



CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1585

BOARD OF LICENSE AND INSPECTION REVIEW

VIA TELEFAX AND REGULAR MAIL

January 12, 2012

Neil Sklaroff, Esquire
Ballard Spahr
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Jane Lovitch Istvan
Senior Attorney, City of Phila. Law Dept.
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Carl Primavera, Esquire
Richard C. DeMarco, Esquire
Klehr Harrison
260 S. Broad Street
Philadelphia, PA 19102

Paul Boni, Esquire
325 Chestnut Street, Suite 1109
Philadelphia, PA 19106-2611

Samuel C. Stretton, Esquire
P.O. Box 3231
301 South High Street
West Chester, PA 19381

Re: Board of License and Inspection Review. Appeal Nos. 4147: 4220
Address: 223-225 South 6th Street, "Dilworth House"

Dear Counsel:

Enclosed please find a copy of the Amended Findings of Fact and Conclusions of Law in the above-referenced matters.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kenneth S. Butensky".

Kenneth S. Butensky
General Counsel
Board of License and Inspection Review
215-683-5419
215-683-5398 (Fax)

Enclosure

**CITY OF PHILADELPHIA
BOARD OF LICENSE AND INSPECTION REVIEW**

JOHN J. TURCHI, JR. and : APPEAL NO. 4147
MARY ELIZABETH TURCHI, h/w :

v. :

PHILADELPHIA BOARD OF LICENSE :
INSPECTION REVIEW :

Appellee :

And :

THE CONCERNED CITIZENS IN OPPOSITION :
TO THE DILWORTH DEVELOPMENT :
PROPOSAL, AN UNINCORPORATED ASSOC. :
ROBERT GREENBUAM, TRUSTEE AD LITEM :

Intervenor :

JOHN J. TURCHI, JR. and : APPEAL NO. 4220
MARY ELIZABETH TURCHI, h/w :

v. :

PHILADELPHIA BOARD OF LICENSE :
INSPECTION REVIEW :

Appellee :

And :

THE CONCERNED CITIZENS IN OPPOSITION :
TO THE DILWORTH DEVELOPMENT :
PROPOSAL, AN UNINCORPORATED ASSOC. :
ROBERT GREENBUAM, TRUSTEE AD LITEM :

Intervenor :

**AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
THE BOARD OF LICENSE AND INSPECTION REVIEW**

These matters are appeals that were filed with the Board of License and Inspection Review (the "Board") by Concerned Citizens Opposing the Dilworth Development Project with Robert Greenbaum, Esq. as Trustee, ad litem, Society Hill Civic Association (SHAC) and Matthew DeJulio and Benita Fair Lagsdorf, both members of SHAC, challenging a November 19, 2007 approval by the Philadelphia Historical Commission for a proposed development at 223-225 S.

6th Street through to Randolph Street, Philadelphia, Pennsylvania. Based on numerous public hearings and considering the Record, and upon receiving this matter upon remand from the Commonwealth Court of Pennsylvania, the Board hereby makes the following Amended Findings of Fact and Conclusions of Law.

AMENDED FINDINGS OF FACT

1. This matter concerns a proposed development at 223-225 South 6th Street through to Randolph Street, Philadelphia, Pennsylvania.
2. Situated on this property is a building, known as and hereafter referred to as "Dilworth House," that was constructed between 1957 and 1958.
3. The house was built for Philadelphia Mayor Richardson Dilworth and his wife Anne, and designed by Philadelphia architect G. Edwin Brumbaugh.
4. Dilworth House consists of three (3) stories.
5. The Athenaeum is located to the immediate north of Dilworth House. Though taller than Dilworth House, The Athenaeum also consists of three (3) stories.
6. The Lippincott Building, consisting of five (5) stories, is located to the immediate south of Dilworth House.
7. A row of brick dwellings is located to the east of Dilworth House on Randolph Street, which street is adjacent to the Dilworth House.
8. Washington Square is located to the west of Dilworth House.
9. Dilworth House is located within the Society Hill Historic Preservation District and fronts Washington Square on the east side of the Square.
10. The historic significance of Washington Square as one of the original five squares in

William Penn's plan for Philadelphia is common knowledge and is supported by written evidence found in the Record.

11. Dilworth House was formally nominated as a "contributing" building (identified in that nomination by its former tenant, the Philadelphia County Dental Society) and is listed as "significant" in the Society Hill Historic Preservation District.

