

**THE MINUTES OF THE 384th STATED MEETING OF THE
PHILADELPHIA HISTORICAL COMMISSION**

10 August 1994

**Wayne Spilove, Chairperson
City Council Caucus Room
Room 401 City Hall**

Present _____ Wayne Spilove

Ronald Barber, Commerce Department
David Brownlee
Barbara Kaplan, City Planning Commission
Bennett Levin, Department of Licenses & Inspections
Arlene Matzkin
Susan Rabinovitch
Peter VanderHeide, Department of Public Property
Robert Vance, City Planning Commission
Scott Wilds, Office of Housing and Community Development
Stephanie Wolf

Richard Tyler, Historic Preservation Officer
Lori Plavin Salganicoff, Historic Preservation Specialist
Jeffrey Barr, Historical Research Technician
Jeffrey First, Law Department
John Straub, Law Department

Also _____ Carl S. Primavera,

Attorney for Arnav (Mayfair House)
Maureen Collahan, Robert Shusterman, Esq.
Fred Dedrick, Mayfair House Coalition
Kathy Ivens, Mayfair House Coalition
Sandscha Hurgunow, Mayfair House Coalition
Joel Sweets, Esq., Mayfair House Coalition
Mark Coleman Graves, Mayfair House Coalition
Susan A. Hurgunow, Mayfair House Coalition
Randy Cotton, Philadelphia Historic Preservation Corporation
Milton Marks, Preservation Coalition
Jennifer Goodman, Preservation Coalition
Scott Duenow, Vitetta Group
John Lehane, Tantala Associates
Peter Tantala, Tantala Associates
Augustus Baxter, City Council Staff

The 384th Stated Meeting of the Philadelphia Historical Commission was called to order at 10:15am by Wayne Spilove, Chairperson.

THE MINUTES of the 383rd Stated Meeting of the Philadelphia Historical Commission held on 3

June 1994, Wayne Spilove, Chairperson, were corrected by Mr. VanderHeide to indicate that the proposed City Hall East Pavilion lighting would be of daylight color and temperature with an intensity of five foot-candles. With this correction, the minutes were approved by unanimous vote and adopted after a motion was made by Dr. Brownlee and seconded by Mr. Wilds.

THE REPORTS of the Technical Sub-committee for the Architectural Committee of the Philadelphia Historical Commission, 3 August and 8 August 1994, Arlene Matzkin, Chairperson:

INDEPENDENCE SQUARE GROUP OF BUILDINGS

The Vitetta Group, Inc.

National Park Service

PROPOSAL: Changes to Lighting, Fire Protection, Security and Mechanical Systems

For these proposed revisions, the Architectural Committee recommended at its meetings of 3 August and 8 August 1994:

Approve as resolved the following aspects of the project (described more thoroughly in the 8 August 1994 Minutes of the Technical Sub-Committee):

- *filtration*
- *basement ventilation*
- *future additional HVAC service to Independence Hall's second floor*
- *double wall piping*
- *attic ventilation*
- *contact security devices*
- *Independence Hall basement window sash detail*
- *structural system*
- *lighting*
- *alarms*
- *Independence Hall and Old City Hall electrical outlets*

Approve in concept and request further work on:

- *consistency between the submitted documents*
- *theory behind control of temperature and humidity conditions*

Deny approval of the following issues until Technical Sub-Committee concerns are addressed:

- *Humidity Sensors*
The Sub-Committee urges the reduction of intrusion of sensors and submission of complete drawings

- *Control System*
The Applicant should present complete the design as discussed at 8 August meeting and correct problematic features identified in Technical Sub-Committee minutes

- *Drain Pans*
The Applicant should investigate the existence of space for the use of drainpans under unit heaters, for routes of drainage from the pans, for new pipes to run through existing ductwork, and the possibility of tying into existing drain lines under the Philadelphia Code; The Applicant should also revise the drawings to show drainage lines

-HVAC Heat Escape at Attics

The Applicant should examine proposed method of HVAC heat escape, suggest alternatives if necessary, and describe investigation thoroughly

- Smoke Detectors

The Applicant should research white or paintable alternatives to the black 5"x8" beam detectors, revise the drawings and specifications to reflect detector locations and type changes indicated at the 8 August site visit.

