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Why We Demolish: Assessing Heritage Loss in Philadelphia as a Catalyst for Policy Innovation in Historic Preservation

Samantha E. Kuntz
University of Pennsylvania

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Why We Demolish: Assessing Heritage Loss in Philadelphia as a Catalyst for Policy Innovation in Historic Preservation

Abstract

Demolition of listed historic resources through policy provisions such as economic hardship and public interest has, in recent years, led to increased controversy and tension in the preservation community. As approvals to demolish such heritage anchors as the Sidney Hillman Medical Center, the Church of the Assumption, the Levy-Leas Mansion, the Episcopal Cathedral's Parish House, and the Boyd Theater interior continue to place the Philadelphia Historical Commission and developers at odds with preservation advocates, it is important to review the policy documents at the core of the issue. This thesis proposes that it is not the Commission but the policies that are complicating the Commission's ability to best protect heritage assets. By examining how and why historically designated properties are demolished in Philadelphia (through a review of policy precedents and local case studies), this work proposes policy recommendations to stimulate innovation in preservation and reduce prolonged demolition cases in the future.

Keywords

Philadelphia, historical commission, hardship, public interest, redevelopment

Disciplines

Historic Preservation and Conservation | Public Affairs, Public Policy and Public Administration | Urban, Community and Regional Planning

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WHY WE DEMOLISH.
ASSESSING HERITAGE LOSS IN PHILADELPHIA AS A CATALYST FOR POLICY INNOVATION IN
HISTORIC PRESERVATION

Samantha E. Kuntz

A THESIS

in

Historic Preservation

Presented to the Faculties of the University of Pennsylvania in
Partial Fulfillment of the Requirements of the Degree of

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Advisor / Program Chair
Randall F. Mason
Associate Professor

FOR

My parents and siblings, with your relentless support and encouragement.

And Brian, for your love, logic, and optimism.

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“The Place that Loves You Back” is Vanishing

The preservation of historic assets through their inscription to either the National Register of Historic Places or local historic inventories has been a mainstay of the historic preservation field since National Historic Preservation Act of 1966 formalized the process of designating buildings at the national level. In Philadelphia, however, heritage protection through designation preceded national legislation when the city founded the Philadelphia Historical Commission in 1955. Since that time, advocates of heritage buildings have fought the threat of demolition by affixing heritage buildings to registries that add heightened protective policies legally preventing demolition or unfavorable alternations to the site. But what happens when the circumstances change, and the protections become nothing more than faint obstacles in the course toward imminent demolition?

This question defines the core of an issue that has in recent years come to the forefront of the preservation field. Nearly sixty years after the creation of the Philadelphia Register of Historic Places established a standard for local preservation, listed historic resources under regulatory protection from demolition and alteration continue to face the prospect of demise. The threat, however, arises when such demolitions are sanctioned by apparent misapplications of the local historic ordinance that erode the original intentions of the protective policies. The inclusion of an economic hardship provision, for example, is intended as an escape hatch for burdensome policy order; but in recent applications of hardship for historic building demolitions the clause resembles a wide gap more than safety valve.

This condition is emblematic of the prevailing controversy over historic building demolition in Philadelphia, where concerns over demolition approvals based on economic hardship have elevated tensions between preservation advocates and authorities. In the past three years, the city has witnessed several high-profile cases that invoke economic hardship as a means of enabling the demolition of already-listed historic buildings. This can be seen in the Sidney Hillman Medical Center on Chestnut Street, the Church of the Assumption on Spring Garden Street, and the Levy-Leas House on South 40th Street (figures 1-3). The Philadelphia Historical Commission's demolition approvals for these sites have threatened the ability of preservation authorities and local advocates to work in tandem for the preservation of built heritage in Philadelphia.

This past year, the Philadelphia Historical Commission added another contested demolition to the list of grievances for preservation advocates: the Boyd Theater (figure 4). Built in 1928 as the Philadelphia only art deco movie house, the theater was first flagged by the National Trust for Historic Preservation as one of the 11 Most Endangered Historic Places in 2001.¹ After ceasing operations in 2002, the building was championed by a local non-profit organization, Friends of the Boyd, Inc., who sought to avert demolition by bringing awareness to its heritage value. The group successfully campaigned for the Boyd's inclusion on the Philadelphia Register of Historic Places in August 2008 and tentatively secured its survival; however, in 2013 the theater's owner, Live Nation Worldwide, Inc., submitted an application to the Philadelphia Historic Commission to demolish the movie house's historic interior.² Despite appeals by Friends of the Boyd, an offer

¹ National Trust for Historic Preservation, "11 Most Endangered Places: The Boyd Theater," accessed 08 April 2014, www.preservationnation.com.

² The Preservation Alliance for Greater Philadelphia, "Boyd Theater," webpage, (Philadelphia, PA: The Preservation Alliance for Greater Philadelphia, 2014.)

from an anonymous donor to purchase the building from Live Nation in February 2014, and substantial advocacy efforts launched by local groups such as the Preservation Alliance for Greater Philadelphia, the Philadelphia Historical Commission recently approved demolition of the building's interior due to claims of economic hardship.³ Demolition officially began three days after the Historical Commissions decision, effectively ending the fight to preserve the historic movie house. Like the other three recent cases in Philadelphia, the Boyd Theater debate speaks to a grave concern regarding the application of demolition devices like economic hardship to cases that may or may not warrant such exceptions.

The Philadelphia Register of Historic Places lists thousands of historic resources. And while the few instances of demolition do little to detract from the sheer number of assets protected by the register, each demolition eradicates significant sociocultural value from the landscape. Furthermore, it perpetuates an alarming ethos of simply removing anything that has seemingly outlived its purpose or stands in the way of a substantial redevelopment project, contradicting values identified by those who originally designated the sites so that they might be of consequence to future generations. Much of this threat emanates from actions of public officials and appointees, whose recent decisions, as this thesis argues, reflect a misinterpretation of both the policies and their role in application.

Means + Motives for Demolition

While demolition and redevelopment are inexorable aspects of all cities, decisions regarding demolition are complex. Historic preservation policies have evolved over the years to better respond to such dynamics by authorizing commissions to review cases regarding significant

³ Ashley Kuhn, "Boyd Theatre Demolition Begins; Preservationist 'Horrified,'" *Philly.com Daily News*, 19 March 2014.

changes to historic properties; however, in the case of Philadelphia, existing preservation policy does not adequately protect against the demolition of historically designated buildings. The current policies that enable demolition (discussed in detail in Chapter Three) are not stringent enough to protect heritage interests from development interests. They allow for reasonable loopholes to be misappropriated for economic gain, increase the subjectivity of decision-making, and reduce accountability of those removing heritage assets from the urban landscape. And as Philadelphia continues to adapt to the needs of a contemporary society and must compete with other modern cities, such instances of demolition will continue at this pace unless an reforms are made.

If Philadelphia is to ensure that its current policies and practices remain faithful to the goals of heritage conservation, the city must take a step back and contemplate: *why* are we demolishing historic buildings that others have already successfully fought to preserve, and *why* does it seem to be getting easier?

The question of *how* Philadelphia's listed buildings get demolished is fairly straightforward. In Philadelphia, the mechanisms for heritage building demolition may be found in two analogous forms (*financial or economic hardship* and *unnecessary hardship*) and one auxiliary form (*public interest*), all of which are represented in the Rules and Regulations Sections 9 through 11 and supported by the Historic Preservation Ordinance for the City of Philadelphia in the City Code, §14-2007.⁴ The local authorities also acknowledge one de facto mechanism (*demolition by neglect*) as a final justification for removing historic structures. Any of these policies may absolve

⁴ Philadelphia Historical Commission, "Rules and Regulations," *Revision Draft*, (Philadelphia, PA: Philadelphia Historical Commission, 2013).

a property of historic protections and allow for its demolition; however, they are merely the tools used to facilitate demolition and provide little insight into motive behind seeking demolition.

Thus it is the *why* – the motive, not the means – that threatens the nature of preservation in Philadelphia, as well as in other cities across the nation, and demands further examination as the central focus of this thesis. The language used for demolition provisions such as hardship, public interest, and neglect in policy documents is often indistinct and malleable. Due to the vague nature of these policies, politics and private economic interests appear to shape the decision making process disproportionately. Further investigation is necessary to better understand the leading catalysts behind use the demolition variances, because it is not the existence of demolition provisions but their use that is causing friction in the local preservation community. Policy makers need to anticipate these provocations and adopt policies that ensure a better realization of the fundamental goals of the 1955 Historic Preservation Ordinance and, ultimately, sustainable cultural heritage management in Philadelphia.

These issues of both means and the motives raise significant concerns regarding purpose and the efficacy of preservation policy in Philadelphia. Does the current system appropriately support a preservation agenda or does it favor a redevelopment agenda? Does it provide a meaningful avenue for the synthesis of heritage stewardship and urban revitalization? Or, are we perhaps ceding to outdated policy conventions that no longer protect the best interests of the historic built environment?

Methodology

The following work will proceed in succession from the issue identified in this chapter toward recommendations for improving local legislation in order to best assess how preservation policy in Philadelphia enables the demolition of historically designated properties, and connect the implications of such heritage decision-making on the form of the contemporary city. In the interval, this paper will discuss national precedents for historic preservation policy as it pertains to land use laws; review local preservation policy and sanctioned means of demolishing historically designated buildings; detail cases of heritage building demolition in Philadelphia and identify trends in demolition tendencies; and analyze gaps and weaknesses of the existing local preservation ordinance. Through this course of study, the paper intends to show how the controversial decision-making for historic assets such as the Boyd Theater transcends any single heritage building and speaks to a more complex and troublesome condition of the state of local preservation policy in Philadelphia.

The research to support this assertion comes from two primary data sets. The first is the record of national and local precedents that form the body of work on preservation policy. The second is the record of demolition cases in Philadelphia, which provides the core evidence used to prove the need to draft better policy in Philadelphia. Supported by policy and legal framework for preservation policy, and the local application of preservation law, the list of fifty-five demolition cases heard by the Philadelphia Historic Commission between 1985 and 2012 reveals a startling tendency in this post-urban renewal era to tear down historic structures standing in the way of urban progress. The demolition decisions themselves are largely subjective, and beholden to the unique conditions of each site, stakeholder priorities, and the whims of the administration.

However, it is possible to project changes to the current system that may anticipate challenges to the continued existence of historic buildings in the future and dictate a more rigorous standard of proof for their demolition. As such, preservation policy can be made more effective both in protecting heritage assets and facilitating insightful development of the urban landscape.

Historic preservation is regulated at three distinct levels of government – federal, state, and local – with each unit operating under a common fundamental definition of preservation policy that enables heritage needs to be pursued as legitimate government objectives.⁵ This chapter reviews the broad foundations that established preservation as a “permissible governmental goal,” according to Justice William Brennan in the landmark case of *Penn Central Transportation Co. v. City of New York*, gleaned from the National Historic Preservation Act of 1966 and the various court cases that have upheld the legitimacy of preservation policy since the mid-twentieth century.⁶

Legalizing Heritage Protection

Preservation in the early-twentieth century was enacted mostly by private entities protecting privately owned heritage assets. Despite passing the Antiquities Act of 1906 for cultural resource welfare, the federal government had little direct involvement in preservation activities aside from the 1916 formation of the National Parks Service until the mid-twentieth century; and state and local governments followed suit.⁷ However, in the 1930s the field evolved into a municipal occupation. Starting with Charleston, South Carolina in 1931 and followed soon after by New Orleans, Louisiana in 1937, local governments began to create historic districts – and the

⁵ *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646 (1978).

⁶ Ted Ligibel, Ilene R. Tyler, and Norman Tyler, *Historic Preservation: An Introduction to its History, Principles, and Practice*, 2nd ed., (New York City, NY: W. W. Norton & Company, 2009), 126.

⁷ Diane Lea, “America’s Preservation Ethos: A Tribute to Enduring Ideals,” in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, Robert E. Stipe, ed., (Chapel Hill, NC: Historic Preservation Foundation of North Carolina, Inc., 2003), 5.

ordinances legitimizing the districts – as reactive policy measures against large-scale demolition.⁸ Such early efforts to regulate preservation at a municipal level were to become the foundations of the field; yet, they operated without legal precedent for nearly two decades.

In 1954, however, the formalization of historic preservation law was galvanized by an unlikely source: a United States Supreme Court case allowing the demolition of an old building to make way for urban redevelopment in Washington, D.C. Described by Carol M. Rose as “the most ironic twist in the legal history of historic preservation,” the case of *Berman v. Parker* provided advocates the opportunity to advance historic preservation law on the tailwind of what may be viewed as a defeat for the protection of heritage buildings.⁹ The Supreme Court ruled unanimously that the District of Columbia Redevelopment Land Agency had the authority to identify and demolish blighted properties that posed a challenge to redevelopment plans without infringing on the rights of the owners of the blighted properties (figure 5).¹⁰ Though the judges’ opinions for *Berman v. Parker* contradicted urban development from a historic preservation perspective, “preservationists realized this precedent also could be used to justify ordinances protecting historic buildings. If a city could regulate *against* ‘ugly’ buildings...it could also regulate *for* ‘beautiful’ buildings.”¹¹ This interpretation proved the foundation for nascent preservation law and policy and defined the approach for defending the rights of historic properties.

⁸ Line Cofresi and Rosetta Radtke, “Local Government Programs: Preservation Where it Counts,” in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, Robert E. Stipe, ed., (Chapel Hill, NC: Historic Preservation Foundation of North Carolina, Inc., 2003), 118.

⁹ See *Berman v. Parker*, 348 U.S. 26 (1954); Carol M. Rose, “Preservation and Community: New Directions in the Law of Historic Preservation,” in *Stanford Law Review*, 33 no. 3, (Stanford Law Review, February 1981), 486.

¹⁰ The Oyez Project, “*Berman v. Parker*,” (IIT Chicago-Kent College of Law, 2011).

¹¹ Ligibel et al, 122.

Preservation law drew three critical lessons from *Berman v. Parker* in 1954. First, that there was a legal foundation for aesthetic regulation – albeit, a legal foundation in the reverse – that could be translated into heritage rights.¹² Second, that urban development and historic preservation are intrinsically connected, and thus preservation law must be approached in the same fashion as planning law. And third, that land use and zoning law would, from this point forward, become the foundation for historic preservation law.¹³ It is with these in mind that preservation law advanced as a legitimate and supported legal strategy for protecting built heritage, which would be endorsed just over a decade later by the inception of a federal preservation policy.

National Legislation and Land Use Regulation

The National Historic Preservation Act (NHPA) of 1966 set the standard for preservation policy at all levels of government. Though the Historic Sites Act of 1935 was the first substantial piece of Federal preservation law to follow the Antiquities Act of 1906, NHPA broadened the early conservation acts and legitimized the “active role” of the local governments in historic preservation.¹⁴ The act became the most comprehensive federally mandated documentation of heritage conservation in the United States, setting forth the principles of preservation and the means of regulating the protection of heritage assets.¹⁵ According to John M. Fowler, NHPA’s contribution to preservation policy may be conceived of as two primary functions: “to provide support and guidance for historic preservation programs at the state and local level and to promote the protection and enhancement of historic properties when federal activities are

¹² *Ibid*, 121-122.

¹³ *Ibid*.

¹⁴ Robert E. Stipe, “Where Do We Go From Here?,” in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, (Chapel Hill, NC: Historic Preservation Foundation of North Carolina, Inc., 2003), 461; Cofresi and Radtke, 119.

¹⁵ National Historic Preservation Act, 16 U.S.C. 470 (1966).

directly or indirectly involved.”¹⁶ While these two functions – state and local government on hand, federal government on the other – may appear diametrically opposed, NHPA actually establishes a precedent for partnership between all three units of government that forms the most salient theme of the federal act.¹⁷ Since NHPA’s inception, all tiers of the American government have been influenced by its decrees and thus the act remains the most significant model for heritage conservation law in the United States.

It is due to NHPA that state governments in particular are incentivized to develop historic preservation ordinances. By regulating the use of historically designated properties – public or private – historic ordinances enable preservation authorities to protect heritage assets and the values inherent in their existence. This degree of oversight may be construed as controversial, however, when it comes into conflict with the Constitutional rights relating to use of private property.

Land use law in the United States, upon which historic preservation law is based, operates under the supposition that American citizens have the right to use their properties at their own discretion without fear of government input or confiscation. This Constitutional right is protected by the Fourteenth Amendment, which “also ensures that government actions affecting private property must be ‘reasonable’ and ‘fair’ and must advance a legitimate public purpose;” as well as by the Fifth Amendment, which protects against the taking of private property without “just compensation.”¹⁸ In circumstances where the private property rights afforded by these two amendments are violated absent of reasonable and fair purposes or without just compensation,

¹⁶ John M. Fowler, “Historic Preservation Today,” in *The Urban Lawyer*, 12 no. 1. (The American Bar Association, Winter 1980), 7.

¹⁷ Fowler, “The Federal Preservation Program,” in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, Robert E. Stipe, ed., (Chapel Hill, NC: Historic Preservation Foundation of North Carolina, Inc., 2003), 35.

