distributed a single sheet summarizing his testimony for today and referred the Commission to his testimony that he presented to the Committee on Financial Hardship. Mr. Gallery stated that the Commission has jurisdiction over the exterior of the building only. He noted that most speakers have discussed the interior only. He claimed that Sharon Pinkenson has suggested that, if the interior cannot be saved, then the entire building should be demolished. He stated: "That argument is irrelevant to you because you are not concerned with the interior." Mr. Gallery claimed that the mezzanine and balcony can be removed without affecting the structural integrity of the building or the exterior. He acknowledged that there are costs associated with their removals, but insisted that they can be removed. He asserted that the interior space can be subdivided vertically providing up to as much as 70,000 sf of leasable space, and, under some assumptions, perhaps more. This is the most logical and reasonable way to adapt the building to other uses while retaining the exterior, he contended. Mr. Gallery argued that no evidence has been submitted in writing or verbally that demonstrates that the property was marketed for sale based on the ability to create up to 70,000 sf of leasable space. Live Nation targeted its marketing to live performance venues. He asserted that no information about the marketing by CBRE Richard Ellis has been provided. Neither the Econsult Solutions report and supplemental information nor the Real Estate Strategies report evaluated the economic feasibility of converting the building to at least 70,000 sf of leasable space, he declared. Mr. Gallery concluded that the applicant has not demonstrated that a sale is impracticable nor has it demonstrated that the building cannot be feasibly adapted to other uses. Therefore, he stated, the hardship application cannot be approved.

Andrew Repasky McElhinney addressed the Commission. He stated that the Boyd Theater, inside and out, must be saved. He contended that it would be shortsighted and folly to allow its demolition. He asserted that the Boyd is a "world-class architectural work of art. I know. I have traveled the world." He stated that, despite being a world traveler, he has chosen to make his home in Philadelphia. Mr. McElhinney mentioned the nearby Roxy Theater. He advocated for the denial of the application. He noted that he has directed films and contended that the Boyd would be appropriate for movie premieres and film festivals. He mentioned that actor Tom Hanks had called the Boyd "a real movie theater."

Charles Goodwin, the chair of the Center City Residents Association's task force on the Boyd Theater, stated that the Association's task force as well as its board voted not to oppose the iPic application. He stated that the Association's members held numerous opinions on the application, but, in the end, the Association decided that it would not oppose the application. He noted that the theater's interior is "gorgeous," but acknowledged that the Commission has no jurisdiction over it. He asserted that the vacant theater is a "moldering hulk and has been for 12 years now." He stated that he would like to see the building saved, but has not heard a "credible economic plan" to save it. He contended that the preservation advocates have no real plan to save the building. He reported that, after the latest plan was announced, "we reached out to the Friends of the Boyd and never heard more. We just haven't seen something we need to see to get away from what has been 10, 12 years now of blight on one of the core blocks of Center City. We just can't have another 10 years of blight on that block." He stated that the neighborhood around the Boyd is lively, economically and otherwise, but the block with the Boyd is not. "In the absence of some credible, viable, economic plan, it isn't a choice between demolition and preservation, but a choice between revitalization and continuing blight." He stated that the decision not to oppose this application was an extremely difficult one; it "was like putting down a beloved pet. There's a difference between what you want to do and what's the right thing to do." He concluded that the Center City Residents Association voted not to oppose the application and hoped that the Commission would do "the right thing" as well and approve the application.

Alana Weaver of Rittenhouse Row, a business association, stated that her organization "strongly supports" the iPic application and "urges the Commission to approve it as soon as possible." She contended that "the Boyd Theater deserves a real chance at new life, and we believe that is what the iPic Gold Class Entertainment is offering." The iPic theater would be "an appropriate adaptive reuse of the site and strikes a meaningful balance for the Boyd by restoring the exterior and portions of the headhouse to their original grandeur while offering consumers and residents a modern movie-house concept." iPic is "the most realistic opportunity to redevelop the Boyd Theater that has been seen in years." The new theater complex with benefit the community and serve those living nearby. The theater has sat vacant for too many years and the various redevelopment plans have not materialized. The proposal will reinvigorate Chestnut Street and the vacant theater. She concluded that Rittenhouse Row vigorously encourages the Commission to approve the project."