BRIEF PROJECT HISTORY

Upon the review of the Architectural Committee at its meetings of 29 March and 10 April 1994, the Applicant's proposal for changes to electrical, lighting, fire protection, security and HVAC systems was seen by the Historical Commission at its 381st Stated meeting of 13 April 1994. At that time, the Commission voted to approve the electrical, fire suppression, structural and security systems, and asked that the Applicant re-examine the proposed HVAC system. The proposal for lighting was deferred pending a presentation.

The Applicant submitted another HVAC proposal, and a special review meeting was held on 27 May. The Committee voted to form a Technical Sub-Committee to review further this and future mechanical systems proposals for this project. This Sub-Committee met on the morning of 31 May with the Applicant to resolve new and previously unanswered questions and comments. The results of the Sub-Committee's findings were used to define the recommendations of the Architectural Committee which met later that day. The Commission voted to accept these recommendations at its 383rd Stated meeting of 3 June 1994.

Following another submission, the Technical Sub-Committee met on 14 June 1994, and presented the Applicant with a series of specific questions about the mechanical systems, as well as questions about lighting and about the fire protection and security systems that arose from a careful examination of the new drawings. In response to these questions, the Applicant submitted drawings, specifications, and a technical narrative dated 18 July 1994. The Sub-Committee met on 3 August and found that while the narrative addressed each of the eighteen questions raised, the specifications and drawings were not consistent with it or each other. This and additional comments were discussed with the Applicant at an 8 August meeting of the Sub-Committee. All but five of the problems identified on 3 August were resolved at least in concept. The remaining issues include humidity sensors, the control system, the issues of drain pans under unit heaters, HVAC heat escape at attics, and smoke detectors.

Mr. Wilds made a motion to accept this report and approve the Committee's recommendations with thanks to the Technical Sub-Committee. Dr. Brownlee seconded the motion, which was approved by unanimous vote.

NEW BUSINESS

The Fidelity Mutual Insurance Co., 2501 Fairmount Avenue

A presentation was given by Mr. First who represented the Commission at a June Board of Licenses and Inspections Review hearing. The Reliance Insurance Company had requested a hearing to appeal the

Commission's denial of its proposal to alter the facade at 2501 Fairmount Avenue to replace the building's original name with its own. This appeal was won by Reliance which may now make this alteration. The company stated at this hearing that as a measure of good faith they would continue to work with Commission staff to mitigate damage to the building.

Commission members expressed annoyance at this ruling as a great deal of staff, Committee, and Commission time was spent on this particular issue. Dr. Brownlee noted that this was not a legally definable issue, it was a question of defining what the significant historical factors are in a prominent historic building. It is within this gap that many reversals from the L & I Review Board have occurred. He also noted that the expertise of members of the Review Board is entirely in the other issues that they review.

Ms. Matzkin questioned the fact that matters of historic importance go to this Review Board. Mr. First stated that the Historic Preservation ordinance stipulates an applicant whose proposal is denied by the Commission has a right of appeal to the L & I Review Board. Mr. Tyler further explained that this right and method of appeal is required by the Philadelphia Home Rule Charter for all matters relating to permits. Ms. Matzkin noted that all but one appeal has resulted in the overturning of Commission's decision.

Mr. First also stated that if the Commission desires to appeal the Review Board's decision, it may do so through Common Pleas Court. Both the Commission and the L & I Review Board would be represented by their designated attorneys from the City Solicitor's office. According to Mr. Straub, this appeal must be taken within 30 days of the Review Board's ruling. A discussion ensued about the best way to insure that these appeals are taken within the necessary time period.

Mr. Vance proposed that the Commission adopt a policy whereby every Review Board loss is appealed. Mr. First discounted this suggestion, stating that each appeal must be based on sound legal basis. Mr. Vance then recommended that each time the Commission votes to deny a proposal that may then be brought before the Review Board, the Commission should also vote on appealing a loss at the Review Board to the Court.

Mr. Brownlee noted that the Commission has appealed to the Common Pleas Court previously, and has been similarly unsuccessful. One notable loss here resulted in the United Artists Theater Circuit, Inc. v. Philadelphia Historical Commission I. Mr. Straub stated that the parameters of this appeal are very limited; it would only be successful if the Review Board was seen to have abused discretion or acted ultra vires.

Mr. First and Mr. Straub stated that they would work to formulate options to explore.