12. John J. Turchi and Mary Elizabeth Turchi currently own Dilworth House.

13. The Turchis propose to remove certain portions of Dilworth House and erect a sixteen (16) story residential condominium tower, a condominium comprised of sixty-six thousand (66,000) square feet, with a height of approximately two hundred nineteen feet (219) designed by Venturi, Scott Brown and Associates, Inc.

14. Dilworth House is comprised of a three-story Colonial Revival structure, a front two-story stair hall and one- and two-story L-shaped portions in the back or eastern portion of the building. This rear wing, though sometimes and incorrectly referred to in the testimony as an "addition," is an original component of Dilworth House and contains the dining room and kitchen on the first floor and the master bedroom on the second floor. For purposes of orientation of Dilworth House, the rear wing of the building visible from Randolph Street, was distinguished from the square Colonial Revival portion of the building known as the "box."

15. It is noted that the Historical Commission considered various iterations of Dilworth House projects and conducted public hearings on them, hearing from numerous witnesses for and against the proposals.

16. On November 19, 2007 the Historical Commission issued an approval of Mr. and Mrs. Turchi's application for the removal of a section of the rear wall of the Colonial Revival

containing the large picture window, the two-story stair hall and the rear one- and two-story L-shaped portions of Dilworth House for construction of a sixteen story condominium tower.

17. Pursuant to Philadelphia Code §14-2007 (10) an appeal was taken from the Historical Commission by Concerned Citizens Opposing the Dilworth Development Project with Robert Greenbaum, Esq. as Trustee, ad litem, Society Hill Civic Association (SHAC) and Matthew DeJulio and Benita Fair Lagsdorf, both members of SHAC. These parties shall collectively be referred to hereinafter as "Appellants."

18. Based on the Record and numerous hearings the Board previously voted to sustain the appeal. The matter was then appealed to the Court of Common Pleas, First Judicial District of Pennsylvania where the Board's decision was affirmed. *Turchi v. BLIR, et al.*, CCP, Phila., 0810-00890; 0810-00899. The ruling of the Court of Common Pleas was then appealed to the Commonwealth Court of Pennsylvania which vacated the order of the Court of Common Pleas and remanded the matter to the Board to issue a new determination in accordance with Commonwealth Court's opinion. *Turchi v. BLIR, et al.*, Pa. Cmwlth., Nos. 1273 C.D. 2010; 1274 C.D. 2010.

REMOVAL OF PORTIONS OF DILWORTH HOUSE

19. Philadelphia Code §14-2007(7)(j) provides standards for demolishing a historic building or a building which contributes to the character of a historic district. Under this section the demolition must either be "necessary in the public interest" or be warranted because the building's owner cannot use the building for "any purpose for which it is or may be reasonably adapted."

20. Philadelphia Code §14-2007(2)(f) provides the following definition:

Demolition or demolish. The razing or destruction, whether entirely or in significant part, of a building, structure, site or object. Demolition includes the removal of a building, structure or object from its site or the removal or destruction of the facade or surface.

21. A fundamental issue in this matter is whether the removal of the front two-story stair hall, the rear L-shaped portion of Dilworth House along with sections of the Colonial Revival structure's rear wall constitutes "a razing or destruction ... in significant part." Philadelphia Code §14-2007(2)(f).

22. In its approval on November 19, 2007 the Historic Commission found that the proposed removal of certain parts of Dilworth House does not constitute a "demolition in significant part."

23. Relative to the Historic Preservation Code's definition of "demolition" and what may constitute "demolition in significant part" the Commission's Minutes of September 9, 2006 provide the following exchange between Commission members, staff and counsel:

Mr. Steinberg asked Mr. Copeland if the Rules & Regulations provide guidance for the interpretation of "demolition in significant part." Mr. Copeland replied, "not really." He quoted the demolition definition in the ordinance. He noted that the second sentence on the definition provides "some sense of the degree of removal" necessary to constitute "demolition in significant part." Mr. Sugrue asked Mr. Copeland if he perceived "façade" and "surface" as the key words. Mr. Copeland replied that he did; "removal of the façade or surface is demolition." Mr. Sugrue stated that neither the interior volume nor the footprint is the appropriate measure; it is façade or surface. Mr. Copeland opined that the percentage of demolition might not be relevant. Mr. Steinberg states that the ordinance and Rules provide "no real guidance." Mr. Copeland added: "no real guidance except 'in significant part'." Mr. James asked if any of the terminology related to demolition is defined in the Secretary of the Interior's Standards. Mr. Farnham stated that he knew of no definition of "significant demolition" within the Standards or Guidelines.