¹⁸ Ligibel et al, 121.

the act of inhibiting an owner's use of property constitutes a taking of their property and an infringement on their rights. Although historic preservation ordinances regularly place restrictions over the use of privately owned resources, the laws are protected against takings claims due to precedents set by high-profile court cases in which "protecting historic resources has consistently been upheld as a legitimate use of governmental authority".¹⁹

If the federal NHPA set the standard for policing preservation, then the American courts are responsible for confirming the legitimacy of its legal framework – and in some cases, advancing the cause – by upholding the right of historic preservation ordinances to regulate heritage buildings. In doing so, the courts have established the constitutionality of historic preservation legislation over the years. Since *Berman v. Parker* first empowered preservationists to protect historic assets using land use law precedents, the courts have continued to uphold heritage rights in significant cases such as *Maher v. City of New Orleans* (1974), *Figarsky v. Historic District Commission* (1976), and *Penn Central Transportation Company v. City of New York* (1978).²⁰ The later decision in particular set the tone for modern preservation law by recognizing preservation as a rightful goal for local governments to pursue. By siding with the City of New York in their decision to deny the right for Penn Central to develop their air rights above the historic Grand Central Terminal, the United States Supreme Court – in a six-to-three decision – endorsed local government use of preservation ordinances to protect historic resources. The landmark case, according to Ted J. Ligibel et al, "formed the legal basis for legislatures to grant cities the right to establish controls to which the owners of historic properties would be subject."²¹ As such, the

¹⁹ Julia H. Miller, "Providing for Economic Hardship Relief in the Regulation of Historic Properties," in *Preservation Law Reporter*, (September 1996), 1130.

²⁰ See *Maher v. City of New Orleans*, 371 F. Supp. 653, 663 (E.D. La. 1974); *Figarsky v. Historic District Commission*, 171 Conn. 198, 368 A.2d 163 (1976); *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646 (1978).

²¹ Ligibel et al, 126.

Penn Central decision shaped contemporary preservation policy and formally verified the significance of local government in protecting and regulating private properties for the benefit of heritage conservation.

The significance of this case cannot be overstated. In addition to irrefutably grounding preservation policy in a landmark case of the nation's highest court, the decision stood as a reflection of public support for the field of historic preservation. As Thompson Mayes writes:

Preservation laws provide us with a measure of the strength of public support for preservation. Although laws are not a perfect reflection of society's values and do not represent the values of every individual in society, they do provide some indication of society's shared goals and priorities and the resources we value.²²

If such an understanding of preservation law is applied to the Penn Central case, then the majority opinion of the court demonstrated a growing public investment in preserving historic structures in 1978, barely two decades after *Berman v. Parker* indicated a lack of concern for retaining old buildings in urban spaces. This emphasis on preservation thusly reflects the legitimacy of not only preservation in the legal sense, but also preservation as a socially supported pursuit that justifies government intervention.

Preservation Policy

Though NHPA and subsequent Federal cases such as Penn Central have formalized the legal right to invoke preservation objectives to regulate buildings for preservation, the administration of

²² Thompson Mayes, "Preservation Law and Public Policy: Balancing Priorities and Building an Ethic" in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, Robert E. Stipe, ed., (Chapel Hill, NC: Historic Preservation Foundation of North Carolina, Inc., 2003), 159.

preservation law typically falls firmly to the localized governments.²³ As Mayes notes, “NHPA does not *require* the federal government to preserve historic resources, only to consider them.”²⁴ It is therefore at the discretion of state and city governments to formulate and apply local preservation policy.

John de Monchaux and J. Mark Schuster propose five – and only five – types of tools for implementing preservation policy at all levels of government: *ownership and operation*, which involves direct government control over a historic asset; *regulation*, an indirect control device whereby governments dictate the actions of independent owners and operators of historic assets; *incentives (and disincentives)*, used by governments to influence the actions of independent actors; *establishment, allocation, and enforcement of property rights*, which enables governments to effect better preservation through legal means; and *information*, a resource used by governments to stimulate public support for preservation and inspire independent actors to make decisions that benefit preservation goals.²⁵

According to De Monchaux and Schuster, each of these tools represents a form of government intervention that together form the entirety of options for effecting change in heritage policy. Furthermore, in this model, the five tools are expressed as messages to help define the application of tools to policy. For example, the fourth tool of Property Rights is presented as a statement that reads, “you have the right to do *x*, and the state will enforce that right.”²⁶ This view emphasizes the relationship between the regulatory entity (national, state, or city

²³ **N.B.** The decision-making capacity of states is conferred by Section 106 of NHPA, see National Historic Preservation Act, 16 U.S.C. 470f (1966).

²⁴ Mayes, 159.

²⁵ John de Monchaux and J. Mark Schuster, “Five Things to Do,” in *Preserving Built Heritage: Tools for Implementation*, John de Monchaux, Charles A. Riley, II, and J. Mark Schuster, eds., (Hanover, NH: University Press of New England, 1997), 5.

²⁶ *Ibid*, 6.

government) and the actor (private citizen, corporation, or other public body), strengthening the theme of collaboration and partnership that runs throughout preservation law and policy. It is also worthwhile to note that every form of government has these five tools at its disposal; however, it is how the tools are wielded that determines the efficacy of preservation policy in any given context.

It is with these concepts of collaboration and context in mind that we must regard our current systems of preservation policy. Preservation policy is not a static device imposed by a government entity, but a reflexive construct employed to protect vital cultural assets. It must be reviewed at various intervals in response to changes in the political, social, and historic landscapes and balance the maintenance of cultural assets against other public good objectives such as economic development in order to remain a potent resource for protecting built heritage.

The most influential policies for historic preservation are found not at the federal or state levels, but at the local level.²⁷ In order to understand the nature of preservation policy as it pertains to historic building demolition, this chapter will review the functional capacity of the Philadelphia Historical Commission to protect and preserve historic assets. It will also address the legally sanctioned methods for demolishing historic buildings as outlined by the City of Philadelphia Historic Preservation Ordinance and provide a focused account of the most obstreperous aspect of local preservation policy today: economic hardship.

It should also be noted that the Philadelphia Historical Commission is not the only municipal entity responsible for reviewing demolition cases for other aspects of public policy, or even the only agency engaged with historically listed building demolition. Other agencies include the Philadelphia Redevelopment Authority, the Office of Housing and Community Development, and the Board of Licenses and Inspection Review. The last agency is especially relevant in preservation policy as it is responsible for reviewing initial appeals to Historical Commission decisions prior to the appeals advancing to the courts.²⁸ However, this paper focuses on the policies created for and enforced by the Commission, and thus the other agencies are of secondary relevance to the matter at hand.

²⁷ Cofresi and Radtke,, 117.

²⁸ **N.B.** For more information of demolition in the City of Philadelphia, see The Philadelphia Building and Occupancy Code, Philadelphia Code § 4-200 (Subcode "A," 2003).

Local Regulation

The responsibility to legislate historic preservation in Philadelphia falls to the Philadelphia Historical Commission, a regulatory agency authorized under the city's Zoning Code. A recognized Certified Local Government by the National Park Service and the Pennsylvania State Historic Preservation Office since 1986, the Commission bears responsibility for stewardship of historic assets as established by the City of Philadelphia Historic Preservation Ordinance (Table 1). It has the ability to designate buildings to the local register of historic places, develop local historic districts boundaries, and review applications for any actions – including demolition – that alter the character of designated historic resources and of resources within the established historic districts. Additionally, according to the Philadelphia Historical Commission's Rules and Regulations, the Commission is authorized to maintain an "advocacy function within the municipal government in the duty to make recommendations to the Mayor and City Council and a like role with the public at large in its obligations to increase awareness of the values of historic preservation."²⁹ As such, the Commission has two primary responsibilities: to promote heritage conservation and to protect its existence via preservation policy.

²⁹ Philadelphia Historical Commission, "Rules and Regulations," (Philadelphia, PA: Philadelphia Historical Commission, 2010), 7.

Stated Purposes of Historic Preservation Policy in Philadelphia³⁰

- (1) Preserve buildings, structures, sites, and objects that are important to the education, culture, traditions, and economic values of the City

 - (2) Establish historic districts to assure that the character of such districts is retained and enhanced

 - (3) Encourage the restoration and rehabilitation of buildings, structures, sites, and objects that are designated as historic or that are located within and contribute to the character of districts designated as historic without displacing elderly, long-term, and other residents living within those districts

 - (4) Afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of historic buildings, structures, sites, and objects that are designated individually or that contribute to the character of historic districts

 - (5) Strengthen the economy of the City by enhancing the City's attractiveness to tourists and by stabilizing and improving property values

 - (6) Foster civic pride in the architectural, historical, cultural, and educational accomplishments of Philadelphia
-

Table 1 | Core objectives of the preservation policy in Philadelphia, as outlined by the City of Philadelphia Historic Preservation Ordinance.

However, it is through policy that the Historical Commission has the greatest impact on preserving the city's heritage. Preservation policy enables the local government to intervene at critical moments in the lifecycle of a heritage site to protect its associative and potential values. Consider this capacity within the context of de Monchaux and Schuster's "Five Tools" (Table 2).

³⁰ Philadelphia Historical Commission, "City of Philadelphia Historic Preservation Ordinance," (Philadelphia, PA: Philadelphia Historical Commission, 2012), Chapter 14-1000: Historic Preservation § 14-1001 Public Policy and Purposes.

Policy Tool	Select Examples from the City of Philadelphia Historic Preservation Ordinance Powers and Duties
(1) <i>Ownership and Operation</i>	“Make recommendations to the Mayor and City Council that the City purchase any building, structure, site, or object of historic significance where private preservation is not feasible, or that the City acquire façade easements, development rights, or any other property interest that would promote historic preservation.”
(2) <i>Regulation</i>	“Review and act upon all applications for building permits to alter or demolish historic buildings, structures, sites, or objects, or to alter or demolish buildings, structures, sites, or objects located within historic districts (§14-1005).”
(3) <i>Incentives and Disincentives</i>	“Make recommendations to the Mayor and City Council concerning the use of grants, gifts, and budgetary appropriations to promote the preservation of buildings, structures, site, objects, or districts of historic importance to the City.”
(4) <i>Property Rights</i>	“Designate as historic those buildings, structures, sites, and objects that the Historical Commission determines significant to the city (§14-1004(1)).”
(5) <i>Information</i>	“Increase public awareness of the value of architectural, cultural, and historic preservation.”

Table 2 | Philadelphia preservation policy in the context of de Monchaux and Schuster’s “Five Tools of Government Action.”³¹

The Philadelphia Historical Commission has, by way of the local historic preservation ordinance, all of the authority at its disposal to develop a meaningful “tools approach to government action,” and exhibits evidence all of five of the tools that de Monchaux and Schuster propose are critical to developing a meaningful approach to preservation through public policy.³² It is the second of these five tools, *regulation*, which comes into sharp focus when addressing demolition decision-making. The City of Philadelphia Historic Preservation Ordinance has the authority to restrict demolition unless a reasonable argument is made to overturn the restriction. There are only three such provisions for demolishing a historically designated building accord to local

³¹ *Ibid*, 5; Philadelphia Historical Commission, “City of Philadelphia Historic Preservation Ordinance,” Sections 14- 2007(7)(f) and (j).

³² De Monchaux and Schuster, 2.

preservation policy – neglect, public interest, and economic hardship – which will be discussed in further detail at the end of this chapter.

Economic Hardship: Preservation's 'Safety Valve'

Economic hardship is defined as a legal recourse within historic preservation policy as in other areas of local government, functioning as a variance from historic preservation ordinances that mandate strict governmental authority over private property.³³ Grounded in the basic tenets of property rights, economic hardship is invoked in critical situations where a government regulation of privately owned property proves so financially onerous that it might be considered a takings according to the Fifth Amendment. It provides an avenue for property owners to seek administrative relief from any undue financial burdens of maintaining a historic resource. As such, hardship acts as a safeguard against infringements on private property for both property owners and administrators of preservation law.

The overall concept of economic hardship has been clearly demarcated and finessed over decades of policy challenges, so that it holds within federal and state courts of law.³⁴ However, hardship is a decidedly local issue. According to Julia Miller, “the term ‘economic hardship,’ or its equivalent, can mean whatever the local jurisdiction has prescribed it to mean, subject to state enabling law.”³⁵ Though the concept is supported by legal precedence at the federal level,

³³ National Trust for Historic Preservation, “Economic Hardship,” (Washington, D.C.: Preservation Nation, 2013).

³⁴ Miller, 1135.

³⁵ *Ibid*, 1136.

hardship – like much of preservation policy – is a local historic commission’s tool, falling within the scope of authority to regulate private property according to state mandate.³⁶

The process to demolish a historically designated structure on the basis of economic hardship in Philadelphia is fairly straightforward. Regardless of established cultural value, historic building demolitions are sanctioned by local preservation ordinance based on evidence of any financial burden that cannot be otherwise resolved. In order to demolish under this pretext, property owners in Philadelphia must submit a claim that proves beyond reasonable doubt that the “building, structure, site, object, or public interior portion of a building or structure cannot be used for any purpose for which it is or may reasonably be adapted.”³⁷ The Committee on Financial Hardship, a technical advisory committee within the Historical Commission, subsequently assesses the validity of the claim before passing the case on for review by the Architectural Committee. Afterward, the case is sent to the Historical Commission for final decision.³⁸ Once the Commission has ruled in favor of demolition due to hardship, it is within the legal right for dissenters to appeal the decision with the Board Licenses and Inspections Review. However, financial resources for litigation are limited for both parties and the process is often more burdensome than successful.

Although the process may be straightforward, the policies behind the undertaking require a considerable degree of legal interpretation that has given rise to significant controversy in recent years. The three provisions for heritage resource demolition are problematic in that objective policies necessitate subjective applications of the law. This can be seen in each of the three

³⁶ National Trust for Historic Preservation, “Authority to Regulate,” (Washington, D.C.: Preservation Nation, 2013).

³⁷ Philadelphia Historical Commission, “City of Philadelphia Historic Preservation Ordinance, Sections 14- 2007(7)(f) and (j).

³⁸ *Ibid*, “Rules and Regulations,” (Philadelphia, PA: Philadelphia Historical Commission, 2010), 54.

variances authorized by the Historic Preservation Ordinance: *demolition by neglect*, where a lack of maintenance has led to a dangerous deterioration of the historic structure and it poses a hazard to the environment; *demolition in the public interest*, in which the case can be made that it is more valuable to the community to demolish the historic structure and replace it with a different type of public asset; and *demolition by financial (or economic) hardship*, which exempts property owners from such a financial burden that the ordinance may be construed as an infringement on their property rights and constitute a taking.³⁹ Though the Philadelphia Historical Commission has approved demolitions based on all three of these regulatory variances – and in many earlier cases, without any cause at all – the current system of preservation policy in the city is plagued by controversies surrounding the latter device of economic hardship.

This is due to the fact that despite the policy’s origin as a “safety valve provision” for individual property owners, the clause has become a go-to claim for larger organizations striving to make their properties more profitable (discussed in further detail in Chapters 4 and 5).⁴⁰ The issue, therefore, is not the loss of the historic resources so much as it is the application of preservation policy to achieve that outcome. And it is this misapplication of the provision that emphasizes the fragility of preservation ordinances whose loopholes potentially allow for the laws to be molded to the needs of the applicant.

Instead of addressing the public’s mounting concerns vis-à-vis the problematic policy, the Philadelphia Historical Commission recently proceeded with changes to the local ordinance that strengthened the existing the legislative process. Executive Director Jon Farnham proposed

³⁹ Philadelphia Historical Commission, “Rules and Regulations,” 56-61; Mayes, 178.

⁴⁰ Christopher J. Duerksen, ed., *A Handbook on Historic Preservation Law*, (Washington, D.C.: The Conservation Foundation and The National Center for Preservation Law, 1983), 104.

changes in 2013 to the review process of financial hardship within the Rules and Regulations that would better allow the Commission to assert its proper authority, without what Farnham refers to as the “fear of frivolous challenge.”⁴¹ The proposed change to the hardship section of the Rules and Regulations involves a slight alteration of the text that requires hardship applicants to attempt to sell the property in order to prove, beyond a doubt, that there is no feasible economic return on the structure. Finding this aspect to be both burdensome in its own right and the source of the contention in the Commission’s recent rulings, Farnham suggested the Commission instead adopt language similar to that of the Historical Preservation Ordinance, which strikes the sale imperative and highlights the need to demonstrate that “a building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted” and that “sale of the property is impractical.”⁴²

Such changes increase the ease of obtaining demolition approval and abstract the economic hardship clause from its original intent. Furthermore, this manner of resolution merely appears to manipulate the demolition provisions of local preservation policy from “assurance[s] to property owners that relief is available in situations where the impact of a particular action proves to be especially harsh” to a strategies for demolishing historic resources.⁴³ If so, then the trajectory of preservation policy in Philadelphia is therefore moving away from the Historical Commission’s formal purpose to preserve and protect heritage assets “in the interests of the health, prosperity, and welfare of the people of Philadelphia.”⁴⁴ Swift intervention in Philadelphia’s approach to preservation policy enabling demolition is thus necessary to prevent

⁴¹ Jonathan Farnham, “Proposed Revisions to the Rules & Regulations,” *Internal Memorandum*, (Philadelphia, PA: Philadelphia Historical Commission, 1 March 2013), 1.

⁴² Farnham, 4.

⁴³ Miller, 1131.

⁴⁴ Philadelphia Historical Commission, “City of Philadelphia Historic Preservation Ordinance,” § 14-1001.

further damage to the inventory of historic resources, to the legislative system, and to the trust between decision-makers and the public.