Henry Hauptfuhrer stated that he is a lifelong resident of Philadelphia and an "ardent" supporter of the Boyd Theater. He stated that he has restored buildings in Philadelphia including historic landmarks. He stated that he initiated the relighting of Boathouse Row and has raised money for historic buildings in Philadelphia. He stated that he is dedicated to preserving the interior of the Boyd, "to protecting one of the great interior public spaces in the City of Philadelphia." He said that many Philadelphians "love and support" the Boyd. He claimed that the will, expertise, and resources are available to save the Boyd. He pointed out that Live Nation's 2008 request for proposals banned for seven years "any entertainment music concerts except theatrical performances and comedy acts." He contended that the Boyd is designed to accommodate such performances. With the ban, Live Nation made the Boyd unappealing to any buyer, he claimed. He asserted that this is like selling an apartment building, but restricting it from residential use for seven years. He added that it is unclear whether this restriction still stands. He concluded that this ban creates a self-imposed hardship. He noted that the Friends of the Boyd is willing to pay $4.5 million for the building to save it. He claimed that Live Nation "will not be impacted negatively in any way if the Boyd was purchased" for $4.5 million by the Friends of the Boyd. However, if the iPic project proceeds, the "city will be impacted greatly." "The Historical Commission should support the sale of the Boyd intact if there is an equal offer for the building." If the Commission approves the application, it will put all historic properties at risk. Mr. Hauptfuhrer concluded that Live Nation should sell the building with no strings attached. The Historical Commission should not allow the building to be sold with restrictions. He noted that Live Nation is a $6.3 billion, publicly-held company that is "the largest producer of live music concerts in the world." It manages over 100 venues and Ticketmaster. He listed several venues managed by Live Nation. He claimed that the Boyd is not a "credible" threat to Live Nation and wondered about the “back story.” He suggested that Live Nation could be a programming partner with the new manager of the Boyd. He concluded, stating that the Friends of the Boyd offer is equal to the iPic offer and should be accepted.

Howard Haas of the Friends of the Boyd addressed the Commission. Mr. Haas stated that some have claimed that he has said that it would take 10, 15, or 20 years to raise the funds to rehabilitate the Boyd Theater. He denied ever having made such a statement. “Our aim is now.” He asked the Commission to enter into a “binding legal agreement today” that would stipulate that, if the Historical Commission denied the application, the Friends of the Boyd “will go to closing immediately.” He asserted that “if we can’t raise those rehab funds in 12 months, we’ll sell the theater to Mr. Rodin and he can do what he wants.” He stated that “we’ll maintain the theater in that year.”

Ms. Jones noted that the hardship application was submitted to the Historical Commission on 30 September 2013. She asked Mr. Haas if he was aware that the application had been submitted as of that day. Mr. Haas responded that, “when it was filed Mr. McClure gave us the courtesy of an immediate meeting. That was the first that we knew of this and at that time we did try to, we actually tried to get the matter in the press, and that took quite a long time, and it was only after it got in the press that we became aware of the one generous benefactor.” The benefactor “wasn’t aware of its imminent threat.” Ms. Jones asked why it took Mr. Haas five months to come forward with a proposal. Mr. Haas responded that “it didn’t actually get into the newspapers for a few months because they were waiting for the Hardship Committee hearing.” Ms. Jones again asked Mr. Haas if he was aware of the application in September 2013. Mr. Haas replied “well, we knew of it.” Mr. Sherman asked Mr. Haas why he relied on newspaper reporting to inform potential donors of the proposal. Mr. Haas responded “You don’t pull four-and-a-half million dollars out of a hat.” Mr. Farnham noted that individuals have pointed out to the Commission during this review that Section 14-1001(4) of the preservation ordinance stipulates that one of the purposes of the ordinance is to “afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of historic buildings.” Mr. Farnham noted that others have implied during this review that organizations have not had the opportunity to acquire the Boyd Theater. He asked Mr. Haas if he was asserting that organizations had not had the opportunity to acquire this property prior to the submission of the current application. He asked Mr. Haas if the property had ever been offered for sale for preservation. Mr. Haas responded that “after Clear Channel went away, we had somebody in the theater community who wanted to go with us into the theater because she had terrific connections with legitimate theater operators and we arranged an appointment to visit the Boyd with her so that she could represent to her friends, and they cancelled the appointment last minute. They rescheduled. They did the same thing a total of three times, and then they basically excluded us altogether from any consideration and so, no, we don’t believe that we’ve had that opportunity.” Ms. Jones apologized for not understanding the answer and asked Mr. Haas to explain who excluded him from consideration. Mr. Haas responded “Live Nation. We can document that. We’ve got all the emails and the correspondence. They just kept doing this the night before and they just said that’s it and we’re going to try some other strategy.”