24. The Board finds that the term "significant part" found the Philadelphia Code's definition of "demolition or demolish" is not defined by Philadelphia Code §14-2007(2)(f) or the Secretary of the Interior's Standards for Rehabilitation.

25. The Board was presented with numerous documents and heard various testimony as to the amount of square feet of space in Dilworth House and what numerical percentage of the building's footprint is to be removed. The September 9, 2006 Minutes of the Historical Commission contain a representation from Dr. Jonathan Farnham (then the Historical Commission's Acting Historic Preservation Director) that Historical Commission staff calculated that 48% of the building's footprint would be demolished.

26. Though 48% of the building's footprint is to be removed (according to Historic Commission staff), in assessing the "appropriateness" of proposed removal and the reasonableness of the Historical Commission's decision the Board must consider the purposes of the Historic Preservation Code, the historical, architectural or aesthetic significance of a building, structure, site or object; the effect, design and compatibility of the proposed work, the Secretary of Interior's Standards, and any special conditions. See, §14-2007(1); (7)(k)(.1- .7).

27. Craig Schelter, an expert in city planning and urban development, provided testimony to the Commission and the Board.

28. George Thomas, Ph.D., an architectural historian, also provided testimony to the Commission and the Board.

29. Mr. Schelter encouraged a more global view on the issue of whether removal of portions of Dilworth House would be "significant." That is, rather than looking at the numerical value of square footage or footprint area that would be removed, Mr. Shelter pointed to the "public experience" when viewing Dilworth House after completion of the proposed project. Both Messrs. Schelter and Thomas testified that the "box" of the Colonial Revival structure of Dilworth House is the "significant" part of the structure and that most of that box would be

retained and remain visible to the public.

30. The significance of the rear wing that is to be removed was the subject of varying testimony. Dr. Thomas asserted that the rear wing of Dilworth House had the dining room, the kitchen, the pantry and serves "basically support services," (N.T., May 7, 2008, p. 26.), and is more of an "afterthought;" (*Id.* at 59) an anomaly and of lesser architectural value than the Colonial Revival portion of the structure.

31. John Gallery, Executive Director of the Preservation Alliance of Greater Philadelphia, testified that generally alterations are minor things, which may include demolition. However, in his view, the amount of the building to be removed translates into a demolition.

32. Mr. Gallery also testified that the rear wall section of the Colonial Revival structure containing the large picture window and the rear portion of Dilworth House are important parts of the building because they communicate the structure's 1950's attributes and identify the building as a "hybrid" of Colonial Revival and more contemporary (i.e., 1950's) architectural styles.

33. The rear wing of Dilworth House has been referred to by some in the Record as an "addition" or "afterthought." These views are in error because it is part of the home's original architecture and is specifically referenced in the Historical Commission's 1999 historic designation, which according to Dr. Thomas includes, "'One bay, two-story wing, double hung eight over 12 sash, stuccoed.' That's the rear wing. That's the part that's being removed." (N.T. 5-7-08, p. 23.) Dr. Thomas went on to state, "[t]hey included it in '99 as part of it, but in a sense their emphasis is on the front where they have 50 words and the back part has six words." *Id.* 39.

34. According to the September 9, 2006 Minutes of the Historical Commission,

“Brumbaugh does not mention the additions in his discussion of the building, Mr. Thomas asserted; therefore, they are less significant. They were stuck to the side of the building to solve modern problems.”

35. A quantitative analysis based on the amount of words that the official, historical designation lends to the rear wing of Dilworth House is unavailing and does not provide a reasonable basis for the Historical Commission’s decision. This Board has been charged with the duty to give deference to the “reasonable interpretations” of the Historic Preservation Code by the Historical Commission and not with accrediting speculative or convenient historic preservation theories extrapolated from vacuous word counts or speculative psycho-history. Claiming insight as to the inner thoughts of Mr. Brumbaugh, the architect of Dilworth House, by interpolating from Brumbaugh’s lack of discussion (so far as it is known) about “additions” (an incorrect reference to parts of the building that are in fact original) to minimize the rear wing of Dilworth House is not a reasonable basis to justify the proposed destruction. Some may criticize their aesthetics, but these portions serve to differentiate the Colonial Revival elements of the structure from the modern design and inform its hybrid composition. The rear wing as well as the Colonial Revival box that comprise Dilworth House are all part of the complete, original, historically designated structure that was especially designed for that space and are defining aspects that serve to characterize the property. §14-2007(7)(k)(.1),(.2),(.3),(.4),(.5) (6), Secretary of Interior Standards 1, 2, 5.