4 | LOCAL DEMOLITION CASES

Despite the current uptick in historic demolition controversies, demolition of listed historic buildings has actually decreased in recent years. This chapter and the next explore the matter in further detail by presenting demolition data and documenting several recent cases. Between the creation of the Philadelphia Historical Commission in 1955 and its reorganization under Section 14-2007 of the Philadelphia City Code in 1985, there were more than 500 documented cases of heritage building demolition.⁴⁵ The Commission has approved demolition 37 times since 1985, which is approximately 66% of all such demolition requests. However, demolition approval remains a key aspect of distrust between bureaucrats and the public – not because of the number of approvals but because of the ineffectiveness of the policies that are intended to prevent such loss. In considering the implementation of policy in last three decades of demolition decisions and analyzing critical data of recent case studies, it will be possible to assess gaps and weaknesses in the current system of preservation policy.

Demolishing Heritage: 1985-2013

The most comprehensive list of Philadelphia’s heritage demolitions covers only the past three decades of policy application. Philadelphia Historical Commission Executive Director Jonathan Farnham compiled the dataset in 2013 to serve as internal reference material for the Commission, which at that point was already deeply engaged in demolition controversies. The data summarizes the case history of all 56 locally designated historic properties whose owners

⁴⁵ Jonathan Farnham, “Summary Database of Old Demo Cases,” (Unpublished dataset, Philadelphia Historical Commission, 2012), Microsoft Word file.

requested their demolition between 1985 and 2012.⁴⁶ At present, the Commission's archives contain individual records of all demolition cases brought forth from the agency's inception in 1955; but these cases have not been comprehensively compiled. Only cases heard after the reorganization of the Commission in 1985 were aggregated for the dataset due to their relevance in the application of contemporary policies.⁴⁷

After listing all cases chronologically from 1985 to present, Farnham cataloged the approved cases under three main categories (table 3). *Approvals with Hardship Findings* include all cases proving an economic burden on the property owner. *Approvals with Public Interest Findings* contain all cases where property owners were able to convince the Commission that demolition would allow for the heritage resource to be replaced by another, greater public good. And finally, *Approvals with No Finding* refers to historic resources granted demolition by the Commission without specifically citing causes within the Historic Preservation Ordinance or elucidated in the Rules and Regulations. In such cases, the structures were torn down either for issues of neglect or for reasons beyond the scope of the Commission's authority (indicating a considerable loophole in the ordinance whereby historic structures have been demolished for reasons beyond the three variances).⁴⁸ All other cases not included in any of the three approval categories were withdrawn by the application, denied by Commission, or tabled for more information and never resumed.

The list reveals that the Commission has approved total demolition for 37 historic buildings since 1985, roughly 66% of all demolition cases brought forth (charts 1-2). That statistic rises to

⁴⁶ **N.B.** Tables and graphics in this document redesigned from dataset by author. The most recent demolition case, the Boyd Theater, was added to the list by the author based on the timing of this report.

⁴⁷ **N.B.** A full catalogue of Philadelphia Historical Commission demolition cases can be found in Appendix A.

⁴⁸ Jonathan Farnham, *interview*, (Philadelphia, PA: Philadelphia Historic Commission, 1 August 2013).

approximately 73% when partial demolitions – approvals granted for only sections of a historic resource, or interior demolitions – are factored into the equation. Yet approvals have decreased significantly in the past few years under the administration of Mayor Michael Nutter. Compared with the three previous administrations, which together granted 33 full demolitions in the span of 23 years, the current iteration of the Historical Commission under Mayor Nutter has only approved four total demolitions and one partial demolition. It is worth noting, however, that while approvals have decreased, the number of approvals as a percent of total demolition cases brought forth has risen to nearly 80% (or 100%, if partial demolitions are counted).

	1985-1992	1992-2000	2000-2008	2008-2013	TOTAL
TOTAL CASES ⁴⁹	21	17	13	5	56
APPROVED	12	9	12	4	37
Financial Hardship	3	1	3	3	10
Public Interest	1	0	4	1	6
No Findings	8	8	5	0	21
PARTIALLY APPROVED ⁵⁰	2	1	0	1	4
DENIED	3	1	0	0	4
NO DECISION	4	6	1	0	11

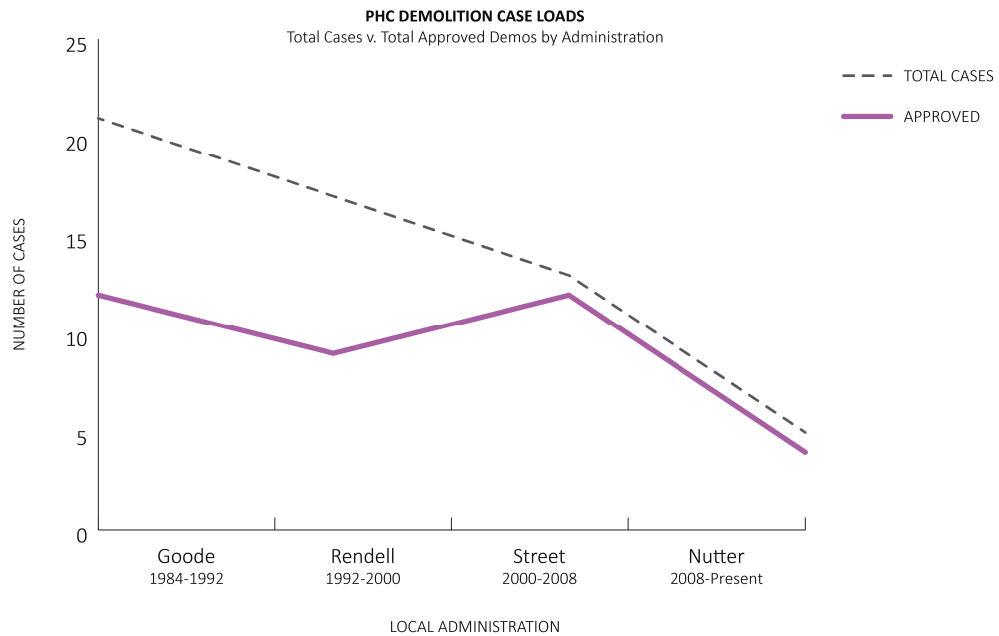
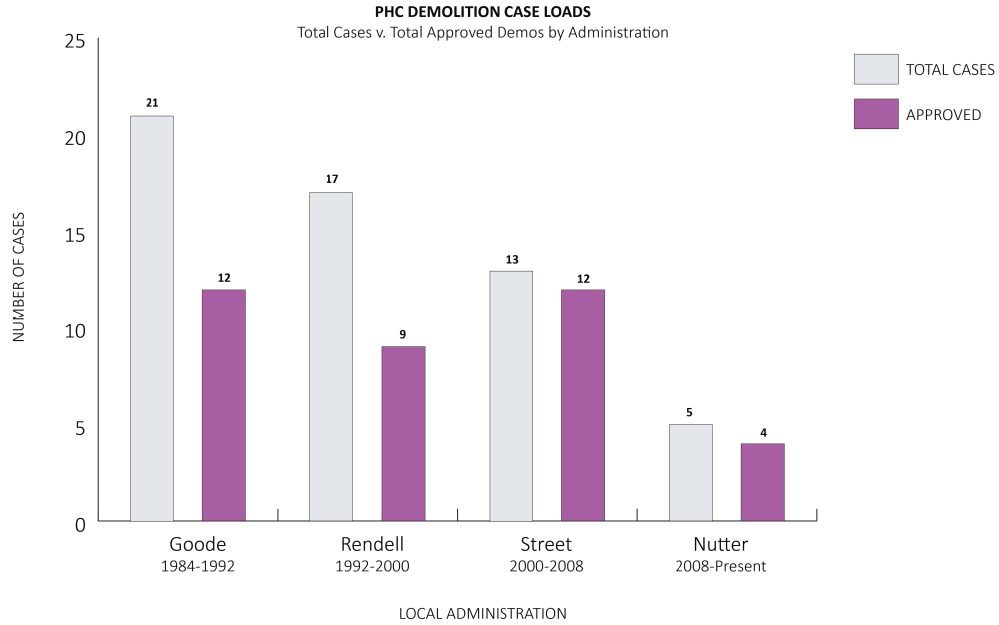
Table 3 | Demolition Summary Table: Matrix of decisions by administration and justifications.

⁴⁹ **N.B.** The dataset is a record of all cases of demolition, but does not indicate cases where approved demolitions were not carried out.

⁵⁰ **N.B.** *Partially Approved* refers to heritage resources not granted total demolition by the Commission. Such cases include the demolition of sections of the whole resource, façade preservation, and interior demolitions, which erase significant heritage value but reserve a degree of the original resource. Category added by author to differentiate between total eradication of local resources and massive alterations such as the Boyd Theater.

Aside from the general reduction in both cases of demolition and Commission approvals, there has been a substantial change in frequency of certain justifications applied to heritage demolition requests (chart 3). From 1985 to 2008, the majority of demolitions were approved without findings of either public interest or financial hardship. 63% of the demolitions that advanced in that time span with approval from the Commission lacked the burden of proof mandated by the Historic Preservation Ordinance. Though many of these cases may, in fact, fall under the category of demolition by neglect, they are not attributed as such in Farnham's dataset. The last of such approvals without finding concluded in 2007, however, and have not since been brought to the Commission for judgment. Recently, however, financial hardship has taken its place as the most persistent cause for demolition.

Frequent approvals of financial hardship claim complicate the picture of reduced demolitions. Even if the total number of claims and approvals has recently decreased, the certainty of demolition success based on hardship is rapidly increasing (chart 4). As a percent of all demolition approvals between 1985 and 2013, hardship accounts for only 27% of all approved demolitions. However, such cases have increased from 25% of all approvals during Mayor John F. Street's administration (2000-2008) to 75% under Mayor Nutter. The recent administration may have only faced five demolition applications for designated resources, but financial hardship claims account for three full demolition approvals and one partial.



Charts 1-2 | Demolition cases reviewed by the Philadelphia Historical Commission from 1985-2013, comparing the number of demolition requests to the number of approvals by mayoral administration.

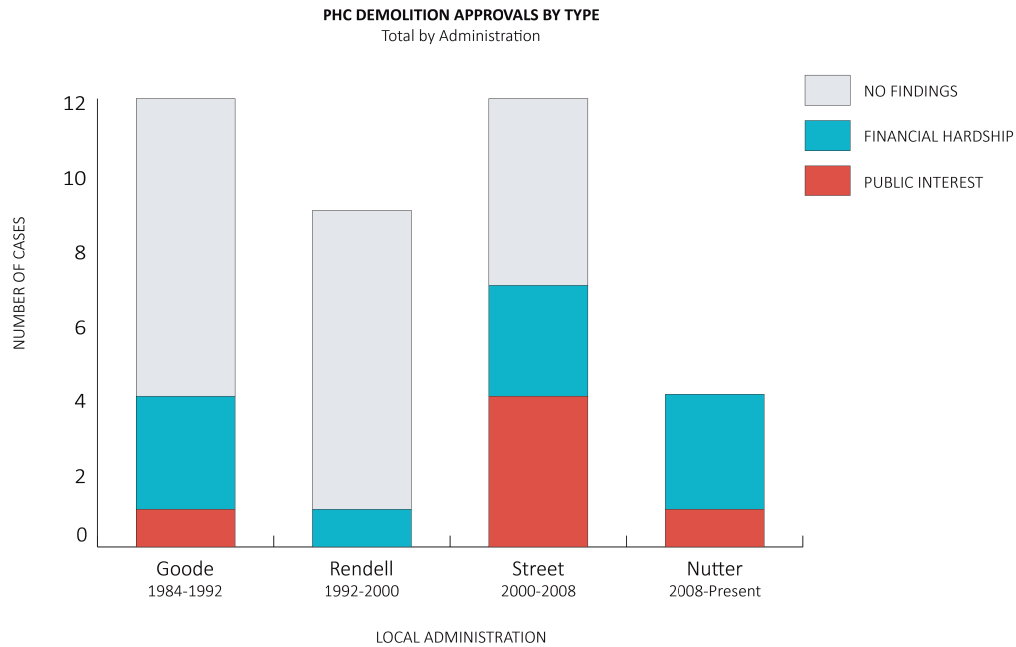


Chart 3 | Comparison of demolition approvals by provision and by mayoral administration.

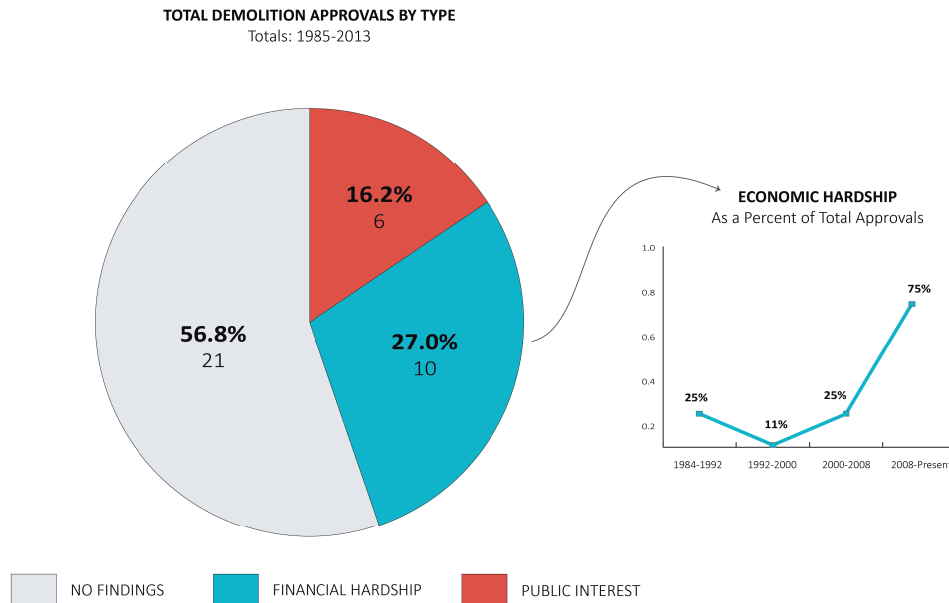


Chart 4 | Breakdown of total demolition approvals by preservation policy justification, with economic hardship as a percent of total approvals broken out to show how this policy measure has emerged recently as the most effective means of heritage building demolition.

Key Takeaways

There are four significant lessons to take from the broad demolition database. First, there are positive trends leading to a reduction in the number of locally listed building demolitions. This is apparent in the vast reduction of demolitions following the reorganization of the Commission in 1985 – which according to Farnham “set the learning curve for the Commission on how to deal with demolition cases” – proving that revising policy can aid in the protection of heritage resources.⁵¹ More importantly, there has been a decline in the number of approvals “without finding.” The absence of this approval justification in recent years demonstrates a more concentrated effort on behalf of the Commission to substantiate demolition claims according to the written orders. It is not a policy innovation per se, but a progressive approach to policy application worth noting.

However the impetus to fully justify demolitions may be detrimental to the policy process. The second lesson from the list is that while the number of financial hardship cases has not necessarily increased in recent years, they have become comparatively more common and more successful in enabling demolition. While the Commission may be trying to prove within the policy sanctions why a demolition is appropriate, it may be also be encouraging the misapplication of appropriate claims. This leads into the third lesson of the list, which is that all cases under the current administration have been approved. There may be far less instances of demolition requests, but the Commission has validated each of them due to claims of financial hardship and public interest. As the following section of this chapter shows, these cases have become controversial due to the misapplication of demolition mechanisms that enable fast approval.

⁵¹ Jonathan Farnham, *interview*, (Philadelphia, PA: Philadelphia Historic Commission, 1 August 2013).

The fourth and final lesson from this list is less apparent, though no less critical, than the previous three. It is that such decision-making does not occur within a vacuum, and decisions regarding historic buildings are intrinsically tied to the economy, especially the real estate market (chart 5). As this simple analysis shows, there is a correlation between demolition approvals and the health of the real estate market: the rate of demolition approvals decreases as the price of residential housing increases. The results of this comparison appear counterintuitive, as logic predicts a greater threat to historic resources when the market is strong and development is rampant. However such is the case in Philadelphia. This may be due to the relatively small sample size of the historically designated buildings subset as compared to the chosen market indicator. Or there may be a rational connection. It is conceivable that property owners are more inclined to dispose of historic buildings for economic generators when the market is down. Or perhaps the issue is that undeveloped real estate is more expansive than run-down, historically listed properties in weaker market conditions, and thus developing over historic resources can be more cost effective for developers. Regardless of the explanation for this unconventional relationship, policy must be prepared in the event that the slight downward trend of indexed housing prices in Philadelphia continues and produces more applications for historic resource demolitions in the future.