> **MOTION:** Ms. Jones moved to adopt the recommendation of the Committee on Financial Hardship and find that the application for the property at 1910 Chestnut Street has demonstrated, pursuant to Section 14-1005(6)(d), that:
>
> 1. the building cannot be used for any purpose for which it is or may be reasonably adapted;

2. the sale of the property is impracticable;
3. commercial rental cannot provide a reasonable rate of return; and,
4. other potential uses of the property are foreclosed.

Mr. Mattioni seconded the motion.

Ms. Jones acknowledged and appreciated the range of emotion and passion expressed by the participants. She stated that the Commission's decision would be far easier if emotion and passion alone carried the day. She stated that the Commission, however, must base its decisions on fact and the law. She also noted that the Commission should not attempt to protect the interior indirectly, when it has no jurisdiction over it. She observed that many participants in the review have commented on the significance of the interior of the building and she acknowledged that the theater has provided potent memories for many. She stated that, despite the passion and emotion, she believes that the applicant has met the burden of proof and demonstrated that the building cannot be used for any purpose for which it is or may be reasonably adapted, as is required by the ordinance.

Ms. Hawkins stated that, with the exception of the Commission's executive director, she has participated in more meetings regarding this application than anyone else associated with the Commission. She noted that she opined that a meeting of the Committee on Financial Hardship "felt like a funeral." She remarked that that sentiment continues today. She observed that she was reminded today of the purposes of the preservation ordinance, which include preserving buildings, structures, sites, and objects that are important to the education, culture, traditions, and economic values of the city, and affording interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of historic buildings. She stated that that is a "heavy charge." She stated that she seconded the Committee on Financial Hardship motion to recommend that the Commission find that the application proved that the property suffered a hardship because she was concerned about the due process rights of the applicant in light of the length of time it had taken to review the application. She noted, however, that the Commission has broader authority than the advisory committees. She stated that the building has sat vacant for many years; therefore, a six-month delay to determine whether there are other alternatives would not be excessive, especially in light of the weight of this decision.

Mr. Mattioni stated that the only portion of this building under the Commission's jurisdiction with significance is the front façade on Chestnut Street. The façade is currently dilapidated, but it is the portion of the building with value when judged within the limits of the Commission's jurisdiction. The rest of the building is a "non-descript" brick structure "without much to excite any real interest." He noted that the interior may be considered significant by some, but it is outside the Commission's purview because it has not been designated or even nominated as an interior. He asserted that the applicant will preserve the significant part of the building; the removal of the brick box at the rear will not constitute a demolition of a significant part of the building. He also noted that, although not in the Commission's purview, the proposal will retain the historic use of the building. He stated that the applicant has presented a compelling case and the motion should carry.