The Mayfair House, 401 W. Johnson Street

Mr. Spilove recused himself from any Commission business pertaining to the Mayfair House owing to a potential business conflict. The Chair of the Commission was turned over to Vice-Chairperson Stephanie Wolf for the duration of this discussion. Mr. Tyler, Ms. Kaplan, Mr. Wilds, and Mr. Barber also recused themselves as Ex-Officio Board Members of the Philadelphia Historic Preservation Corporation, a non-profit organization with a real property interest as the holder of a facade easement in the Mayfair House. These Commission members did not vote, nor did Mr. Tyler comment or offer a staff recommendation on this issue. Since a quorum was present at this meeting, any action carried by the majority vote of the

remaining Commission members was considered an action of the Commission.

Dr. Wolf asked for a statement about this issue from Commissioner Levin who had requested that the Mayfair House be added as an agenda item. Mr. Levin stated that the work ordered by the L & I Review Board has not been done and that with the building continues to create health and safety problems for the neighborhood. Furthermore, no payment has been made by the building owner or any of its representatives on back taxes. The Department of Licenses and Inspections now considers this an abandoned property, and as a result has now contracted for the demolition of the building. The Department is prepared to proceed with demolition by the end of the month. This information was brought before the Commission as a courtesy to inform the members Department's plans.

In addition to hearing this discussion of demolition, Commission members received a letter from the Mayfair House Coalition requesting that the property be removed from the Philadelphia Register. Noting that these are separate issues, Dr. Wolf asked what the Commission was being asked to do. Dr. Brownlee noted that the Mayfair House Coalition has asked for a particular action while Mr. Levin has not, and later stated that the Coalition's request should be referred to the Designation Committee by Commission vote.

Fred Dedrick of the Mayfair House Coalition explained that the letter asks for consideration of dedesignation and not necessarily Commission action at this time. He stated that the Philadelphia Historic Preservation Corporation (PHPC) does not seem interested in pursuing the protection of its easement in this case and dedesignation would allow it to avoid going to court. The members of the Mayfair House Coalition enthusiastically support Mr. Levin's intention to demolish the building.

Mr. Dedrick then described the neighborhood's struggle with this building and its owners. The building was first vacated in 1989 after being declared unfit for human habitation by L & I. Beginning in 1992, the neighbors of the Mayfair approached its owners, Arnav Industries, by phone, fax, and letter offering to help to find qualified developers and a way to rehabilitate this building. Letters to L & I outlining the building's problems were copied to Arnav. According to Mr. Dedrick, none of these efforts produced in a response. For years, vandals have repeatedly thrown objects such as paint cans and radiators from high windows onto the surrounding lawn and Johnson Street. This has apparently continued even after the L & I Review Board December meeting where the owners were ordered to seal the upper floors. The lower portion of the building was sealed and the windows of upper floors removed when the owner was threatened with demolition by the L & I. Plaster and lead paint from within the building has now begun to fall onto neighbors homes and yards.

Mr. Dedrick contends that the owners have no intention of performing the work they agreed to perform within 60 days of the December 17th hearing. He substantiated his claim with letters dated April and July from Arnav's attorney, Mr. Primavera, stating that the work to seal the windows of the upper floors will begin immediately. This work has yet to begin. Mr. Dedrick fears that this neglect will inevitably result in injuries or deaths, and stated that several neighbors have left or are planning to leave. He advised the Commission to be wary of the owner's promises and to support the demolition as necessary for the betterment of the neighborhood.

Others also spoke in favor of the demolition of the building. Kathy Ivens, a neighbor, questioned the historic designation of the Mayfair House. Augustus Baxter, another neighbor and a representative of the 8th Councilmanic District, stated that this building is not only an eyesore, but a serious problem in the community as an attractive nuisance.

Mr. Primavera spoke for the owner of the Mayfair House, stating first that his office was given very short notice about this hearing. He requested that any Commission action be deferred until those interested in saving the building may be properly prepared. He also expressed concern that so many Commission members were forced to recuse themselves. Mr. Primavera explained that Arnav Industries became the owners of the Mayfair House when they foreclosed on a \$5 million loan that had gone into default. As a result, several issues, including taxes owed, are in dispute.

With regard to sealing the upper floors, Mr. Primavera stated that a contract is in place, the materials have been ordered, and the money for the work is in escrow. The contractor, Veluci, will begin to perform this work next week (the week of 15 August). John Lahane of Tantala Associates, Project Engineer representing the owner for the rehabilitation, stated that the contractor has been paid for the materials to seal the upper floors. Subsequent payments to the contractor will be made on a progress basis. Mr. Levin stated that although a permit will not be needed for this work, the responsible parties must fill out the permit application for documentation purposes. This has yet to be done. Mr. Primavera remarked that he had never before been informed of this requirement.