PHC DEMOLITION CASE LOADS + MARKET TRENDS
 Total Cases v. Total Approved Demos by Administration
 as Compared with Indexed Philadelphia House Price

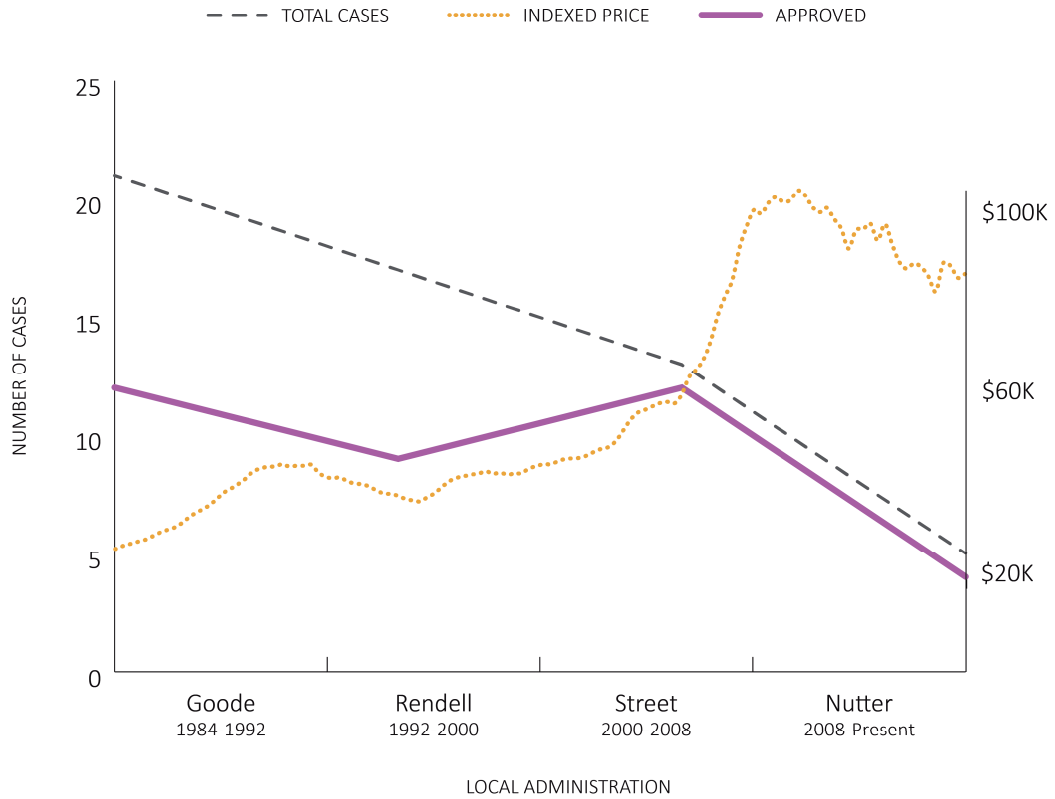


Chart 5 | Heritage building demolition with respect to a key real estate market indicator: the indexed price of residential housing. In recent years, the housing price increases correspond to decreases in demolition cases – and more notably, their approvals.⁵²

⁵² Indexed Philadelphia House Price trend line prepared by Kevin C. Gillen, “Philadelphia House Price Indices,” presentation to Fels Institute of Government, 2 May 2013 (Philadelphia, PA: University of Pennsylvania, 2013).

While the dataset helps to view trends in demolishing Philadelphia’s built heritage, only goes so far in understanding the underlying conflicts. A detailed examination of recent cases will therefore provide a clearer sense of the dynamics fueling the considerable controversy. The following case studies are intended to explore the intricacies of implementing demolition policy at a more detailed level. They consist of the five most recent cases of demolition brought before the Philadelphia Historical Commission: Sidney Hillman Medical Center, The Church of the Assumption, 400 S. 40th Street, Episcopal Church Parish Houses, and the Boyd Theater. Together, these cases have captured significant media attention over past decade and prompted organized advocacy efforts by non-profit organizations and community groups. Thus while the Commission maintains that the reduction in demolition cases translates to a positive trajectory for preservation policy, these cases and their implications to the greater public belie the fact that there are still gaps and weaknesses in the current system.

Contemporary Demolition Case Studies

*Hillman Medical Center (1950-2011)*⁵³ – The Sidney Hillman Medical Center, a mid-century modern building in the heart of Philadelphia’s Center City, became the recent administration’s first case of economic hardship in 2009. Designed in 1950 by architects Louis Magaziner and Herman Polss, the vacated health center was protected from demotion due to its situation within the boundaries of the Rittenhouse-Fitler Residential Historic District, designated in 1995 (figure 6). That standing as a non-contributing resource to the local historic district became controversial in 2009, however, when the building’s new owner, Chicago-based developer John

⁵³ **N.B.** Originally located at 2116 Chestnut Street. Alternatively known as the Men’s Apparel Industry Health Center.

Buck Company, sought to construct a residential high-rise tower in its place – and economic hardship became the avenue for replacing one trendy modern structure with another (figure 7).

The process to demolish the structure, originally developed to offer free medical services to members of the Men’s Apparel Industry Union, moved rapidly in 2009 (figure 8). The John Buck Company submitted an application to the Philadelphia Historical Commission to tear down the medical facility that summer based on economic hardship. Though the Commission noted that non-contributing buildings within historic districts do not necessary have to prove hardship, the case was passed to the Committee on Financial Hardship for review.⁵⁴ After finding that hardship was present in the Hillman Center case, the Historical Commission approved the Committee’s recommendation of demolition the following month (figure 9).

The core of the issue – regardless of the reported economic burden – was that the Hillman Medical Center’s modernist design was simply not in keeping with the aesthetic character of the local historic district in which it was based.⁵⁵ Thus not only was the building not individually protected by designation, it was not even a contributing resource to its protective overlay; and the site’s only remaining distinction as a non-contributing resource did little to protect against demolition. Furthermore, the case epitomizes the issue of preservation prejudice faced by modernist buildings.⁵⁶ Many buildings like the Hillman Medical Center, built around the middle of the twentieth century and just reaching the fifty-year mark for historic recognition, are at odds with ingrained notions of what is historic and fail to prove independent heritage value that could be used to stave demolition. The Hillman Medical Center merited an individual designation; and

⁵⁴ Philadelphia Historical Commission, Holdings File: Demolish N-C Building, Construct Tower, July 2009.

⁵⁵ *Ibid.*

⁵⁶ Alan Jaffe, “Preservation Row: Hillman Medical Center,” (*PlanPhilly*, 1 June 2009).

had its contribution to the built environment – an architectural anomaly of social and historic value – been recognized, it would not have been as vulnerable to development agendas.

Although the Preservation Alliance for Greater Philadelphia supported the value of the Hillman Medical Center by appealing the Commission’s demolition approval in 2009, the organization’s advocacy, negotiations, and objections were unable to reverse the decision. In 2010, the City of Philadelphia’s Licenses and Inspections Review Board “quashed and dismissed with prejudice” the appeal from the Alliance and no further actions were taken to prevent the demolition, which began in earnest in 2011. By 2012, no traces remained of the Hillman Medical Center as the new 34-story apartment complex opened to residents.

Lessons of the Hillman Medical Center

- Even within the boundaries of a historic district, buildings without individual designations – especially non-contributing resources to the historic district – are vulnerable to demolition.
 - What society perceives as historic plays a central role in demolition – and designation – efforts. Modernist buildings are more threatened because the contemporary style is often viewed as less valuable than other architectural styles.
 - Location is very much a factor in hardship cases. The prime location and subsequent redevelopment scale of the Hillman Medical Center in Center City raises concerns about development prospects influencing hardship applications.
-

Table 4 | Key takeaways from the Sidney Hillman Medical Center case.

*Church of the Assumption (1848-present)*⁵⁷ – The Church of the Assumption has stood on Spring Garden Street for over 160 years. Built between 1848 and 1849 from designs by architect Patrick Charles Keely, the structure remained active under the ownership of the Archdiocese of

⁵⁷ **N.B.** Located at 1123-1133 Spring Garden Street. Also known as Assumption B.V.M.

Philadelphia until 1995 (figure 10). Yet in 2006, after over a decade of vacancy and deterioration, the Archdiocese sold the property to SILOAM, an HIV/AIDS medical services provider in Philadelphia. SILOAM held the property for three years without investing in its repair until a citation from the Board of Licenses and Reviews mandated that the owner either repair or demolish the now dangerous structure (figure 11).⁵⁸ Consequently, the application for demolition based on financial hardship was filed by SILOAM and approved by the Commission in 2010.

The Commission's role in this case is complicated by its various objectives. Although it was the Commission that approved demolition in 2010, it was also the Commission that sought and approved the building's designation to the Philadelphia Register of Historic Places in May of 2009 in order to strengthen protective policy regarding survival. This particular tactic was immediately challenged by SILOAM, which appealed the designation in advance of their filing a demolition application. While the appeal remained active and contentious up until its eventual dismissal in 2011, the fact that an owner was engaged in a legal battle over a protective measure enacted by the very agency that had permitted the demolition measure expresses the complicated nature of the Commission's role in the lifespan of heritage resources.

Regardless of the Commission's role in attempting to protect the resource, others attempts were made by third party advocates to protest the Commission's role in granting the resource's demise. The Callowhill Neighborhood Association (CNA) appealed the demolition decision in 2010 on the grounds that the hardship finding was inaccurate.⁵⁹ The Clay Studio, a non-profit

⁵⁸ Jared Brey, "Commonwealth Court Rules Assumption Case Moot, Orders Common Pleas to Dismiss Siloam Appeal," (*PlanPhilly*, 21 November 2013).

⁵⁹ Philadelphia Historical Commission, Holdings File: 1123-33 Spring Garden Street Minutes for Designation and Demolition Reviews, nd.

arts-based community institution, offered in 2011 to negotiate a deal with SILOAM to purchase the church and thus remove any perceived hardship. At one point in 2012 there was even an attempt to nominate the site for a historical marker through the Pennsylvania Museum and Historical Commission; however, the nomination was ultimately denied as the review found the church to be of “questionable” statewide significance.⁶⁰ This decision also noted “the nomination seems an attempt to prevent the demolition of the building, which the marker will not do,” emphasizing the lengths to which advocates were attempting to go to preserve the church.⁶¹

By 2012, the marker had been denied and no sales deal brokered. The appeal filed by CNA was upheld by Board of Licenses and Inspections, only to be reversed by the Court of Common Pleas. And SILOAM’s appeal of the historic designation remained pending. By this point, demolition seemed inevitable – until SILOAM managed to sell the building. With one swift \$1.2 million transaction between SILOAM and local developer John Wei, the case transformed from a simple hardship controversy into a larger issue of policy application beyond the scope of the original conditions under which it was awarded.

The new owner Wei continued to seek demolition for the building based on hardship, despite the fact that his purchase acted as an indicator that hardship was not inherently linked to the church. The Historical Commission took a stance to this effect, ruling that hardship approval transferred to Wei along with the property.⁶² However, in 2013 the Commonwealth Court of Pennsylvania ruled against this mentality, ordering the Court of Common Pleas to Dismiss SILOAM’s original appeal. According to Judge Rochelle S. Friedman:

⁶⁰ Philadelphia Historical Commission, Historical Marker Nomination Form 2012 and Marker Panel Summaries, Holdings File: Spring Garden Street – 1100 Block, nd.

⁶¹ *Ibid.*

⁶² Philadelphia Historical Commission, Holdings File: 1123-33 Spring Garden Street Appeal of Demolition Approval, nd.

Because SILOAM sold the church which SILOAM’s appeal was pending before the trial court and the new owner did not intervene, we conclude that the matter before the trial court was moot. Therefore, we vacate the trial court’s order and remand the case to the trial court to dismiss SILOAM’s appeal without prejudice to the new owner to seek a demolition permit.⁶³

To date, this order has prevented demolition of the Church of the Assumption (figure 12).

Lessons of the Church of the Assumption

- The Assumption case emphasizes the conflicting roles of the Commission in deciding what to preserve and what must be demolished. It also highlights the fact that designations determining a resource’s eligibility for protection are not reflections of current conditions and thus not always strong enough barriers against demolition.
 - According to the ordinance, the sale of a building should in theory negate a claim of hardship. Yet in this case, the transfer of a hardship status along with the property rights raises serious questions about the authenticity of the perceived economic burden as determined by the Commission.
 - Heritage demolition affects more than advocates of historic preservation. In this case, the community was highly involved in the appeals process, proving that the public is a significant stakeholder.
-

Table 5 | Key takeaways from the Church of the Assumption case.

*Levy-Leas Mansion (ca. 1853-present)*⁶⁴ – The property commonly known as 400 South 40th Street presents another complex financial hardship case akin to the Church of the Assumption. The case first came to the Philadelphia Historical Commission in 2007 under slightly different circumstances. The home, a villa designed by Samuel Sloan and purchased by in 1853 by Captain John Patterson Levy, had endured 120 years of alterations before its designation to the Philadelphia Register of Historic Places in 1971 (figure 13). In that time span, the private

⁶³ SILOAM v. City of Philadelphia Board of License and Inspection Review (1978 C.D.2012).

⁶⁴ **N.B.** Located at 400 South 40th Street. The site is typically referred to by its street address, but the private home has been known in the past as either the John P. Levy House or David Porter Leas Mansion for its early owners; Aaron Wunsch, “Why 400 South 40th Street Matters,” (*Hidden City Philadelphia*, 28 March 2013).

residence was adapted into a nursing home in 1942, modernized in 1964, and shuttered in 2003 due to the condition of the facility (figure 14).⁶⁵ When the University of Pennsylvania purchased the property in 2003, the institution sought to find a viable use for the property without degrading the heritage value. Therefore, in 2007, the University petitioned the Commission for the permits necessary to restore the Levy-Leas Mansion while constructing a 10-story addition that would support its new use as an extended stay hotel (figure 15). The application was denied.

When the University returned the Commission in 2012, its application for the Levy-Leas Mansion has changed significantly. Five years following the failure to gain the Commission's support for the building's reuse, the University abandoned all attempts to reuse the structure and instead called for its demolition based on financial hardship. Instead of affixing a contemporary high-rise on top of the historically designated property, the new plan was to raze the structure and erect a 5-story apartment building in its place (figure 16).⁶⁶ According to an affidavit from Edwin Datz, Jr., the president of the University's development entity OAP, Inc., years of studies had failed to find a rational economic rehabilitation plan for the property and thus the site presented the owners with an unreasonable economic burden.⁶⁷ The only appropriate recourse, according to the owners, was to demolish the site.

The Commission approved the demolition with a finding of hardship in 2012, a decision later upheld by the Board of Licenses and Inspections during an appeal by the Woodland Terrace Homeowners Association. Though the Woodland Terrace Homeowner's Association maintained that the University had not made a "good-faith effort to sell the property" and that the

⁶⁵ Nicole Contosta, "Another Proposal for High-Rise on 40th & Pine Streets," (*University City Review*, 12 October 2011).

⁶⁶ Philadelphia Historical Commission, Holdings File: 400 S. 40th Street, nd

⁶⁷ Edwin Datz, Jr., Affidavit, (Commonwealth of Pennsylvania and County of Philadelphia, 7 March 2012).

Commission has erred in applying hardship to their approval decision, the heavily divided Review Board upheld the Commissions original finding and a subsequent appeal to the Philadelphia Court of Common Pleas affirmed the demolition approval.⁶⁸ The case is currently held up in the process of obtaining zoning variances for redevelopment – which themselves are based on financial hardship – but the old Samuel Sloan villa may find some reprieve. The Court of Common Pleas may have upheld the Historical Commission’s demolition approval, but it also affirmed the Homeowner’s Association legal standing to appeal the case in the state court.⁶⁹ Thus the battle continues.

Lessons of the Levy-Leas Mansion

- Once again, community members are crucial stakeholders; the persistent involvement of community groups in this case calls attention to the fact that historic buildings are anchors of value to the public, and that loss – and change – to the landscape has significant consequences for that public.
 - Heavily modified historic resources such as the Levy-Leas Mansion are difficult to defend from demolition; like modernist buildings they face prejudice, as aesthetic values – and, subsequently, sociocultural values – are less evident.
 - When demolition cases are highly contested and drawn out, they prevent conservation and maintenance and further degrade historic resources. On the other hand, they also sustain vacancy that prevents a neighborhood from revitalizing.
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Table 6 | Key takeaways from the Levy-Leas Mansion case.

*Episcopal Cathedral Parish House*⁷⁰ (1902-2013) – The demolition case of the Episcopal Cathedral’s Parish House in West Philadelphia is the only recent case considered by the

⁶⁸ Christopher Mote, “Demo Approval for 40th and Pine Mansion Upheld by L&I Board,” (*Hidden City Philadelphia*, 22 February 2013); Woodland Terrace Homeowners Assoc., et al v. City of Philadelphia Board of License and Inspection Review (03186 C.D.2013).

⁶⁹ Nicole Contosta, “Court of Common Pleas Issues Ruling on 400 S. 40th Street That’s Both a Victory and a Defeat for the Woodland Terrace Homeowners Assoc.,” (*University City Review*, 16 April 2014).

⁷⁰ **N.B.** Originally located at 3723-3725 Chestnut Street.

Commission dealing with demolition in the public interest. Local church architect Charles M. Burns designed the parish house and rectory – which together are referred to as the aforementioned Parish House – for the cathedral during its reconstruction after fire in 1902, redesigning an existing three-story brownstone and constructing the other from scratch (figure 17).⁷¹ Though the brownstones are distinct from the original nineteenth-century cathedral, they were added independently from the house of worship to the Philadelphia Register of Historic Places in 1981. However, in 2012 they became targets for demolition when the cathedral decided to replace the Parish House with an economic generator that could support maintenance costs of the main chapel (figure 18).

After issuing a continuance in May of 2012, the Commission resumed its review of the demolition application in June of the same year and approved the demolition of the contributing resources on the basis of public interest. The Preservation Alliance for Greater Philadelphia appealed the Commission’s decision to invoke the public interest clause with the Board of License and Inspection Review just weeks after the ruling, citing ten reasons why the Commission’s decision was “arbitrary and capricious.”⁷² However, the appeal was settled in 2013 with an agreement between the two parties that enabled demolition to continue (figure 19).