36. The Record contains a building survey (Turchi Exhibit 14) prepared by George E. Thomas, Ph.D. with assistance from materials conservationist Christopher Frey, M.S. In reference to the rear portion of Dilworth House, this survey provides,

On the rear, the building shifts into an unusual combination of contemporary suburban details, some modern uses of material, and historic details. The front block and first block of the rear wing are clad in Flemish bond while the service wing, like

the front stair wing, is clad in stucco. A sleeping porch of the sort common in Chester County farmhouses opens off the main second floor bedroom. This was always a part of the bedroom space and never functioned as a separate porch. The "porch" was designed to keep the proportion of the rear wing like those of colonial houses, while providing space along the party wall for a bathroom and dressing room. The roofs are of Pennsylvania slate.

37. It is hard to escape that removal of the rear wing would strip Dilworth House of several of the building's primary living areas, i.e., the master bedroom, dining room and kitchen, as well as "service" functions. Destruction of these primary elements, with their references to a Chester County farmhouse and the proportions of a colonial house, lends a qualitative context to the proposed, partial destruction of the building and whether this is a "razing or destruction" of a "significant part" of the residence. §14-2007(2)(f). At minimum, removal of these portions of Dilworth House go beyond a mere "change in the appearance" of the building and would involve much more than alterations such as "reproofing, cleaning or pointing" as contemplated by the Historical Code's definition of "alter or alteration." §14-2007 (2) (f).

38. Mr. Carey Yonce, an architect and Venturi's project manager for the proposed condominium tower, was qualified as an expert witness in the field of architecture (N.T., 4-30-08, p. 5). Mr. Yonce testified that "Robert Venturi's initial idea for the site was to play off the idea of a traditional Philadelphia row home where typically the street façade is the full width of the property, and then, as you go back, the house begins to step back to allow light into different areas of the house." (N.T., April 30, 2008, p. 22).

39. Mr. Yonce also testified that the south wall of the tower is considered the "party wall," housing the elevators and stairs and does not contain as many windows as the tower's other elevations. (*Id.*, at. 24). In acknowledging the lack of windows in the southern elevation, Mr. Yonce

testified that the solid portion of the wall will have "articulations" or patterns in the brick as well as a stepped façade where Venturi has "given an indication of the interior functions." (*Id.* at 59). Mr. Yonce further testified that one wall of the site "has to be ... the party wall side and the other one has the opportunity for more articulation." (*Id.* at 24). According to Mr. Yonce, the southern aspect of the tower was made the "party wall" largely in deference to the Athenaeum, the building that neighbors Dilworth House and that would neighbor the tower at the north elevation.

40. If Mr. Yonce's insights as an expert on architecture are to be credited as sound architectural theory and as a reasonable basis for the Historical Commission's decision, they must be capable of broad application when applied to other buildings, such as Dilworth House. With this in mind, the following testimony offered by Mr. Yonce, offered in context of the tower's south wall, is particularly illuminating when applied to Dilworth House and the portion of that building that is proposed for destruction:

I think another thing to say that, you know, architects draw elevations but they don't really exist. It's not really an accurate representation of what we see. And I know that a lot of attention has been paid to just this elevation and being critical of it as an entity, but I think that you have to conceive of them all four together. And in many ways, what we do here really informs the other facades, too. And it's the kind of dynamic between all four facades that makes an interesting building.