Mr. Primavera contended that this historic building should not be destroyed because of the work of vandals and stated an intention to work with the neighborhood to maintain the property. The owner will take legal action if necessary to prevent the demolition of the building. He further stated that the owner may be within days of signing a letter of intent with a major developer for the property. Upon questioning by Ms. Matzkin, he amended that to the end of the month.

Ms. Rabinovitch asked why the City taxes have not been paid. Although Mr. Levin and the Mayfair House Coalition contend that City taxes have not been paid for at least the last two years, Mr. Primavera stated that some taxes were paid and some are still in dispute. Those taxes which are not in dispute, they "fully intend to pay." Ms. Rabinovitch questioned Arnav's probable intention to use City funding to help rehabilitate the building when they have not contributed to the City with their tax dollars in a timely fashion. Mr. Primavera responded that his client paid all taxes up to the Sheriff's sale, albeit to gain title insurance, and that Arnav's \$5 million investment in the property should not be ignored. Furthermore, this rehabilitation will employ many in the construction industry.

Dr. Brownlee stated that this discussion is taking place because of what the neighborhood and L & I see as an unabated nuisance and that there would be no discussion if the owner had a demonstrated record of fulfilling its obligations under law. He lamented that the owner's low credibility undermines the defense of this highly visible, historically significant building.

Randy Cotton, Vice President of the Philadelphia Historic Preservation Corporation (PHPC), made two points. First, he requested that those present dismiss the statements made by Mr. Dedrick regarding PHPC's ability or willingness to uphold the easement it holds on the Mayfair House. Second, through their lawyer, PHPC submitted a letter to Mr. Spilove, Mr. Tyler, the City Solicitor, and other Commission members. This letter stated that PHPC believes that this hearing does not offer them a fair hearing inasmuch as it was notified of it less than 48 hours before. No one from PHPC familiar with the case was available to speak including their executive director, legal counsel and executive and easement policy board members. Mr. Cotton came without complete knowledge of the facts of the case, and he declared that his presence should not be taken as PHPC's acknowledgement of this as a fair hearing.

Robert Vance stated that, although not a representative of PHPC, he attended a meeting with the PHPC counsel, executive director, and the head of the executive committee prior to a scheduled executive committee meeting, and that it became clear to him that PHPC was not interested in aggressively pursuing

whatever easement rights it has. He further objected to Mr. Cotton's characterization of this meeting as unfair. According to Mr. Vance, PHPC had the opportunity to hear the neighbors' sentiments at that meeting, and had an executive committee meeting scheduled directly afterwards to vote on a position. Owing to the lack of a quorum at that meeting, PHPC does not have a position. Mr. Vance stated that PHPC had its opportunity to act, and that the Commission should now act. He recommended that the Commission act in support of the endeavors of the Department of Licenses and Inspections.

Jennifer Goodman from the Preservation Coalition spoke to reiterate points put forward by the PHPC letter and a letter submitted by the Preservation Coalition for the record. Ms. Goodman recommended that the Commission make sure that all the correct application and review procedures have been followed for this building and stated that this issue of due process should be raised for all buildings reviewed by the Historical Commission.

Dr. Brownlee stated that the Commission is in a peculiar position -- not asked to do anything as the Historical Commission except consider dedesignation of the building, a Designation Committee matter. The issue of the building's demolition as described by Mr. Levin is not open to Commission action. Mr. First acknowledged that the Commission has no standing on this matter as there is no formal request for the Commission to approve or disapprove. Mr. Levin stated that L & I does not issue demolition permits to itself and that the bulldozer will be coming to the property within two weeks. Mr. Levin stated that the Department has a moral obligation to disclose intentions regarding historical buildings to the Commission.

Mr. First noted that it has never been formally resolved whether L & I must go through any of the procedures that all others must if it wants to demolish a building. The Rules and Regulations do not deal specifically with this situation, and the Law Department has never made a formal ruling. Dr. Wolf recommended that the Commission resolve to assure that its procedures are not compromised. Ms. Matzkin noted that the Commission's wishes have been overridden several times in the recent past with the "imminently dangerous" clause.