The core issue of this case was the use of public interest as a justification for demolition, when, according to the Preservation Alliance’s appeal, “the Commission failed to address whether, even if a public interest were at stake, demolition would be necessary to that interest.”⁷³ One article

⁷¹ Stephen Salisbury, “Episcopal Cathedral Gets OK to Raze Historic Buildings, Erect Apartment High-Rise,” (*Philadelphia Inquirer*, 10 June 2012).

⁷² Philadelphia Historical Commission, Holdings File: 13-19 S. 38th Street and 3723 and 3725 Chestnut Street; Demolish Buildings, construct Tower, May 2012.

⁷³ *Ibid.*

by the *Philadelphia Inquirer* summarizes the dissent in a single question: “how does ‘public good’ translate into a private developer erecting an apartment tower on a small plot, at the cost of historic and handsome buildings (with a city block vacant across the street)?”⁷⁴ In reality, the interest at the heart of the demolition is that of the Episcopal Cathedral – a fact that the case has never attempted to obscure, but bury underneath the condition of public interest. A publication by the cathedral clearly states, “the value devoted to keeping the parish house or even its façade is value that should be devoted to the church building and especially its spire.”⁷⁵ To this effect, the cathedral’s attorney Neil Sklaroff explains that the Parish House must be sacrificed to preserve the institution’s principal asset in a letter to the Commission:

In order to preserve, maintain and repair the sacred cathedral and in order to allow the cathedral to continue its mission of outreach to the neighboring community, the cathedral’s governing body has decided, in the absence of other resources and practical solutions, to redevelop its real estate assets.⁷⁶

While Sklaroff’s rationalizes demolition for the benefit the cathedral, he does not explain why it is within the authority of the Philadelphia Historic Commission to support the finances of a private entity at the sake of a public value (figure 20).

Despite the ambiguity of the case and the eventual demolition of the Parish House in 2013, the settlement obtained by the Preservation Alliance may be viewed as a positive compromise in light of harsh decision-making trends. The agreement stipulated that demolition may proceed so long as the cathedral develop a detailed 50-year plan for the cathedral’s preservation – thereby holding the cathedral accountable for keeping their word that the loss of one resource would

⁷⁴ Steven J. Sietzman, “Planned Demolition Raises Questions,” (*Philadelphia Inquirer*, 14 June 2012).

⁷⁵ George E. Thomas, *Philadelphia Episcopal Cathedral and the Parish House*, (Philadelphia, PA: Civic Visions LP, 2012), 25.

⁷⁶ Neil Sklaroff, Letter to the Philadelphia Historical Commission, 11 April 2012.

sustain another.⁷⁷ The settlement may not have prevented demolition, but it did garner a powerful solution for protecting heritage values when policy fails.

Lessons of the Parish House

- The indistinct language of the public interest provision in the ordinance creates controversy over its application to buildings facing demolition.
 - The settlement between the Preservation Alliance and the cathedral provides a strong precedent for resolving cases in the future, and suggests ways to improve the policy so that the public benefits in some way from the loss of the heritage resource in the interest of the public.
 - The Parish House raises important questions about the motives behind demolition, and the policies used as strategies to enable demolition, that must be better explored in the review process.
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Table 7 | Key takeaways from the Parish House case.

*Boyd Theater*⁷⁸ (1928-present) – The most recent case heard by the Commission was that of Boyd Theater. As this paper has already stated, the Boyd Theater’s interior was recently torn down due to a Commission ruling that sufficient hardship existed to justify partial demolition. Designed as an art deco playhouse in the Spanish Mission style by architecture firm Hoffman-Henon Company in 1928, the Boyd was once a premiere movie house that fell victim to decades of mismanagement and neglect (figures 21-22). Despite designation to the local register in 2008, its then owners, Live Nation Worldwide, Inc., brought the theater before the Commission for demolition in 2013. At issue once more was the concept of hardship. The owners claimed the conditions economically unviable for reuse, but that the exterior façade could be preserved if the

⁷⁷ Preservation Alliance for Greater Philadelphia, “Episcopal Cathedral Update March 2013,” webpage.

⁷⁸ **N.B.** Located at 1908-1910 Chestnut Street.

interior was divested of its ornate art deco theater and rebuilt as a modern luxury multiplex (figure 23).⁷⁹

In February 2014, the Committee on Financial Hardship accepted the entertainment company's hardship claim despite concerns brought forth by preservation advocates that the application was lacking proof that adaptive reuse or a sale of the building was unfeasible.⁸⁰ Their recommendation passed next to the Commission, which gave the final approval for demolition based on financial hardship in March 2014 (figure 24). Demolition began three days later.

Though the art deco interior is now gone, questions regarding the legitimacy of the financial hardship claim remain. A primary concern was the Commission enabling the hardship claim to justify demolition when the hardship was not only poorly defended, but ultimately disproved. An eleventh-hour buyer for the Boyd Theater emerged in the period of time between the Committee on Financial Hardship's approval of the application and the Commission's final hearing, but was disregarded. As Howard Haas, President of the Friends of the Boyd non-profit, recently wrote in an op-ed for *PlanPhilly*, "if there's a would be bona fide purchaser who would not demolish, then the applicant for demolition has not met their burden of proof."⁸¹ But instead of quashing the demolition case or even merely stalling the Commission's decision, the proof of economic potential was passed over for quick decision that enabled the destruction of one of Philadelphia's valuable historic assets.

⁷⁹ Michael Klein, "Eight-Screen Movie Theater and Restaurant Planned for Old Boyd," (*Philadelphia Inquirer*, 2 October 2013).

⁸⁰ Matt Golas, "Historical Commission Committee Accepts Boyd Hardship Application," (*PlanPhilly*, 27 February 2014).

⁸¹ Haas, Howard, "Opinion: Howard Haas' Position on the Boyd Decision," (*PlanPhilly*, 16 March 2014).

While the Boyd Theater case may only represent a partial demolition, it symbolizes the gamut of cases concerning heritage resources careening toward demolition without adequate protection from the leading authority in charge of their preservation. The Commission the opportunity to take a legally sanctioned stance against Live Nation’s demolition request the moment a prospective buyer emerged, but instead chose to move forward with the destructive plan already in motion.

Lessons of the Boyd Theater

- Partial – or interior – demolition may be as inflammatory as complete demolition. The loss of built heritage to any degree under equivocal circumstances creates controversies that divide the local preservation community.
 - The burden of proof for hardship is unclear and unevenly applied to cases of heritage demolition.
 - Though the ordinance requires property owners to attempt to sell the building, it cannot mandate that the owners accept offers for the property. This is a large gap in the policy.
 - The case also emphasizes the need to determine the cause of the hardship, and adapt the policy to better protect from self-inflicted hardship claims.
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Table 8 | Key takeaways from the Boyd Theater case.

Gaps + Weaknesses in Preservation Policy

Despite biases of preservation or development advocates, it is actually quite difficult to assign blame in these cases because the true weakness is not the agencies or actors involved in demolition cases, but the policies behind them. There are preexisting gaps in Philadelphia’s preservation policy that enable unsubstantiated demolition motions to progress as legitimate

claims. The following section proposes four distinct aspects of local preservation policies that have exacerbated the loss of heritage resources in Philadelphia.

The first weakness stems from the wording of the demolition provisions in the Historic Preservation Ordinance or elucidated in the Rules and Regulations that leave historic resources vulnerable to creative manipulation of the legislation. The Parish House case illuminates the issues with interpreting public interest in particular for demolition cases. According to testimony against demolition by David B. Brownlee of the Design Advocacy Group, “public interest is not adequately defined by the Historic Commission Ordinance or its Rules and Regulations. In absence of such definitions, the concept of public interest is amorphous and potentially gigantic.”⁸² In truth, the policy documents avoid defining public interest; the Rules and Regulations state only “the applicant must provide documentation demonstrating the necessity of demolition in the public interest.”⁸³

The vague language of the public interest provision is not lost on the Historical Commission. Farnham himself stated, “the public interest provision in the ordinances gives the Commission very broad powers that it can utilize in extraordinary experiences” and that “the door is so wide open as to what the public interest is.”⁸⁴ The threat, however, of such imprecise policies is that the mechanism for demolition can be shaped to fit any number of situations that act against the preservation agenda. This paves the way for mistreatment of heritage resources under the guide of lawful application of policies.

⁸² Philadelphia Historical Commission, Meeting Minutes of the 598th Stated Meeting of the PHC June 8, 2012, Holdings File: 13-19 S. 38th Street and 3723 and 3725 Chestnut Street; Demolish Buildings, construct Tower, May 2012.

⁸³ Philadelphia Historical Commission, “Rules and Regulations,” *Revision Draft*, 60.

⁸⁴ *Ibid.*

Financial Hardship is better defined in the policies than public interest, being covered extensively in the Rules and Regulations and well laid out in the ordinance. The issue with hardship is more of how the policies are interpreted than how they are written.

This concept is well evidenced in the second weakness, the misapplication of policies. The concept of hardship was originally developed as a means of protecting individual property owners from harsh legal ordinances, not to help large corporations access greater profit opportunities. Each of the five cases reviewed – even the public interest case – represent buildings that stand in the way of greater economic potential: the Hillman Medical center was replaced with a 34-story apartment complex by its developer-owner the John Buck Company; the Church of the Assumption was most recently bought by local developer Wei who is seeking demolition at this prime real estate on Spring Garden Street; a 5-story residence is planned for the site of the Levy-Leas House and pursued by the University of Pennsylvania’s development entity, OPA; the Parish Houses have been torn down to make way for a 25-story residential tower developed by the cathedral’s development partner, the Radnor Property Group; and the Boyd Theater has been gutted for a major entertainment company to redevelop the interior as a luxury multiplex.

The fact that all economic hardship cases in recent years have been brought forward by large developers intentionally purchasing deteriorated historic sites for their strategic locations as opposed to their heritage and architectural values and not burdened individual owners has led to increased distrust between preservation advocates, developers, and the governing entities. According to Aaron Wunsch, the frequency with which this occurs has not been lost on the public:

It is hard to avoid the conclusion that development interests have come to dominate other considerations in deciding the fate of listed buildings [...] Rather than being reflexively upheld, the law is being interpreted, and when it is interpreted in regard to the demolition of listed buildings, recent rulings have come down in favor of institutions and developers.⁸⁵

The current problem does not, however, fall entirely on the decision-making proclivities of Commission members; it is a product of policies that are far too susceptible to mismanagement. There must be a better distinction between economic *viability* and economic *profitability* in the economic hardship provision that allows Commission members to fairly assess if the financial distress could amount to a takings.

Though “the basic test for financial hardship...is about the building, not the financial means of the owner,” there is an all-too real possibility that the demolition provision is being inappropriately applied to cases where the development-oriented owners are misrepresenting the hardship of the building for personal gain.⁸⁶ Consider the case of the Hillman Medical Center, or the Boyd Theater. Hardship did not lead to a development agenda, a development agenda led to the owners finding hardship. Historic resources cannot protect themselves against actions such as these without government intervention; yet is when the government intervention is unintentionally aiding the process of development agendas that the system appears truly fractured. The current system is not stringent enough at present to prevent such misapplications of the provisions. The Commission must strengthen the policies so that safety valves are only open to legitimate issues of hardship and public interest.

⁸⁵ Aaron Wunsch, “Letter to the Editor: Wunsch responds to Farnham,” (*PlanPhilly*, 19 February 2013).

⁸⁶ Ashley Hahn, “Preservation Hardship Primer,” (Philadelphia, PA: *PlanPhilly*, 16 January 2013), 3.

The third weakness is the one of responsibility of heritage maintenance and accountability. The issue is apparent in all of the recent demolition cases, which cite neglect and deteriorated conditions as reasons for requiring demolition. However, it should not be the responsibility of the government to resolve such issues created by the property owners. The Boyd Theater speaks strongly to this particular weakness. In an open letter to the Commission regarding the process that enabled the demolition, Katherine Dowdell of Philadelphia AIA recently wrote:

It is understandable that the deteriorated and unattractive condition of the façade is a source of great distress to the neighbors. This is the responsibility of the building owners, Live Nation. Not the neighbors, not the friends group, not the city – the owners. Why Live Nation is not being held responsible for the deplorable condition of the building is a mystery.⁸⁷

Had the owners of the Boyd Theater better maintained the property, it is conceivable that hardship would have not been so evident and that dire measures such as demolition may not have been necessary. But there is no provision in the cases of demolition that precludes claims where the owners have wrought their own hardship. The issue needs to be addressed as it currently provides a gap in the system, enabling demolitions that may otherwise be prevented.

The fourth and final weakness comes in the form of the political process, which does not currently support a strong enough preservation agenda in the course of implementing preservation policy. For example, the composition of the Philadelphia Historical Commission as mandated by the ordinance has more political appointees than independent preservation advocates. According to Section 14-1003 of the City of Philadelphia Historic Preservation Ordinance, the mayor may appoint 14 members to the Commission: six members from the local

⁸⁷ Katherine Dowdell, Letter to Sam Sherman, Chair of the Philadelphia Historical Commission, 19 March 2014.

government (the City Council President, the Director of Commerce, the Commissioner of Public Property, the Commissioner of Licenses and Inspections, the City Planning Commission Chairman, and the Director of Housing) and eight members practiced in the history of the city and preservation (with at least one architect, historian, architectural historic, real estate developer, Community Development Corporation representative, and a community organization representative).⁸⁸ Each of these members is compensated for their participation on the committee. The structure of this entity by law provides the Mayor (and political agendas) great influence over the Commission and their decisions. When the monetary incentive is added to this environment, the Historical Commission is placed in position where preservation objectives may not trump political objectives. The members, in effect, become employees of the Mayor and not advocates for heritage resources and the public.

For the purpose of comparison in this matter, consider the composition of the New York City Landmarks Preservation Commission. The 11 members are likewise appointed by the mayor, but are of very different ilk than those in Philadelphia. According to Section 3020 of the New York City Charter there must be three architects, one historian, one city planner or landscape architect, one realtor, and five resident representing each of New York City's boroughs on the local preservation commission – and only the Commission Chair is compensated for his or her membership.⁸⁹ The Landmarks Preservation Commission is only one example, but it shows how a comparable east coast city organizes the entity charged with administering preservation policy.

While the Philadelphia Historical Commission may not be in need of restructuring, it does need to review how its composition influences decision-making, and how its political focus is a potential

⁸⁸ Philadelphia Historical Commission, "City of Philadelphia Historic Preservation Ordinance," Section 14- 1003, 5-6.

⁸⁹ City of New York, "New York City Charter", Section 3020.

weakness on which demolition cases may prey. Given the degree of developer-driven projects that came before the Commission in recent years as cases of financial hardship and public interest – and were approved as heritage building demolitions – it is reasonable to suggest there may be a weak link in Philadelphia’s policy structure that merits assessment and revision.

At issue is a lack of policy innovation in Philadelphia: historic preservation policy has not evolved quickly or dramatically enough to address the challenges presented by contemporary urban development and urban politics. For the sake of argument, the field of historic preservation can be roughly divided into conservation or technical approaches and policy approaches. While conservation continues to evolve and adopt new practices that enable innovation in the field, policy rigidly adheres to decades old methods of regulation. This chapter explores the hazards of this dichotomy and proposes eight policy responses to help transform preservation's approach to heritage building demolition.

Technical Preservation v. Regulation

In general, methods of regulation are as critical as methods of conservation and architectural design when it comes to affecting the future existence of built heritage, and the decisions made in the City Halls across the nation have as much impact on historic resources as decisions regarding use of specific materials and techniques. For this reason, local policy matters should not be regarded with any less deference than matters of physical preservation interventions. However, in practice, preservation policy is treated entirely differently than conservation when it comes to protecting historic resources. While conservation approaches are often advanced by new techniques, policy approaches to preservation remain mostly static and unchallenged. Why is policy any less dynamic than conservation? Furthermore, why, when we so often question legal *decisions* in modern society, do we regard the *ordinances* as gospel?

On one hand, policy must be stable enough that when challenges arise there is an uncompromising authority with which to regulate preservation. If the policy is to change to better support preservation needs, who is to say it cannot be modified in a manner that would prove detrimental to built heritage? However, on the other hand, it is unreasonable for policy to remain entirely rigid in light of unquestionable change. If the policy no longer adequately reflects the conditions of contemporary preservation needs, can it continue to serve its original purpose? Both of these conditions are equally threatening to the government's ability to provide historic preservation as a valuable public good. Therefore now is the time to treat preservation policy like a deteriorating resource: evaluate the conditions, stabilize the structure, and develop new forms of interpretation that allow the public to once more appreciate its value.

Revising Preservation Policy in Philadelphia

The local preservation policy is not immune to changes; both the Historic Preservation Ordinance and the Rules and Regulations have undergone changes at various intervals to better address contemporary issues. The ordinance, defined as Section 14-2007 of the Philadelphia City Code, was first established within the existing local law in 1955. The pioneering ordinance, one of the earliest of its kind in the United States, was significantly redrafted in 1985 in response to changes in local land use law.⁹⁰ The new ordinance increased the capacity of the Commission with such added authority as maintaining the Philadelphia Register of Historic Places and designating a wider variety of historic resources that register. It also granted the Commission power to prevent the demolition of historic buildings. In doing so, the 1985 revision fell "into the category of ordinances which grant more power and discretion to historic commissions to carry out their

⁹⁰ Prema. Katari, "Preservation and Residential Property Values: The Case of Philadelphia," (Masters Thesis, University of Philadelphia, 2005), 2.; Charlotte E. Thomas, "New Steps to Preserve the Old: The Revised Historic Preservation Legislation for the City of Philadelphia," (*Villanova Law Review*, 32 no. 2, 1987), 441.

prescribed functions.”⁹¹ Changes to the ordinance in the past three decades have been sparse, such as the most recent edits from 2012 that reflect the city’s adoption of a new zoning code.