Ms. Merriman stated that some who have testified have used the words "impractical" and "impracticable" synonymously, but they are not synonyms. She asked Andrew Ross, the Commission's attorney to distinguish between them. Mr. Ross noted that some may have simply mispronounced "impracticable" as "impractical." Others may have equated them. Mr. Ross stated that every definition of the word "impracticable" includes an element of feasibility. The use of the word “impracticable” allows the Commission to assess the feasibility of a sale. The question is not simply whether a sale is “possible” or “impossible,” but whether it is feasible. Mr. Palantino opined that the word “impracticable” was carefully chosen for the ordinance to give the Commission the authority to assess the feasibility of a sale. He contended that the applicant has met the burden, including demonstrating that a sale is “impracticable.” Mr. Mattioni agreed and stated that, as he noted earlier, Section 14-1005(5)(b)(.6) of the ordinance indicates that the Commission must determine whether there are any potentially “profitable” adaptive reuses for the property. He stated that he is convinced by the application that there are no profitable adaptive reuses for the property. He stated that he is also convinced by the application that it has proven all three prongs of the test: that the sale of the property is impracticable; commercial rental cannot provide a reasonable rate of return; and, other potential uses of the property are foreclosed. He stated that the question is whether the property itself suffers from a financial hardship. He again stated that the applicant has met the burden put forth in the ordinance. He stated that he believes that a sale is impracticable. He stated that the Friends of the Boyd offer was proffered “kind of late in the game” and the evidence supporting the offer was “woefully lacking.” He asserted that the Commission “should not give much weight” to the offer in light of the date of submission of the application in September 2013 and the date of the offer in February 2014. Mr. Mattioni disagreed with Ms. Hawkins, who suggested tabling the application for six months. He noted that redevelopment solutions for this property have been sought for years with success. “At some point, one must say that enough is enough.” He again advised that the Commission approve the application.

> **ACTION:** By a vote of 9 to 1, the Commission adopted the motion proffered by Ms. Jones and Mr. Mattioni to adopt the recommendation of the Committee on Financial Hardship and find that the application for the property at 1910 Chestnut Street has demonstrated, pursuant to Section 14-1005(6)(d), that:
> 1. the building cannot be used for any purpose for which it is or may be reasonably adapted;
> 2. the sale of the property is impracticable;
> 3. commercial rental cannot provide a reasonable rate of return; and,
> 4. other potential uses of the property are foreclosed.
>
> Ms. Hawkins dissented. Mr. Sherman abstained.

Mr. Farnham asked the Commission to consider the Architectural Committee’s recommendation on the architectural portion of the application. He noted again that the applicant has provided a revised design for the Sansom Street facade in response to the Architectural Committee contention that it should be better articulated. Ms. Hawkins noted that the application proposes to rehabilitate the Chestnut Street just as it was proposed and approved by the Commission in 2008 for the Hal Wheeler project. She noted that the Architectural Committee asked the architect to revise the Sansom Street facade to be “more pedestrian-friendly and scaled to the city” than either the historic building or the initial design of the facade. She stated that the revised proposal addresses the concerns of the Architectural Committee and is a better solution for Sansom Street.

Mr. Sherman asked if any Commissioners wished to offer additional comments. No one offered comments. Mr. Sherman asked if anyone in the audience wanted to comment. No one in the audience offered comments.

> **ACTION:** Ms. Merriman moved to approve the application with the revised Sansom Street façade as presented to the Historical Commission on 14 March 2014, with the staff to

review details, pursuant to Section 14-1005(6)(d) and Standards 6 and 9. Mr. Schaaf seconded the motion, which passed unanimously.

ADJOURNMENT

ACTION: At 3:30 p.m., Ms. Turner moved to adjourn. Ms. Leonard seconded the motion, which passed unanimously.

STANDARDS AND GUIDELINES CITED IN THE MINUTES

Standard 2: The historic character of a property will be retained and preserved. The removal of distinct materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 4: Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Standard 5: Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Standard 6: Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new works shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Standard 10: New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Roofs Guideline: Recommended: Designing additions to roofs such as residential, office, or storage spaces; elevator housing; decks and terraces; or dormers or skylights when required by the new use so that they are inconspicuous from the public right-of-way and do not damage or obscure character-defining features.

§14-1005(6)(d) Restrictions on Demolition.
No building permit shall be issued for the demolition of a historic building, structure, site, or object, or of a building, structure, site, or object located within a historic district that contributes, in the Historical Commission's opinion, to the character of the district, unless the Historical Commission finds that issuance of the building permit is necessary in the public interest, or unless the Historical 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.

Section 9.4 of the Rules & Regulations
To substantiate a claim of financial hardship to justify a demolition, the applicant 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. 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.