Milton Marks of the Preservation Coalition asked whether this demolition is the result of a public nuisance which needs to be abated or if it is considered an abandoned building for non-payment of taxes, and will the threat fall away if the taxes are paid. Mr. Levin stated that L & I considers this building an imminently dangerous structure owing to the tax situation, objects thrown from windows, the history of the owners, etc. The owner appealed a demolition order and a compromise was worked out. As stated previously, the owner's promises were never fulfilled.

As Mr. Levin announced his need to leave the meeting to attend to an emergency, Mr. Vance made a motion to support the Department's efforts with the Mayfair House without waiving any other rights the Commission may have with regard to L & I's demolition of historic buildings. This motion was seconded by Mr. VanderHeide. Mr. Brownlee declared that he would not be able to vote for this motion for two reasons. First, he did not believe that the short notice given to the owners and PHPC in advance of this meeting was sufficient for their preparation. Secondly, as the question of the Commission's legal standing with respect to demolition by L & I has not been resolved, a vote for support of such an action would constitute a legal precedent. Dr. Wolf stated that she would vote for tabling the motion. Mr. Vance withdrew his motion, agreeing that this legal determination should be made before any individual actions are taken.

Mr. Tyler spoke to the general issue of the Commission's legal standing, recommending that the Commission formally request a written opinion from the Solicitor's office. **Mr. Brownlee then moved to**

obtain a written opinion from the City Solicitor's office about the permitting of demolition undertaken by L & I. Mr. Vance seconded the motion, which was passed by unanimous vote.

Historic Districts in Philadelphia

Dr. Wolf then returned the Chair of the meeting to Mr. Spilove. Mr. Tyler suggested that the Commission defer its general consideration of the creation of historic districts, owing to the length of the Mayfair House discussion.

Ms. Goodman commented that if the postponement is to the next scheduled Commission meeting, a short description of the actions to be taken before that meeting should be given. Mr. Tyler explained that letters of notice to property owners were being printed and are due to be mailed on 1 September. Each owner in this property will receive two letters: one to the property owner at the owner's address as listed in the Department of Revenue's Real Estate files, and one to "OWNER" at the property address. In addition, posters will be placed in the neighborhood, informing both owners and tenants of buildings of the hearing. A legal notice in the newspaper will also be printed.

Mr. Tyler then proceeded to describe briefly further steps toward nominating an historic district in Philadelphia. The initial hearing should consist of a slide presentation describing the character of the district, testimony and discussion. Before this hearing, however, informational meetings will be held in the neighborhood. The initial hearing itself will be followed by an evening meeting in the neighborhood in order to afford everyone an opportunity to be heard. Ms. Kaplan recommended that this meeting follow the first by no more than one week.

Mr. Spilove recommended that the Commission meet again in the next week to ten days at the Commission offices.

Harry A. Batten Memorial Fund

Two disbursements from the Harry A. Batten Memorial Fund were requested by Mr. Tyler. First, a \$30 payment to Lori Plavin Salganicoff for the balance of a \$105 bill for signature digitization; \$75 had been approved previously. This was approved by unanimous vote. Second, Mr. Tyler requested funding not to exceed \$750 to attend the National Trust Convention in Boston. Four conference sessions will deal with legal and constitutional issues. Mr. Wilds asked how the Batten Fund is financed. Mr. Tyler stated that several Commission members donate their honorarium and that the Commission received royalties from the sale of Philadelphia Preserved, the HABS catalog. Mr. Wilds moved to authorize this expenditure. The motion was seconded by Ms. Wolf and approved by unanimous vote.

REPORT of the Activities of the Historical Commission Staff, June and July 1994.

Mr. Wilds asked about the Preston Retreat. Mr. Tyler stated that this was a part of the Pennsylvania Hospital complex of buildings east of 46th Street on Market Street. The Philadelphia Housing Authority (PHA) now has a development there. In the late 1950s/early 1960s, the Commission consented to the demolition of the majority of the complex, with the exception of a retaining wall. PHA would now like to remove this wall. Randal Baron and Jeffrey Barr visited the site, which is on the Philadelphia Register, and notified PHA of the necessary procedures for both Section 106 review and Historical Commission

review.

A motion to adjourn was made by Mr. Wilds, seconded by Dr. Brownlee and approved by unanimous vote at 12:00.

Respectfully submitted,

Lori Plavin Salganicoff