The Rules and Regulations have been revised more frequently. Following their creation in 1990, the Rules and Regulations have undergone five revisions in 1997, 2003, 2005, 2009, and 2010. The most recent attempt to modify the document came in 2013, when Farnham prozed a language change regarding the review criteria for financial hardship claims. This change provides critical insight into the direction of policy changes in Philadelphia today. As a side-by-side comparison of the revised text for Section 9.4 shows, the new wording widens the interpretive scope for the hardship provisions demolition (table 4).⁹²

By changing the owner’s stipulated “affirmative obligation in good faith” from an attempt to sell the building to a demonstration that the sale is “impractical,” the proposal adds more ambiguity to the Rules and Regulations that lessens the protective capacity of the legal document.⁹³ According to the Preservation Alliance, the emphasis on proving the sale “impractical” increases the potential for misinterpretation and thus “could have the dual effect of weakening the standards for demonstrating financial hardship while simultaneously exposing the Commission to more challenges of its decisions, not fewer.”⁹⁴ These changes are currently tabled for review at a future time, neither approved nor denied. However, Farnham’s proposed changes to the hardship provision reveal two critical aspects of the current state of preservation policy in

⁹¹ C. Thomas, 441.

⁹² Inga Saffron, “Changing Skyline: Proposed Rule Change Upsets Preservationists,” (*Philadelphia Inquirer*, 08 March 2013).

⁹³ Philadelphia Historical Commission, “Rules and Regulations,” *Revision Draft* 2013.

⁹⁴ Preservation Alliance for Greater Philadelphia, “The Preservation Alliance calls on the Historical Commission to Table Proposed Changes to its Rules and Regulations,” webpage.

Philadelphia: that local policy can be altered to better suit the climate of preservation, but that recent attempts have not succeeded.

Original Text (1990)	Proposed Revision Text (2013)
<p>“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.”</p>	<p>“To substantiate a claim of financial hardship to justify a demolition, the applicant must demonstrate 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 a building, structure, site, or object cannot be used for any purpose for which it is or may be reasonably adapted, the applicant has an affirmative obligation in good faith to 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.”</p>

Table 9 | A side-by-side text comparison of changes to the hardship provision in the Rules and Regulations (Section 9.4), as proposed by the Philadelphia Historical Commission’s Executive Director in 2013.⁹⁵

Recommendations

The policies regarding heritage demolition in Philadelphia should be revised to better address protection of historic assets in the contemporary context. Though small revisions have been made in recent years, there has been no significant overhaul of the policies since the 1985 reorganization of the ordinance. This paper advocates for a more substantial redrafting of demolition policy than previously enacted for three reasons: to protect historic assets from tenuously justified demolition; to respond to a different climate of urban development than existed during the last major policies revisions; and to restore trust between the government and

⁹⁵ Philadelphia Historical Commission, “Rules and Regulations,” *Revision Draft* 2013.

the public. By consenting to obey the rules for the sake of not challenging the existing system, the government is not preserving heritage so much as it is preserving heritage *law*. As such, the City of Philadelphia – and the resources it is tasked to protect – can no longer afford to cling to stagnant elements of the preservation process any longer. The findings of this paper have led to eight specific recommendations to improve preservation policy regarding heritage demolition.

Recommendations for Preservation Policy Innovation in Philadelphia

- (1) Update existing demolition polices in ordinance and in the Rules and Regulations to make standards less ambiguous.

 - (2) Strengthen the process of financial hardship review.

 - (3) Differentiate between individual property owners and large corporation owners when reviewing hardship claims.

 - (4) Refine the process for evaluating public interest.

 - (5) Hold demolition applicants responsible for in depth accountability reviews regarding their record of property maintenance.

 - (6) Appoint a consultant or consulting team to review demolition alternatives and funding sources with property owners prior to demolition review by the Commission.

 - (7) Develop conditions for demolition, ensuring that the public interest is met with a good-faith replacement of the value lost to the public when heritage assets are destroyed.

 - (8) Reorganize the Commission to achieve a stronger balance of political and preservation constituencies.
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Table 10 | Eight Recommendations for improving Philadelphia’s preservation policy.

(1) *Update existing demolition polices in ordinance and in the Rules and Regulations to make standards less ambiguous.* As the legal foundation for heritage stewardship in Philadelphia, the ordinance and the Rules and Regulations must provide clear guidance for the application of

policy. Yet the drafted language of the existing policy documents have proven to be problematic, as evidenced by the number of challenges to the Commission's rulings in recent years. The policies regarding demolition need to be more explicit in terms of what is and is not acceptable.

It is for this very reason that proposed changes to the hardship provision in the Rules and Regulations are so precarious. The suggested revision does little to clarify the requirements of hardship applications, and actually obscures the conditions of the regulation behind a complex rewording of the original statement. The Commission should instead adopt modifications to all facets of demolition policy that address the rules in a clear and logical fashion. This includes tightening the language to reduce creative interpretation, as well as introducing more – and clearer – requirements for variance applications that secures the burden of proof on the property owner.

The purpose of advocating for such revisions is not to strictly define every aspect of demolition provisions. There must exist a degree of flexibility that enables the Commission to respond to the intricacies of a highly diverse range of historic assets. However, the foundational components of public policy cannot err on the side of vagueness to assure the Commission's ability to make decisions about resources in different contexts and conditions. Changes can be implemented that reduce the ambiguities without imposing ironclad policies, and the following recommendations explore ways to attain this in Philadelphia.

(2) *Strengthen the process of financial hardship review.* Though the conditions of financial hardship are inherently a subjective policy provision due to the singular context and condition of each demolition case, the process of its review must be consistent. One of the principal issues with recent cases of demolition due to financial hardship is the seemingly imprecise and biased

manner in which the Committee on Financial Hardship and the Philadelphia Historical Commission approve the cases. This triggers dissent among preservation advocates. If the review process was revised to yield more transparent decisions grounded in objective analyses of the financial necessity, the hardship clause would be more appropriately applied to cases that truly merit the provision and thus the opposition would be less frequent.

Therefore the Commission should invest in developing a strong methodology of financial hardship review, preferably through a better-defined system of checks and balances that incorporates the concerns of local advocacy groups and property owners. There should be a clear sequence of steps that carry a hardship application from the submission requirements (which themselves require refinement) to the final demolition decision. If at any point the applicant is unable to comply with the process, their claim should not be advanced. The purpose of this process is to standardize a highly subjective aspect of preservation policy; to ensure that the burden of proof is on the property owner and not on the government; and to establish a more transparent system for the public.⁹⁶

(3) *Differentiate between individual property owners and large corporation owners when reviewing hardship claims.* Similar to the separate representation of non-profit organizations in Section 10 of the Rules and Regulations, this recommendation proposes to delineate between property owner classifications in Section 9 of the same document to better capture the capacity of owners to handle hardship. In recent years, developers with entirely different financial resources, objectives, and challenges have raised the majority of financial hardship cases. Individual property owners – for whom the hardship variance was originally conceived – face very

⁹⁶ Melvin B. Hill, Jr. and James K. Reap, "Law and the Historic Preservation Commission: What Every Member Needs to Know," in *Cultural Resources Partnership Notes*, (Washington, D.C.: United States Department of the Interior, Heritage Preservation Services, National Park Service, 2007), 16.

different issues of hardship than developers. This has led to a perceived manipulation of the clause as a subsidy to developers, which denigrates the validity of such a vital provision.

If Philadelphia is capable of creating a separate set of standards for non-profits in order to distinguish between commercial and charitable purposes, then there is reason to explore adding a category for large companies that delineates commercial enterprises from individual property owners.⁹⁷ The core purpose of the hardship provision is to prevent takings claims – not to stimulate economic development. However, the Commission often awards the hardship provision in cases where the pressure for economic development is more evident than the threat of a taking. For this reason, the policy must be revised to enforce a more stringent burden of proof for the commercial entities more likely to misemploy the hardship claim. Large companies or successful development corporations have more resources to pursue a hardship claim and fight appeals than an individual property owner – and likely have more to gain from the demolition of the historic resource. It is therefore in the interest of owners and the public to develop separate avenues for evaluating demolition requests as a means of hardship relief in order to maintain the integrity of the financial hardship clause.

(4) Refine the process for evaluating public interest. Public interest is a fundamental policy concept that requires more careful implementation. The term itself is complex: public interest is an established principle for enacting preservation policy and the land use laws that govern the protection of historic resources; yet there is less specificity when used as a justification for demolition. Currently, the provision constitutes a loophole in the policy due to vague language and application. There is no given definition of what is public interest in the definition sections of

⁹⁷ National Trust for Historic Preservation, "Assessing Economic Hardship Under Historic Preservation Claims Under Historic Preservation Ordinances," in *Preservation Law Educational Materials* (Washington, D.C.: National Trust for Historic Preservation, 2009), 2.

either the ordinance or the Rules and Regulations, though the review process requires that applicants submit “documentation demonstrating the necessity of demolition in the public interest” without indicating acceptable forms of proof.⁹⁸

Public interest needs to be given a more coherent definition in the ordinance that is firm enough to inhibit the existing gap in the policy, yet flexible enough that it may be interpreted for a range of conditions. The Commission should also work to develop a rigorous methodology for reviewing public interest claims that comprehensively studies the resource, uses a standard measure for evaluating the costs and benefits to the public, and in which the decision-making is wholly transparent. Additionally, due to its nature as a provision acting to promote public welfare, the public interest review process should include more public input than other demolition reviews.

One way to ensure that the public is well served by a decision to demolish in the name of public interest is to increase public outreach by holding forums for communities most directly affected by a proposed demolition – whose interests are ostensibly being served. Their feedback would provide clearer insight into what public interest is for that community and offer additional evidence either for or against the demolition, while preserving the Commission’s right to make the ultimate decision. Another consideration should be to delegate the final decision in this new process to the Mayor of Philadelphia – as is standard practice for public interest claims in Washington, D.C., where an appointed Mayor’s Agent decides the case – so that the final word on public interest comes straight from the person directly elected by the public.⁹⁹ This would

⁹⁸ Philadelphia Historical Commission, “Rules and Regulations,” Section 12, 2010.

⁹⁹ Dominique M. Hawkins, “A Study of Philadelphia Historical Commission’s Rules and Regulations: Review in Concept, Financial Hardship, Demolition in Public Interest,” (Philadelphia, PA: Preservation Design Partnership, May 2010), A.14.

increase accountability to the public in situations where it is used as the justification for demolishing heritage. Finally, the Commission should reopen the possibility of forming a specialized task force to review public interest claim as was mandated by the Parish House appeal settlement in 2013.¹⁰⁰ Public interest is a vague term of considerable influence to the local community, and its declaration should not be a simple matter of process for the Commission. It demands more in depth research than previously given, and it should be assigned to a group of people able to give public interest claims the attention they require.

Philadelphia is one of only eleven major cities in the nation to have direct provisions for public interest demolitions in its historic ordinance, none of which have a standard process of review for evaluating such public interest claims.¹⁰¹ The city is therefore poised to become a model of preservation policy should it take the initiative to reform its stance on public interest demolitions. The revision of the public interest review process would not only revolutionize preservation policy, but would also pave the way for other cities in the United States to enact more insightful decision-making regarding what values that are best for the public.

(5) Hold demolition applicants responsible for in depth accountability reviews regarding their record of property maintenance. Particularly in cases of financial hardship, it is reasonable for the government to deny demolition when the hardship is a product of the intentional or negligent actions of the property owner.¹⁰² The hardship process should account for more than

¹⁰⁰ **N.B.** For more information on the Parish House settlement and the task force provision, see Recommendation 6.

¹⁰¹ **N.B.** Public interest provisions found in the following cities: Detroit, Michigan; Fresno, California; Los Angeles, California; Miami, Florida; Pasadena, California; Portland, Oregon; Sacramento, California; San Antonio, Texas; St. Louis, Missouri; Washington, D.C. Based on a detailed review of 60 historic ordinances of major American cities; Hawkins, 6.

¹⁰² Hahn, 3.

a single transaction at the moment of the demolition application and consider the circumstances under which the proposed hardship was generated.

Elaborating on the roles and responsibilities of actors in hardship policy, Melvin B. Hill Jr. and James K. Reap assert that historical commissions must assess the cause of hardship:

If the owner has neglected the building, paid too much for the property, or is just gambling on getting a permit in spite of knowing the ordinance provisions, he may have created his own hardship. Government isn't required to bail an owner out of a bad business decision or speculative investment.¹⁰³

Yet it is under these very conditions that some cases, notably the Church of the Assumption, are approved for demolition. Preservation policy should regulate against using hardship in this manner. Historic preservation ordinances in Las Vegas, Los Angeles, and Phoenix prohibit the use of financial hardship when the property owner is responsible for “willful or negligent acts of the owner including purchased price is substantially more than the market value; failure to perform ordinary maintenance; failure to solicit and retain tenants; and failure to provide normal tenant improvements.”¹⁰⁴ With policy precedents in place, the Philadelphia Historical Commission should do more than consider the cause of hardship; it should develop a clear method for evaluating the accountability of claimants in the review process. This will ensure that the hardship provision is used as intended as a protection against takings claims (pursuant to the Fifth Amendment of the Constitution), and not as a means of demolishing resources for financial gain.

¹⁰³ Hill and Reap, 16.

¹⁰⁴ Hawkins, 4-5.

(6) *Appoint a consultant or consulting team to review demolition alternatives and funding sources with property owners prior to demolition review by the Commission.* Listed historic resource demolition should always be a last resort, having exhausted all other possibilities. When such alternatives are unknown and demolition is regarded as the only solution, the Commission should intervene and help property owners consider all possible options. Demolition cases should not be considered until after all alternatives have been explored and a high level of transparency has been maintained. On one hand, this assessment will help retain more historic resources put to reasonable uses in the city. On the other, if no alternative is possible, it will provide strong – and impartial – evidence for the Commission to grant demolition without any doubt.

By establishing a consulting team, the Commission would also be able to develop more creative policy responses to the conditions of hardship. In cities across the nation, historical commissions are authorized to develop economic packages (incentives, financial strategies, and even subsidies) for a building's preservation to counteract financial hardship. Such policies can be found in the historic ordinances of Atlanta, Chicago, and Pittsburg among others.¹⁰⁵ Other cities such as Richmond, Virginia allow for the modification of zoning codes to reduce barriers against reuse.¹⁰⁶ Philadelphia would do well to include similar policies in its Historic Preservation Ordinance, which may be informed by a new consultancy team.

In recent hardship cases, the Commission has employed an independent consultant from Real Estate Strategies, Inc. to review demolition applications and corresponding financial reports.¹⁰⁷

¹⁰⁵ *Ibid*, A.2-10.

¹⁰⁶ *Ibid*, A.11.

¹⁰⁷ Alan Greenberger, Letter to John Andrew Gallery, 08 November 2010

This practice, used most recently in hardship application reviews for the Levy-Leas Mansion and the Boyd Theater, can be traced back to a settlement deal from the Sidney Hillman Medical Center case in which the Commission agreed to contract a real estate consultant for future hardship reviews.¹⁰⁸ However, the Philadelphia Historical Commission does always not have a record of accepting the advisory entities for demolition provisions. As a condition of the appeal settlement between the Philadelphia Historical Commission, the Preservation Alliance of Greater Philadelphia, and the Radnor Property Group for the Parish House, the Historical Commission was required to explore the possibility of forming a task force to review the use of public interest claims in historic demolitions.¹⁰⁹ The Commission dutifully reviewed the proposition, but voted to reject the prospect of the ad hoc committee.¹¹⁰ Yet perhaps in the context of a comprehensive policy revision it will be possible to revisit the possibility of a demolition task force to greater success.

(7) Develop conditions for demolition, ensuring that the public interest is met with a good-faith replacement of the value lost to the public when heritage assets are destroyed. The Parish House settlement shows the importance of creating agreements between property owners and public when resources are demolished in the name of public interest. When a valuable heritage asset is lost, the property owner should have a responsibility to the public to provide some degree of compensation. In the case of the Parish House, this was accomplished through a preservation plan and fund for the adjoining listed building owned the cathedral and the promise of exploring the introduction of an ad hoc public interest task team in the Commission. However, it would be

¹⁰⁸ John Andrew Gallery, Statement on Sidney Hillman Medical Center, webpage (The Preservation Alliance for Greater Philadelphia, December 2010).

¹⁰⁹ Benjamin Leech, *Interview*, (Philadelphia, PA: Preservation Alliance of Greater Philadelphia, 06 August 2013.)

¹¹⁰ Philadelphia Historical Commission, "The Minutes of the 612th Stated Meeting of the Philadelphia Historical Commission," 9 August 2013.

beneficial to explore other ways that public interest demolition applications would only be granted on the condition that property owners give back to the community in a meaningful way specific to historic preservation.