I think one of the things that Robert Venturi is known for is seldom do we do buildings where all four elevations are identical. Robert Venturi's very [sic] known for his ideas regarding context of the square, but also the context of the design, itself. (N.T., 4-30-08, p. 25)

41. The rear, non-Colonial Revival components of Dilworth House contain service as well as primary functions of the building and identify the building for what it is: a hybrid of architectural styles and physical record of their use. Mr. Yonce testified how "we design buildings from the outside in and from the inside out." (N.T., April 30, 2008, p. 24). The shadowing of the south

3 P. 12

"party wall" of the proposed tower that houses the stairs and elevators and the tower's references to a traditional Philadelphia row home were offered to show how Venturi incorporated architectural techniques to harmonize the new tower with the Society Hill Historic District. Similar to Venturi's use of non-identical elevations, Brumbaugh's use of 1950's construction to house the stairs and other service portions in the rear wing, as well the master bedroom's references to a farm house and proportions designed "like those of a colonial house," (Thomas, at Turchi Exhibit 14) are similarly valid construction techniques which give "indications of the interior functions." (N.T., 4-30-08, p. 59). Moreover, these portions create a physical record of the building's hybrid architecture by a recognized architect, establish a physical historic record, candidly represent Dilworth House to the surrounding streetscape, and contribute to the character of the Historic District. (7)(k)(1), (.2),(.3),(.4),(6), Secretary of Interior Standards 1, 2, 4, 5. The Historic Commission failed to "conceive of them all ... together" in the "context of the design, itself." (Yonce, N.T., 4-30-08, p. 25). Removal of these portions would contravene the purposes of the Historic Preservation Ordinance and undermine the historical and architectural significance of the building as well as the contribution that Dilworth House makes to the historic district.

42. The rear wing's architecture engenders distinctive features and construction techniques that are consonant with the purposes of the Historic Preservation Code and should therefore be preserved. §14-2007(1), (7)(k)(1),(.2),(.3),(.4),(6), Secretary of Interior Standards 1, 2, 5. Destruction of the rear wing to accommodate the placement of proposed condominium tower would therefore not be appropriate. §14-2007(7)(k)(4)(5), Secretary of Interior Standards 1, 2, 5.

43. The Turchis propose to demolish both the two-story stair hall and the one- and two-story rear wing of Dilworth House. The stair hall faces Washington Square. The rear wing is visible from Randolph Street.

44. Based on the Record the Board finds that a portion of the front facade of Dilworth House would be removed and therefore is not appropriate and is in contravention of the purpose and express provisions of the Historic Preservation code, §14-2007(1)(.1); (7) (k) (3), (4); Secretary of the Interior Standards 1, 2, 3, 5, 10.

45. Based on the Record the Board finds no basis or special conditions that warrant an exemption from the Historic Preservation Code. §14-2007(1),(.1);(k) (.7).

THE PROPOSED CONDOMINIUM TOWER

46. The Board was also presented with a voluminous amount of scale drawings, renderings, and photographs portraying the project as well as surrounding buildings and streetscape.

47. But for a section of the rear wall of the Colonial Revival structure being removed, the "box" portion of the building will remain in the proposed development of the condominium tower.

48. The condominium tower itself would be set back behind the box of Dilworth House with a cantilever over the rear wall of the structure to remain.

49. The sixteen story proposed tower, with a height of approximately two hundred nineteen feet, would have brick material at its base and have a stepped facade with a width of approximately fifty feet at the front or western aspect of the building.

50. The tower would be set back from the footway on Sixth Street and would be erected at and connected to the rear of the remaining portion of Dilworth House and wrap around the north

side, where the tower's entrance would be located.

51. Though the Board received testimony from the architect's project manager, Mr. Yonce, stating that the characteristics of the proposed tower are intended to "play off of a traditional Philadelphia row home," the Board finds that the tower will significantly dwarf the remaining portion of Dilworth House rendering it a subservient structure, relegating its historic integrity through the tower's massing, size and scale.

52. The Board finds that construction of the condominium tower would impair the integrity of the historic property and that demolition of original portions of Dilworth House in order to accommodate the tower is unreasonable. See, *Secretary of Interior Standard No. 10*.

53. It is acknowledged that Washington Square contains other large structures. The tower cannot simply be viewed in itself however; it must be in concordance with the purposes of the Historic Preservation Code, be compatible with the character of the historic site and district, neighboring structures, surroundings and streetscape and not destroy historic materials that characterize the property. §14-2007(1),(1)(6);(7)(k)(1),(2),(3),(4),(5),(6), Secretary of Interior Standards 2, 3, 5, and 9. Dilworth House received a historic designation and is located in a historic district. It is not appropriate under the Historic Preservation Ordinance to render this historic building (or what remains of it) as a footstool to the sixteen story tower that would be erected and overshadow it.

