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TESTIMONY OF THE GREENWICH VILLAGE SOCIETY
FOR HISTORIC PRESERVATION
REGARDING ST. VINCENT'S HOSPITAL HARDSHIP APPLICATION
TO THE LANDMARKS PRESERVATION COMMISSION

July 15, 2008

Hardship applications have been extremely rare in the 43-year history of New York City's landmarks law. It is the strongly held belief of the Greenwich Village Society for Historic Preservation that they must remain rare, and that all applicants be held to firm, fair, and clear standards so these exemptions are granted in only the most exceptional of circumstances, and only when a clear test has been met.

Because the hardship standard has largely been established by case law, we recognize the serious possibility the St. Vincent's application presents for setting precedent with potentially far-reaching consequences. Given the large number of institutions and non-profits located in Greenwich Village and throughout New York City's historic districts, it is critically important that an appropriate hardship standard be upheld here. We have no doubt that many other non-profits and institutions will look to this decision to gauge the possibilities available to them as a result.

The Preservation Committee of the Greenwich Village Society for Historic Preservation, which crafted this testimony, struggled mightily with the question of evaluating the hardship question in this case. We admit that some of the questions inherent in this may require legal, health policy, engineering, or other expertise beyond our capabilities -- independent expertise which we hope the LPC will secure and employ as part of its review. However, it was the consensus of the committee that there are some fundamental issues which *MUST* be addressed in evaluating this hardship application.

Firstly, it is imperative that the appropriate legal standard be applied in this case, especially as the case may help establish new precedent. St. Vincent's contends that the Sailor's Snug Harbor test (*Sailors' Snug Harbor v. Platt 29 A.D.2d 376, First Dept., 1968*), i.e. whether or not landmarks requirements significantly physically interfere with its ability to fulfill its charitable mission, is the appropriate standard to be applied here. However, the case has been made that the Penn Central ruling (*Penn Central Transportation Co. v. City of New York, 438 U.S.104, 1978*), decided by the United States Supreme Court and applied in the later St. Bartholomew's case, supersedes that decision. This would instead make the appropriate test whether or not a building can continue to be used for its current purpose. Though St. Vincent's advocates the Sailor's Snug Harbor test, we do not believe that it has yet been resolved why this later standard is not the more appropriate one to be applied here.

We also believe that the fact that the O'Toole Building was already within a

designated New York City Historic District when purchased by St. Vincent's Hospital requires serious consideration. This appears to be a unique situation among landmarks hardship cases which have previously been heard, all of which involved buildings that, by contrast, were landmarked *after* the applicant already owned them. A hardship claim for a building which was purchased with historic district restrictions already in place raises particularly troubling and problematic issues. It is our understanding that the New York State Court of Appeals ruled in *Gazza v. NYS Dept. of Environmental Conservation* 89 N.Y.2d 603 (1997) that hardship cannot be claimed for property where land use restrictions had predated its purchase. If this is so, the question must be answered as to how this hardship application can be reconciled with such case law.

Moving from the question of legal standards and precedents, it seems critically important that hardship exemptions should only be considered if an applicant has exhausted all reasonable alternatives. In evaluating this, it is our view that the burden falls upon the applicant, in this case St. Vincent's, to show that all such alternatives have in fact been fully explored and exhausted.

For example, we believe that St. Vincent's must show that it has exhaustively pursued all reasonable options for alternative sites for its new hospital, including sites beyond the properties it currently owns. We do recognize that "reasonable" in this case must take into account limitations regarding the location, size, and type of sites that can accommodate a medical center which serves the West Side of Manhattan between the Battery and 59th Street.

In addition, we believe that other alternatives must also be fully explored, including:

- renovating the existing hospital buildings;
- using other sites that St. Vincent's currently owns, such as the 16th Street site, either as is or by expanding the footprint through potential acquisition of neighboring properties;
- building a new hospital on the sites of the Coleman and Link buildings, which are not contributing buildings to the historic district; and
- splitting a new hospital between two or more buildings on either side of 7th Avenue.

While St. Vincent's has explored some of these possibilities, it has not done so conclusively, and it has not explored others. For those alternatives St. Vincent's has explored, we believe it is of the utmost importance that the LPC bring in independent government and/or private sector experts to evaluate the feasibility of these options, and ensure that all reasonable potential alternatives are fully considered.

We would be remiss not to highlight that there is clearly a great public need for the services St. Vincent's provides; in fact, that undeniable public need, along with the long and deep history of St. Vincent's as a part of the cultural heritage of Greenwich Village for more than 150 years, has been a large part of the argument for the approvals St. Vincent's has sought. We firmly believe that the services St. Vincent's

provides to this neighborhood and all the neighborhoods it serves are still very much needed, and that these services must continue. On the other hand, the continued preservation of a treasured history and streetscape through landmarking, and preserving the integrity of landmarks protections now and for years to come, are also unquestionably necessary and in the public interest, and also reflect the greater good of the city and long-standing public policy decisions.

It is this tension which has made our deliberations, and we believe those of many members of the public, so challenging. As currently configured, the hardship application forces a choice between these two public policy imperatives. We are hopeful that it is not necessary to make such a choice.

Toward that end, it is our strong belief that the City and the State should play a prominent role in this process. If necessary, we believe they should help with the identification and acquisition of alternative sites, and/or assist in other ways with realizing the modernization of the hospital, so that both of these public policy imperatives can be achieved. We believe that no matter the circumstances, City and State government have a responsibility to help ensure the continuation of a necessary public health and community service, financially and otherwise. Such assistance would seem especially appropriate in this case, when it is also needed to ensure that invaluable historic district protections and land use regulations are not diminished. We urge the LPC to bring the City and State into this process, so that the hospital's modernization can move forward without undermining the landmarks preservation law.

Finally, as we have stated previously, it is critical that the Commission not consider the hardship case and the application for the East Campus in isolation from one another. The two applications are inextricably interwoven in many ways. Sites and buildings on the East Campus may need to be considered as alternatives for a new hospital. And the impact that the proposed new building on the O'Toole site, if approved, would have on density and scale in the area should inform decisions about the appropriate density and scale of development on the East Campus.

We appreciate the Commission considering our testimony. We hope that you will use all of your powers to ensure that all alternatives are fully explored for this landmarks hardship case, and that the high standards for demonstrating hardships and preserving the integrity of landmarks regulations are maintained and upheld.