Is it possible to institutionalize reparation for lost heritage? There does not appear to be any existing precedents, aside from settlements like that of the Parish House, but it would be worthwhile to consider how something such as a consent agreement could help smooth the process of demolition. For example, the property owner could agree to contribute Preservation Pennsylvania or to a fund within the Commission that supports more nominations to the Philadelphia Register of Historic Places.¹¹¹ This would engender a social contract between property owners and the public that would signify that all parties involved understand the value that will be lost in a demolition and is invested in contributing to the public in return. Such an agreement would be subjective in nature, and be determined at the discretion of the Commission.

(8) Reorganize the Philadelphia Historical Commission to achieve a stronger balance of political and preservation constituencies. One of the limitations of the Commission is that its configuration begets more political representatives than preservation advocates. The current composition as mandated by the ordinance calls for a total of 14 mayoral appointees. Less than half of the Commission is comprised of members of the local government or a delegate of that office, including the City Council President, the Director of Commerce, the Commissioner of Public Property, the Commissioner of Licenses and Inspections, the City Planning Commission Chairman, and the Director of Housing. The remaining eight members must include at least one

¹¹¹ **N.B.** The settlement for the Sidney Hillman Medical Center included a provision for the developer, the John Buck Company, to donate to the statewide non-profit organization Preservation Pennsylvania.

architect, historian, architectural historic, real estate developer, Community Development Corporation representative, and a community organization representative.¹¹²

The issue is not the mayoral appointment process. A cursory review of other local historical commission ordinances suggests this to be standard practice across the nation. The problem is the structure of the ordinance itself: by requiring so many specific public employees, it reduces an opportunity for more insight, advocacy, and balance that might be gained with more members of the public. A review of other historical commissions shows more emphasis on appointing resident members to the commission. The New York City Landmarks Preservation Commission includes five resident representatives from each of the five boroughs. The New Orleans Historic District Landmarks Commission does not require representatives from specific political offices, but must have an appointed member who is a resident or property owner from each of the established historic districts.¹¹³ The Raleigh Historic Development Commission of North Carolina is required to have 25% resident or property owner representation on its roster, with the “majority” of members experienced in the fields of preservation, history, and architecture.¹¹⁴ In Philadelphia, by contrast, half of the members of the Commission are political appointees, there is no mandated resident representative, and – unlike in each of these other three cities – the general members are compensated. The by-laws of the Philadelphia Historical Commission should be altered to remove the over-dependence on existing members of the local government and put in their place more local representatives and preservation professionals. This should help align the Commission more closely with the cited purposes of the ordinance, as opposed to alignment with mayoral policies and priorities.

¹¹² Philadelphia Historical Commission, “City of Philadelphia Historic Preservation Ordinance,” Section 14- 1003, 5-6.

¹¹³ City of New Orleans, New Orleans Historic District/Landmarks Commission Enabling Legislation, 1980.

¹¹⁴ City of Raleigh, Code of Ordinances, 2013.

Conclusion

According to De Monchaux and Schuster, “there are five and only five things governments can do – five distinct tools that they can use – to implement their urban design policies, including their policies vis-à-vis the preservation of the built heritage.”¹¹⁵ While there is no latent sixth tool, there is one more thing that governments *should* do: increase efforts to reevaluate and revise policies so that they reflect the evolving context in which they govern. The absence of preservation policy innovation in Philadelphia has led to an atmosphere of tension in heritage proceedings that could be mitigated through more dynamic and insightful policy. In the wake of yet another demolition controversy with the Boyd Theater, now is the time to implement such changes and set in motion a better system of protecting Philadelphia’s historic environment.

However, this assessment of preservation policy would be remiss to not identify the broader picture of the role of heritage assets in the evolution of urban spaces. Preservation and urban planning coalesce around decisions concerning the built environment, with each field theoretically supporting the goals and objectives of the other. If the current state of preservation policy does in fact enable planning agendas to supersede preservation concerns, then there is a larger issue that concerns the all too tenuous relationship between urban planning and historic preservation. It positions the two fields at odds with one another at a time when their cooperation would increase social and economic benefits for city residents. This has been demonstrated in nearly all major demolition cases concerning historic buildings in Philadelphia, with preservationists developing a distrust of developers and developers viewing preservationists as antagonists to a contemporary agenda.

¹¹⁵ De Monchaux and Schuster, 4-5.

This thesis seeks to pave the way for reconciliation between the fields of preservation and planning. At the very least, it proposes to revise existing policy so that it may become a preemptive maneuver to avoid future strain on the relationship between the two tense fields. Preservation policy must be able to adapt to changes in the urban environment in order to best protect heritage in our cities. Yet, in order to understand where to begin implementing change – and reduce the tension currently radiating throughout the preservation community – we must first recognize the chancy links in the delicate interplay of preservation and planning. Given the number of high-profile cases surrounding the insecure fates of locally designated buildings, it is clear that heritage building demolition is creating a weak link in this chain. Not only must this be resolved to ensure that we are sufficiently protecting Philadelphia’s built heritage, but it must be fixed so as not to draw divisions between two fields that must be able to work in tandem for the benefit of society.

At stake is far more than the loss of the heritage value ingrained in historic buildings. With each demolition in Philadelphia, we are erasing valuable aspects of the urban experience and critical tools for urban revitalization. Preservation is an indispensable facet of sustainable city development.¹¹⁶ According to Nahoum Cohen, “if historical elements are not correctly integrated in daily life, the entire process [of urban planning] will fail and urban centers will continue to empty: the past will simply become both a cultural stumbling block and burdensome to the public.”¹¹⁷ Heritage resources must coalesce with contemporary life in cities; but cities must also become more accepting of their incorporation through less indulgent demolition policies. When

¹¹⁶ Robert A. Young, *Stewardship of the Built Environment: Sustainability, Preservation, and Reuse*, (Washington, DC: Island Press, 2012), 41.

¹¹⁷ Nahoum Cohen, *Urban Conservation*, (Cambridge, MA: The MIT Press, 1999), 11-13.

we demolish heritage resources we are losing more than our past: we are destroying incomparable opportunities for future development.

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FIGURES



Figure 1 | Threatened resources of Philadelphia: The Church of the Assumption, interior view.
Source: Bradley Maule, *Hidden City Philadelphia*, 2013.



Figure 2 | Threatened resources of Philadelphia: Levy-Leas Mansion. Source: Peter Woodall, *Hidden City Philadelphia*, 2012.



Figure 3 | Threatened resources of Philadelphia: Episcopal Cathedral Parish House, exterior prior to demolition. Source: Peter Woodall, *Hidden City Philadelphia*, 2013.



Figure 4 | The Boyd Theater days before the demolition began on its interiors. Source: Bradley Maule, *Hidden City Philadelphia*, 2014.



Figure 5 | The “blighted” commercial corridor at the center of the *Berman v. Parker* (1954) case, whose demolition was unanimously approved by the United States Supreme Court. Source: DC Public Library, *Washingtoniana Collection*, Joseph Curtis Collection.



Figure 6 | The Sidney Hillman Center pictured around the time of the Rittenhouse-Fitler Residential Historic District designation in 1995. Source: City of Philadelphia Department of Records, Historic Commission Collection, nd.



Figure 7 | View of 2116 Chestnut, the 34-story luxury apartment complex that replaced the Hillman Medical Center. Source: Hunter Roberts Construction Group, 2012.



Figure 8 | Contemporary view of Hillman Medical Center prior to demolition. Source: Gabriel Gottlieb, *Philadelphia Heights*, 2011.



Figure 9 | Demolition scene of the Hillman Medical Center. Source: Ben Leech, *Hidden City Philadelphia*, 2011.



Figure 10 | Exterior view of the Church of the Assumption in 1919. Source: *Abandoned America*.



Figure 11 | Interior conditions today require substantial investment to repair the structure for reuse. Source: Michael Christopher, *Abandoned America*, 2012.



Figure 12 | The Church of the Assumption as it interacts with block today. Source: Laura Kicey, *Curbed Philly*, 2013.



Figure 13 | Lithograph view of the Levy-Leas Mansion at the turn of the 20th century. Source: Moses King, 1900 (Digitized 2000, *Places in Time*, Bryn Mawr University).



Figure 14 | Heavily-altered Levy-Leas Mansion exterior today. Source: Aaron Wunsch, *Hidden City Philadelphia*, 2013.



Figure 15 | Line drawing of the University of Pennsylvania's original concept for the Levy-Leas Mansion, the Campus Inn. Source: Thomas Lussenhop, 2008.



Figure 16 | Rendering of approved development at 400 South 40th Street. Source: Atkin Olshin Schade Architects, 2012.



Figure 17 | Elevation of the Parish House. Source: City of Philadelphia Department of Records, Historical Commission Collection, 1969.



Figure 18 | Parish House exterior in the year prior to its demolition. Source: Clem Murray, *Philadelphia Inquirer*, 2012.



Figure 19 | Parish House demolition. Source: *PlanPhilly*, 2012.



Figure 20 | Rendering of the residential tower set to replace the Parish House. Source: BLT Architects, 2013.



Figure 21 | The most recent site of demolition controversy in Philadelphia, the Boyd Theater, in its prime. Source: Irvin Glazer Collection, Athenaeum of Philadelphia, 1928.



Figure 22 | Contemporary Exterior of the Boyd Theater. Source: Charles Fox, *Philadelphia Inquirer*, 2014.

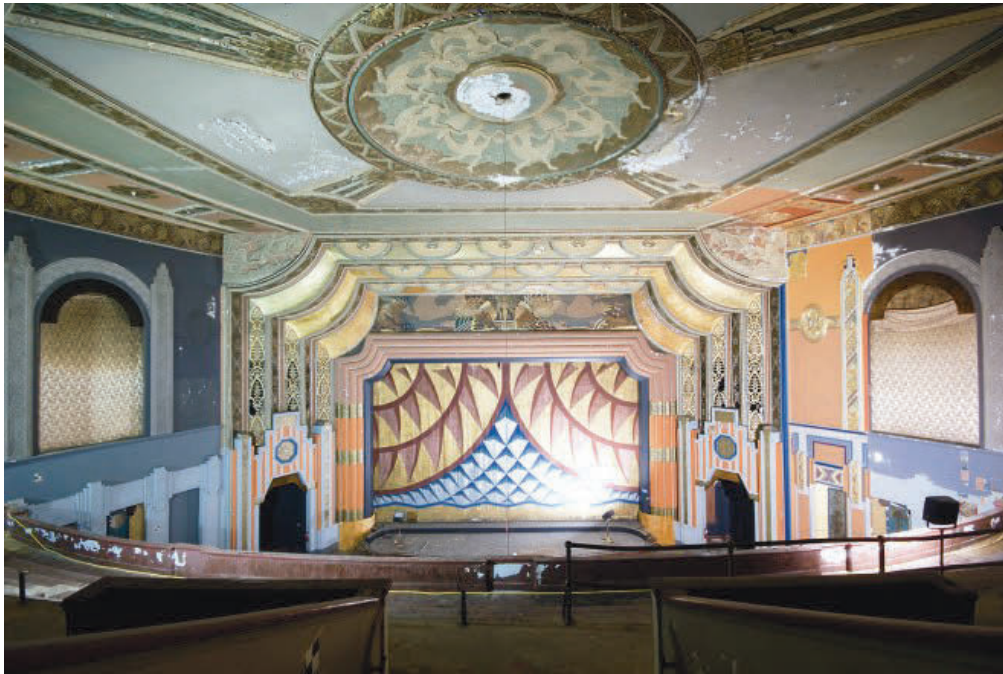


Figure 23 | The Boyd Theater's Art Deco interior, demolished in 2014. Source: Chandra Lampreich, *Hidden City Philadelphia*, 2013.



Figure 24 | Rendering of the Boyd Theater's reinvention as a luxury multiplex. Though the interior has been demolished, the theater's new owners intend to preserve the façade. Source: iPic Entertainment, 2013.

APPENDIX A | Philadelphia Demolition Table 1985-2013

Local Historic Resource	Start Date	Administration	Final Demolition Decision				Justification for Demolition					
			APPROVED	PARTIAL	DENIED	ND / TABLED	HARDSHIP	PUBLIC INTEREST	NO FINDING	NO DEMO		
3001 School House Lane	1985	Goode				■						■
218-220 Arch Street	1985	Goode	■								■	
19 Christian Street	1985-86	Goode	■								■	
Greene Street Friends Carriage House	1985	Goode	■								■	
Wakefield, Fairmount Park	1985	Goode	■								■	
13 South 2 nd Street	1986	Goode					■					
136-48 North Delaware Avenue	1986	Goode	■						■			
149 Hancock Street	1986-95	Goode					■					■
Episcopal Hospital, Gill House	1987	Goode	■							■		
Boyd Theater	1987	Goode					■					■
207-207½ Vine Street	1987	Goode						■				■
Girard College, Various Buildings	1987	Goode	■								■	
Gas Station at 20 th and Arch Streets	1988	Goode	■								■	
26-30 South 21 st Street	1988-90	Goode					■					■
136 South Front Street	1989-90	Goode							■			■
24, 26, 28 South Front Street	1989	Goode					■					■
5322-28 Germantown Avenue and 15-19 Penn Street	1990-91	Goode	■								■	
Smith Hall	1991	Goode	■								■	
1001 Chestnut Street, Victory Building	1991	Goode					■					■

Local Historic Resource	Start Date	Administration	Final Demolition Decision				Justification for Demolition			
			APPROVED	PARTIAL	DENIED	ND / TABLED	HARDSHIP	PUBLIC INTEREST	NO FINDING	NO DEMO
2-16 Vine Street, Jayne Building	1991	Goode	■				■			
920-22, 28, 30 Chestnut Street	1991	Goode	■				■			
Royal Theatre	1992	Rendell				■				■
21-25 South 2 nd Street	1993	Rendell				■				■
Plastered Hall, Boathouse Row	1993	Rendell	■					■		
Logan House, Hunting Park	1993	Rendell				■				■
2000 N. Broad Street Carriage House	1993	Rendell	■					■		
117 Walnut Street	1994	Rendell		■				■		
115 Walnut Street	1994	Rendell				■				■
103-5, 107-9 Walnut Street	1994-95	Rendell	■					■		
York Row, St. James	1998	Rendell	■					■		
Arnest Mansion, Fairmount Park	1995	Rendell	■					■		
219-21 South 9 th Street	1995	Rendell				■				■
1416 West Diamond Street	1996	Rendell			■					■
1725 Triga Street	1996	Rendell				■				■
4414 Ridge Avenue, Stone House	1997	Rendell	■					■		
Park Mall, Temple U. (7 Buildings)	1998	Rendell	■					■		
5520-24 Arch Street, Yellin Studio	1998	Rendell	■					■		
401-17 West Johnson Street, Mayfair Apartments, RDA	1999	Rendell	■					■		

Local Historic Resource	Start Date	Administration	Final Demolition Decision				Justification for Demolition			
			APPROVED	PARTIAL	DENIED	ND / TABLED	HARDSHIP	PUBLIC INTEREST	NO FINDING	NO DEMO
143 and 151 West Coulter Street, School for the Deaf	2001	Street	■					■		
300-18 North 63 rd Street Church	2002	Street	■						■	
1328-32 Race Street, Fire Station	2002-06	Street	■					■		
149 S. Hancock Street, Bouvier House	2003	Street				■				■
1900 Block of Sansom Street, PPA	2004	Street	■					■		
1800-18 Park Avenue, Temple U.	2004	Street	■				■			
10 Rittenhouse	2004	Street	■				■			
1706 Rittenhouse Square Street	2004	Street	■						■	
500 West Willow Grove Avenue, CHA	2005	Street	■						■	
48-50 South Front Street and 103 Chestnut Street	2006-07	Street	■						■	
699 North Broad Street, Divine Lorraine Annex	2007	Street	■						■	
100 East Leigh Avenue, Episcopal Hospital	2008	Street	■					■		
1610-18 Locust Street, Curtis Institute	2007-08	Street	■					■		
2116 Chestnut Street, Hillman Medical Center	2009	Nutter	■					■		
1123-33 Spring Garden Street, Church of the Assumption	2010	Nutter	■					■		
400 South 40 th Street	2012	Nutter	■					■		
3723-25 Chestnut Street	2012	Nutter	■					■		
Boyd Theater (II)	2013	Nutter						■		

Excerpt from "City of Philadelphia Historic Preservation Ordinance" (2012)

§ 14-1005. Regulation.

(1) Building Permit Required.

Unless a building permit is first obtained from L&I, no person shall alter or demolish a historic building, structure, site, or object, or alter, demolish, or construct any building, structure, site, or object within a historic district, nor alter or demolish a historic public interior portion of a building or structure, nor perform work on a building or structure that requires a building permit if such building or structure contains a historic public interior portion

(2) Building Permit Application Referral.

Before L&I may issue such a building permit, L&I shall forward the building permit application to the Historical Commission for its review.

(3) Demolition Notice.

When a person applies for a building permit involving demolition, L&I shall post, within seven days, notice indicating that the owner has applied for a building permit to demolish the property; that the property is historic or is located within a historic district; that the application has been forwarded to the Historical Commission for review. The notice shall be posted on each street frontage of the premises with which the notice is concerned and shall be clearly visible to the public. Posting of a notice shall not be required in the event of an emergency that requires immediate action to protect the health or safety of the public. No person shall remove the notice unless the building permit is denied or the owner notifies L&I that he or she will not demolish the property.

(4) Comment Review.

The Historical Commission's scope of review of applications for building permits for construction, as defined herein, shall be limited to a 45-day period of comment.

(5) Submission Requirements.