54. Based on the Record, the Board finds no basis or special conditions that warrant an exemption from the Historic Preservation Code. §14-2007 (1), (.1); (k) (.7).

55. Based on these factors, the Historical Commission's approval of the tower is not based on a reasonable interpretation of the Historic Preservation Code and is plainly erroneous.

AMENDED CONCLUSIONS OF LAW

1. The Board recognizes that the Historical Commission is a body comprised of experts in the field of historic preservation and other officials and that it regularly interprets its enabling legislation on historic structures and districts.

2. The Board concludes that there is no appropriate, reasonable basis to support the proposed demolition of portions of Dilworth House as said demolition would,

- a) be in contravention with the purposes of the Historic Preservation Ordinance;
- b) remove significant historical and architectural parts of the original building;
- c) remove a large portion of the building's footprint and destroy architecture which has received historic designation;
- d) remove portions of the original building that support and accentuate its dual or hybrid style of architecture and significantly lessen how this architectural technique communicates with the neighboring structures, surroundings and streetscape within the Historic District;
- e) remove valid examples of architecture that were part of the original, historically certified building;
- f) violate numerous Standards issued by the Secretary of the Interior concerning minimal changes to defining characteristics of the building, site and environment, and the building as a record of its time, place and use, and its construction techniques; and
- g) provide no basis for departing from the spirit of the Historic Preservation Ordinance and therefore warrant no exemption.

3. The Board concludes that a portion of the façade of Dilworth House would be

removed.

4. The Board concludes that removal of the section of the rear wall of the Colonial Revival containing the large picture window, and rear wing of Dilworth House, which contains the dining room, kitchen and master bedroom and service areas constitutes razing or destruction in significant part, goes beyond a mere alteration, is not appropriate, and thereby is a demolition under Philadelphia Code §14-2007(2)(f).

5. The Board concludes that the November 19, 2007 approval by the Historical Commission that Mr. and Mrs. Turchi's application "is not a demolition in significant part" was in error, is not based on reasonable interpretations of the Historic Preservation Ordinance, is in contravention of the Ordinance's purpose and is therefore plainly erroneous.

6. The Board concludes that the massing, size and scale of the proposed sixteen story condominium tower are not compatible with the purposes of the Historic Preservation Ordinance.

7. The Board concludes that the proposed tower would minimize the historical and architectural significance of Dilworth House.

8. The Board concludes that the proposed tower would be incompatible with and would unreasonably minimize and dwarf the historically designated Dilworth House and relegate its significance at the site and Historic District.

9. The Board concludes that removal of the portion of Dilworth House in order to accommodate the condominium tower would be in contravention of the purposes of the Historic Preservation Ordinance and the Secretary of the Interior's Standards for Rehabilitation.

10. The Board concludes that removing original portions of Dilworth House to accommodate a luxury condominium tower provides no basis for departing from the spirit of the

Historic Preservation Ordinance and therefore warrant no exemption.

11. The Board concludes that the November 19, 2007 approval by the Historical Commission of Mr. and Mrs. Turchi's application to construct the proposed sixteen story condominium tower was in error and is not based on reasonable interpretations of the Historic Preservation Ordinance and the Secretary of Interior's Standards and is therefore plainly erroneous.

12. The Board of License and Inspection Review has considered all testimony and the entire Record. Based on this evidence and upon giving due discretion and deference to the decision of the Historical Commission, the Board hereby sustains the appeal of Concerned Citizens Opposing the Dilworth Development Project with Robert Greenbaum, Esq. as Trustee, ad litem, Society Hill Civic Association (SHAC) and Matthew DeJulio and Benita Fair Lagsdorf, both members of SHAC from the Philadelphia Historical Commission's approval of November 19, 2007 for removal work and proposed condominium at 223-225 S. 6th Street through to Randolph Street, Philadelphia, Pennsylvania.

13. The Board is constrained to base its Findings and Conclusions on the opinion and order issued by a respected, superior tribunal, the Commonwealth Court of Pennsylvania. That is, the Board is to use the deferential standard of review and not overrule the Historical Commission unless it finds the Commission's decision was plainly erroneous or inconsistent with the Historic Preservation Ordinance. *Turchi v. BLIR, et al.*, Pa. Commw. 1273 C.D. 2010, 1274 C.D. 2010.

14. The Board observes that Philadelphia Home Rule Charter, Section 5-1005, "Board of License and Inspection Review" provides that the Board "may affirm, modify, reverse, vacate or

revoke the action from which the appeal was taken to it.”

15. The Board observes that numerous pronouncements of other Commonwealth Court panels have held that a body, specifically a City of Philadelphia administrative tribunal, that is not vested by the Philadelphia Home Rule Charter with the power to “modify” the actions of a department must therefore give discretion to that department. *City of Philadelphia Department of Human Services v. City of Philadelphia Civil Service Commission (Steve Carter)*, 895 A.2d 87 (Pa. Commw. 2006); *City of Philadelphia v. Civil Service Commission of the City of Philadelphia (Luna)*, 717 A.2d 1067, 1070 (Pa. Cmwlth. 1998) *abrogated on other grounds by Naylor v. Township of Hellam*, 565 Pa. 397, 773 A.2d 770 (2001); *City of Philadelphia v. Civil Service Commission; Appeal of: Laureen M. Boles*, 965 A.2d 389, (Pa. Cmwlth 2009).

16. The Board of License and Inspection Review is specifically vested by the Home Rule Charter with the power to modify decisions of other City actors which, based on the opinions *cited supra*, strongly suggests a substantial evidence standard of review rather than that of giving deference or discretion to the entity being reviewed. In these matters it was determined that that the Civil Service Commission, *because* it lacked investiture by the Philadelphia Home Rule Charter to “modify” the actions of a department head was therefore obligated to give discretion to that department head’s determination. This rationale weighs in favor of the Board of License and Inspection Review utilizing the substantial evidence standard of review.

17. The Board further observes that the Local Agency Law, 2 Pa.C.S. §254 provides that in the event of a complete record

“[t]he court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the

proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals). (Emphasis added).

18. The Board observes that the Commonwealth Court has made numerous pronouncements that the Board of License and Inspection Review is to utilize the substantial evidence standard of review. *McDonald's Corporation v. Board of License & Inspection Review of the City of Philadelphia Appeal of City of Philadelphia McDonald's Corporation and City of Philadelphia v. Rev. Larry H. Falcon Appeal of McDonald's Corporation*, 849 A.2d 1277 (2004 Pa. Commw.) ("This Court is not empowered to substitute its judgment for that of the Board when the decision is based on substantial evidence."); *Society Hill Civic Association, et al. v. Philadelphia Board of License and Inspection Review, et al.*, (Pa. Commw. 2006) (citing, *McDonalds*, "The Court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings are supported by substantial evidence."); *Mulberry Market, Inc. v. Philadelphia Board of License and Inspection Review, et al.*, 735 A.2d 761; 763 (Pa. Commw., 1999) ("Appellate review over a decision of a local agency where the trial court takes no new evidence is limited to determining whether constitutional rights were violated, an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether the procedure before the local agency was contrary to statute."

19. Notwithstanding these observations, the Board in reaching these Amended Findings of Fact and Conclusions of Law has employed the deferential standard of review in conformity and compliance with the Order and Opinion of the Commonwealth Court in *Turchi v BLIR*, Nos. 1273 C.D. 2010; 1274 C.D. 2010.

Vote of the Board of License and Inspection Review: Appeal No. 4147

Anthony P. Rabutino, Chair: City Affirmed

Claire Gatzmer, Vice Chair: Appeal Sustained

Beverly Coleman: Appeal Sustained (Resigned)

Tim Kerner: Appeal Sustained

Gary Lee: Appeal Sustained

Danny Rodriguez: Appeal Sustained

Vote of the Board of License and Inspection Review: Appeal No. 4220

Anthony P. Rabutino, Chair: City Affirmed

Claire Gatzmer, Vice Chair: Appeal Sustained

Beverly Coleman: Appeal Sustained (Resigned)

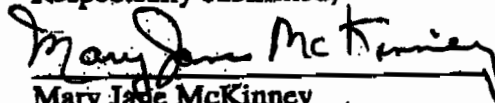
Tim Kerner: Appeal Sustained

Gary Lee: Appeal Sustained

Danny Rodriguez: Appeal Sustained

BY THE BOARD.

Respectfully submitted,



Mary Jade McKinney

Administrator

Board of License and Inspection Review

Kenneth S. Butensky, Esquire

General Counsel

Board of License and Inspection Review