(a) At the time that a building permit application is filed with L&I for alteration, demolition or construction subject to the Historical Commission's review, the applicant shall submit to the Historical Commission the plans and specifications of the proposed work, including the plans and specifications for any construction proposed after demolition and such other information as the Historical Commission may reasonably require to exercise its duties and responsibilities under this Chapter 14-1000.

(b) In any instance where there is a claim that a building, structure, site, or object cannot be used for any purpose for which it is or may be reasonably adapted, or where a building permit application for alteration, or demolition is based, in whole or in part, on

financial hardship, the owner shall submit, by affidavit, the following information to the Historical Commission:

(.1) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;

(.2) Assessed value of the land and improvements thereon according to the most recent assessment;

(.3) Financial information for the previous two years which shall include, as a minimum, annual gross income from the property, itemized operating and maintenance expenses, real estate taxes, annual debt service, annual cash flow, the amount of depreciation taken for federal income tax purposes, and other federal income tax deductions produced;

(.4) All appraisals obtained by the owner in connection with his purchase or financing of the property, or during his ownership of the property;

(.5) All listings of the property for sale or rent, price asked, and offers received, if any;

(.6) Any consideration by the owner as to profitable, adaptive uses for the property; and

(.7) The Historical Commission may further require the owner to conduct, at the owner's expense, evaluations or studies, as are reasonably necessary in the opinion of the Historical Commission, to determine whether the building, structure, site or object has or may have alternate uses consistent with preservation.

(6) Building Permit Application Review.

(a) Determination.

Within 60 days after receipt by the Historical Commission of a building permit application, the Historical Commission shall determine whether or not it has any objection to the proposed alteration or demolition. Before taking any action, the Historical Commission shall afford the owner an opportunity to appear before the Historical Commission to offer any evidence the owner desires to present concerning the proposed alteration or demolition.

(.1) Where the Historical Commission has no objection, L&I shall grant the building permit subject to the requirements of any applicable provisions of The Philadelphia Code and regulations and subject to any conditions of the Historical Commission pursuant to § 14-1005(6)(c).

(.2) Where the Historical Commission has an objection, L&I shall deny the building permit.

(.3) Where the Historical Commission has determined that the purpose of this Chapter 14-1000 may best be achieved by postponing the alteration or demolition of any building, structure, site, or object 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 Historical Commission shall inform the owner in writing of the reasons for its action. Where the Historical Commission acts to postpone the proposed alteration or demolition pursuant to § 14-1005(6)(a), L&I shall defer action on the building permit application pending a final determination by the Historical Commission approving or disapproving the application.

(b) Postponement of Determination.

During the time that action on a building permit application is deferred, the Historical Commission shall consult with the owner, civic groups, public and private agencies, and interested parties to ascertain what may be done by the City or others to preserve the building, structure, site, or object that is the subject of the building permit application. When appropriate, the Historical Commission shall make recommendations to the Mayor and City Council.

(c) Conditions on Approval.

The Historical Commission may require that a building permit for the alteration or demolition of any building, structure, site, or object subject to its review be issued subject to such conditions as may reasonably advance the purposes of this Chapter 14-1000. L&I shall incorporate all such requirements of the Historical Commission into the building permit at the time of issuance. In cases where the Historical Commission, pursuant to § 14-1005(6)(a), agrees to 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, the Historical Commission may require that the historic building, structure, site, or object be recorded, at the owner's expense, according to the documentation standards of the Historic American Buildings Survey and the Historic American Engineering Record (HABS/HAER) for deposit with the Historical Commission.

(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.

(e) Review Criteria.

In making its determination as to the appropriateness of proposed alterations, demolition, or construction, the Historical Commission shall consider the following:

- (.1) The purposes of this Chapter 14-1000;
- (.2) The historical, architectural, or aesthetic significance of the building, structure, site, or object;
- (.3) The effect of the proposed work on the building, structure, site, or object and its appurtenances;
- (.4) The compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings, and the streetscape; and
- (.5) The design of the proposed work.
- (.6) In addition to the above, the Historical Commission may be guided in evaluating proposals for alteration or construction by the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" or similar criteria.
- (.7) In specific cases as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter 14-1000 would result in unnecessary hardship so that the spirit of this Chapter 14-1000 shall be observed and substantial justice done, subject to such terms and conditions as the Historical Commission may decide, the Historical Commission shall by a majority vote grant an exemption from the requirements of Chapter 14-1000.
- (.8) With respect to designated public interior portions,
 - (.a) the Historical Commission may grant an exemption when, owing to special consideration of the mission and financial status of a nonprofit organization, the Historical Commission determines that a literal enforcement of the provisions of this chapter would not be in the public interest and the spirit of this Chapter will be substantially observed, subject to such terms and conditions as the Historical Commission may establish; and
 - (.b) the Historical Commission shall approve a building permit application for an alteration to a non-designated interior portion if the proposed alteration neither has an effect on the appearance of, nor compromises the structural integrity of, a historic public interior portion.

(f) Jurisdiction During Consideration of Designation. L&I shall not issue any building permit for the demolition, alteration, or construction of any building, structure, site, or object that is being considered by the Historical Commission for designation as historic or

that is located within a district being considered by the Historical Commission for designation as historic where the building permit application is filed on or after the date that notices of proposed designation have been mailed, except that L&I may issue a building permit if the Historical Commission has approved the application or has not taken final action on designation and more than 90 days have elapsed from the date the permit application was filed with the Historical Commission. Where the Historical Commission takes final action on designation within the time allotted herein, any building permit application on file with L&I shall be deemed to have been filed after the date of the Historical Commission's action for purposes of this Chapter 14-1000.

9. FINANCIAL HARDSHIP AND PERMIT APPLICATIONS

9.1 Financial Hardship in the Consideration of Permit Applications

9.1.a Pursuant to Sections 14-2007(7)(f) and (j) of the Philadelphia Code, the Commission may determine that a building, structure, site, object, or public interior portion of a building or structure cannot be used for any purpose for which it is or may reasonably be adapted. Such a finding, commonly referred to as a finding of financial hardship, allows the Commission to consider the approval of an application to alter or demolish an historic property that may not otherwise satisfy the Commission's review standards. However, such a finding does not release the historic resource from the Commission's regulation, but only allows the Commission to consider relaxing its review standards.

9.2 Additional Submission Requirements for Financial Hardship

9.2.a In addition to the standard submission documents required by Section 6.7 of these Rules & Regulations, an applicant claiming financial hardship shall submit, by affidavit, the following information for the entire property, as stipulated by Section 14-2007(f)(.1)-(.7) of the Philadelphia Code:

1. amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;
2. assessed value of the land and improvements thereon according to the most recent assessment;
3. financial information for the previous two (2) years which shall include, at a minimum, annual gross income from the property, itemized operating and maintenance expenses, real estate taxes, annual debt service, annual cash flow, the amount of depreciation taken for federal income tax purposes, and other federal income tax deductions produced;
4. all appraisals obtained by the owner in connection with the purchase or financing of the property, or during the ownership of the property;
5. all listings of the property for sale or rent, price asked, and offers received, if any; and,
6. any consideration by the owner as to profitable uses and adaptive uses for the property.

9.2.b As provided by Section 14- 2007(7)(f)(.7) of the Philadelphia Code, the Commission may also require the owner to conduct, at the owner's expense,

evaluations and studies, as are reasonably necessary in the opinion of the Commission, to determine whether the building, structure, site, object, or public interior portion has or may have alternative uses consistent with preservation. If the Commission requires an owner to conduct additional evaluations and studies, these shall, at a minimum, include:

1. identification of reasonable uses or reuses for the property within the context of the property and its location;
2. rehabilitation cost estimates for the identified reasonable uses or reuses, including the basis for the cost estimates;
3. a ten- year pro forma of projected revenues and expenses for the reasonable uses or reuses that takes into consideration the utilization of tax incentives and other incentive programs;
4. estimates of the current value of the property based upon the ten-year projection of income and expenses and the sale of the property at the end of that period, and
5. estimates of the required equity investment including a calculation of the Internal Rate of Return based on the actual cash equity required to be invested by the owner.

9.3 Financial Hardship Submission Completeness

The Historical Commission staff shall review the financial hardship documents and ascertain their completeness pursuant to the submission requirements delineated in Sections 6.7 and 9.2 of these Rules & Regulations. An incomplete application and submission may not be accepted by the staff and may be returned to the applicant with a request for additional information.

In the event that the Committee on Financial Hardship or Commission deems the financial hardship documents incomplete, it may direct the staff to return the entire application to the applicant. The sixty (60) day response requirement prescribed by Section 14- 2007(7)(g) of the Philadelphia Code and Section 6.12 of these Rules & Regulations shall not apply to an incomplete application.

9.4 Review Criteria

To substantiate a claim of financial hardship to justify an alteration, the applicant must demonstrate that the property cannot be used for any purpose for which it is or may be reasonably adapted. The applicant has an affirmative obligation in good faith to explore potential reuses for it. 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.

9.5 Review by the Committee on Financial Hardship

9.5.a The Committee on Financial Hardship is a technical advisory committee of the Historical Commission. The Committee on Financial Hardship is established and defined in Section 3.4.c of these Rules & Regulations.

9.5.b For review at a Committee on Financial Hardship meeting, a complete application as described in Section 6.7 of these Rules & Regulations and Section 9.2 of these Rules & Regulations must be submitted to the staff at least nine (9) working days prior to the meeting. The staff shall release a list of applications to be reviewed by the Committee to all interested parties at least five (5) working days prior to the Committee meeting. All application materials, with the exception of some hardship documentation as defined in Section 9.8 of these Rules & Regulations, shall be considered public information and shall be available for public examination at the Commission office at least five (5) working days prior to the Committee meeting.

Supplemental materials may be submitted during the review process, provided such materials are submitted at least three (3) working days prior to the Committee meeting at which the application will be heard. Such materials, with the exception of some hardship documentation as defined in Section 9.8 of these Rules & Regulations, shall be considered public information and shall be available for public examination at the Commission office upon submission.

9.5.c In addition to the Architectural Committee and Commission, the Committee on Financial Hardship shall review all permit applications claiming financial hardship. The staff shall forward complete applications to the Committee on Financial Hardship. The staff shall also forward an advisory recommendation on the application to the Committee on Financial Hardship. The recommendation shall advise the Committee on Financial Hardship to recommend that the Commission find that the application does or does not demonstrate that the property cannot be used for any purpose for which it is or may be reasonably adapted, or that the application should be tabled for the submission of additional information. The staff may also enter a recommendation directly to the Commission.

9.5.d The applicant or an informed, authorized representative is expected to appear before the Committee on Financial Hardship to present the application and to address any questions that may arise about it. Attendance at this meeting facilitates the review process and avoids delay.

9.5.e The Committee on Financial Hardship shall review the application and formulate an advisory recommendation to the Commission for review at its next meeting. The recommendation shall advise the Commission to find that the application does or does not demonstrate that the property cannot be used for any purpose for which it is or may be reasonably adapted, or that the application

should be tabled for the submission of additional information. The recommendation shall be confirmed in writing to the applicant.

9.6 Review by the Architectural Committee

The Architectural Committee shall review applications claiming financial hardship according to Section 6.11 of these Rules & Regulations.

9.7 Review by the Commission

The Commission shall review applications claiming financial hardship according to Section 6.12 of these Rules & Regulations.

9.8 Public Access to Hardship Documents

Inasmuch as community organizations, preservation groups, other associations, and private citizens may wish to evaluate and comment on a submission made under the financial hardship provision, the application materials described in Sections 6.7 and 9.2 of these Rules & Regulations shall not be subject to confidentiality. Should an applicant attach federal or state tax returns or other materials commonly regarded as confidential, however, these supplementary documents shall not be available to the public.

9.9 Financial Hardship and Non- profit Organizations

For Financial Hardship applications by non- profit organizations, see Section 10 of these Rules & Regulations.

9.10 Unnecessary Hardship

For Unnecessary Hardship applications by low- and moderate- income persons, see Section 11 of these Rules & Regulations.

10. FINANCIAL HARDSHIP AND NON- PROFIT ORGANIZATIONS

10.1 Financial Hardship for Non-Profit Organizations

Section 14-2007(7)(f) of the Philadelphia Code contains provisions for permit applications for alteration or demolition based in whole or in part on financial hardship. For a demolition permit, Section 14-2007(j) further requires an owner to demonstrate that sale of a property is impracticable, that commercial rental cannot yield a reasonable rate of return, and that other potential uses are foreclosed. In addition, Sections 6.7 of these Rules & Regulations describe the submission requirements and review procedures for a permit application; Section 9 of these Rules & Regulations describes the submission requirements and review procedures for an application under the financial hardship clause.

The Commission recognizes that the provisions of Section 14-2007 of the Philadelphia Code and other sections of these Rules & Regulations may not all have applicability to a property owned and used by a non-profit organization. No single set of measures can

encompass the highly variegated types and contexts of buildings held by non-profit organizations. The economics of a building in the middle of a college campus may differ from that of a church, hospital, museum, or child care center.

10.2 Additional Submission Requirements

10.2.a The forms, photographs, drawings, and documents stipulated in Sections 6.7 and 9.2 of these Rules & Regulations shall be submitted.

10.2.b A copy of the IRS letter recognizing the organization as tax-exempt, proof of the organization's registration status with the Commonwealth of Pennsylvania's Bureau of Charitable Organizations, or equivalent documentation evidencing the organization's charitable or non-profit status.

10.2.c The Commission may also require the owner to conduct, at the owner's expense, evaluations and studies, as are reasonably necessary in the opinion of the Commission, to determine whether the building, structure, site, object, or public interior portion has or may have alternative uses consistent with preservation. Section 14-2007(7)(f)(.7) of the Philadelphia Code. If the Commission requires an owner to conduct additional evaluations and studies, these shall, at a minimum, include:

1. identification of reasonable reuses for the property within the context of the property and its location;
2. rehabilitation cost estimates for the identified uses or reuses, including the basis for the cost estimates;
3. the current standard of building and maintenance costs for the performance of the mission or function of the organization, particularly in Philadelphia;
4. a comparison of the cost of the performance of the mission or function of the organization in the existing building and in a new building, and a comparison of the cost of rehabilitation of the existing building with the demolition of the existing building and the construction of a new building;
5. the impact of the reuse of the existing building on the financial condition of the organization;
6. the impact of the reuse of the existing building on the organization's program, function or mission;
7. the additional cost, if any, attributable to the building of performing the organization's service or function within the context of costs incurred by comparable organizations, particularly in Philadelphia;
8. grants received or applied for to maintain or improve the property;

9. the organization's budget for the current and immediately past fiscal year; and

10. consideration, if any, given by the organization to relocation.

11. UNNECESSARY HARDSHIP

11.1 Unnecessary Hardship

Section 14-2007(k)(.7) makes specific provision for the exemption from the requirements of the historic preservation ordinance by a majority vote of the Commission in instances where its literal enforcement would result in unnecessary hardship. The legislative history of this ordinance indicates that this provision was included out of concern and consideration for low and moderate income persons. This provision also recognizes that in such instances, the preservation of basic form and rhythm rather than restoration can meet the objectives of the ordinance and the Commission.

11.2 Eligibility Criteria

11.2.a As its initial criterion for evaluating a request for an exception under the Unnecessary Hardship provision, the Commission may employ the Section 8 eligibility guidelines of the United States Department of Housing and Urban Development (HUD), which defines a low or moderate-income household as one with an income of not more than eighty percent (80%) of the median family income for the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area. Should HUD change its definition of low and moderate income, the Commission may adopt that new definition.

The Commission also recognizes the existence of circumstances under which the rigid application of this standard could result in unnecessary hardship. Examples of this include, but are not limited to, extraordinary medical or education expenses, the cost of maintenance contrasted with the cost of alterations, and the financial ability of persons on fixed incomes, particularly in areas with markedly appreciating values. In view of these and similar situations, the Commission shall consider requests for exemptions under this provision from persons who do not meet the standard of the HUD or other formula.

11.3 Submission Requirements under the Unnecessary Hardship Provision

11.3.a To apply for the exemption under the Unnecessary Hardship provision, a low or moderate income person should submit a building permit application, a description of the scope of work, drawings if available, cost estimates for the proposed work and Federal Income Tax Returns for the previous two years demonstrating household income or other evidence to demonstrate qualification for this exemption. The personal financial information shall be kept confidential.

The Commission staff shall work affirmatively with the applicant in the preparation of the submission and in the provision of technical assistance to solve problems of design and materials.

11.4 Review Process and Procedure

11.4.a The staff shall evaluate the submission for completeness and shall discuss with the applicant possible methods and materials to achieve a higher degree of authenticity within the applicant's budget and needs.

11.4.b The staff shall prepare a recommendation on the application and submit it to the Architectural Committee which shall limit its review to design and refer the matter to the Commission.

11.4.c The Commission shall hear the application, recommendations and any public testimony in the manner prescribed in Section 4 of these Rules & Regulations.

12. DEMOLITION IN THE PUBLIC INTEREST

12.1 Necessity in the Public Interest

Section 14-2007(j) of the Philadelphia Code authorizes the Commission to approve a permit application for demolition that may not otherwise satisfy the Commission's review criteria if the Commission "finds that issuance of the permit is necessary in the public interest."

12.2 Submission Requirements

The applicant must submit the forms, photographs, drawings, and other documents stipulated in Section 6.7 of these Rules & Regulations. The applicant must provide documentation demonstrating the necessity of demolition in the public interest.

12.3 Review Process

The Commission shall process the application according to the procedures established in Section 6 of these Rules & Regulations.

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