

PROTECT THE VILLAGE HISTORIC DISTRICT

(A Project of Open Space Institute)

Box 537, 511 Sixth Ave, New York, NY 10011

Tel: 212-643-0375 Email: ProtectTheVillage@gmail.com

POST-HEARING SUBMISSION TO THE LANDMARKS PRESERVATION COMMISSION BY PROTECT THE VILLAGE HISTORIC DISTRICT ON THE RUDIN AND ST. VINCENT'S DEVELOPMENTS

This post-hearing submission is made on behalf of Protect the Village Historic District (PVHD) for the purpose of focusing the Landmarks Preservation Commission on the legal standards applicable at this point in the review process and in rebuttal to some of the claims made by St. Vincent's, the Rudin Organization and their architects and other consultants at the hearing. This includes a number of claims made regarding the effect of St. Vincent's bankruptcy proceeding on the Landmarks process. As set forth in its initial submission to the LPC, PVHD opposes the granting of the certificates of appropriateness sought by St. Vincent's and the Rudin Organization.

The Applicable Legal Standard

In making their presentations, St. Vincent's and its consultants frequently invoked the necessity of demolishing its existing buildings and building a completely new hospital tower in order to be able to pursue its mission. Indeed, at various times, the consultants asserted that preservation of the Historic District meant "preserving St. Vincent's mission in the Village." They identified the institution as the historic element deserving of preservation and did everything they could to dismiss the significance of demolishing nine existing buildings or building new out-of-scale structures. It was St. Vincent's, they said, that needed to be spared if the fabric of the Historic District was to be maintained, and St. Vincent's, they asserted, can only continue its mission if its applications, and that of the Rudins, are approved.

This assertion misses two critical points. First, the Landmarks Preservation Law was not passed to preserve institutions – it was enacted to protect physical assets and the physical fabric of historic districts. This is absolutely clear in the text of the statute, which makes no mention of maintaining institutions, but, to the contrary, sets forth standards that relate specifically and exclusively to the physical environment. Were it otherwise, institutions would have a free ride in building whatever they wanted; all they would say was we need to modernize, and modernizing requires us to tear down the old and construct something big and new. That thoughtless approach is what the Landmarks Law was supposed to protect against. It also happens to be exactly what St. Vincent's is attempting to do here.

Second, and of even greater importance, the only relevant issue in the current phase of the LPC proceedings is "appropriateness." This question of necessity – of

preserving St. Vincent's as an institution – has no place, legally, in the present round of hearings or in the Commission's decision on the current applications. The only legitimate issue is whether it is "appropriate", within the meaning of that term under the Landmarks Preservation Law, to demolish the nine buildings that comprise St. Vincent's existing campus and replace them with the massive hospital tower and 400-unit condominium structure proposed by the Rudins. If the Commission departs from this standard in reaching its decision, it will violate that law it was created to enforce.

Unfortunately, the issue of "necessity" underlay much of what the applicants presented on April 1. Alleged "need" was not merely the elephant in the hearing room – it was an elephant the applicants did not hesitate to invoke both specifically and by inference. No doubt this was heard by the Commissioners, and it will not be easy to put the concern aside. But it cannot properly be part of the LPC's consideration at this point.

As pointed out in our initial submission, the Landmarks Law "was enacted in response to New Yorkers' growing concern that important physical elements of the City's history were being lost despite the fact that these buildings could be reused." To this end, the Landmarks Law set up a review process that required applicants who proposed to demolish or alter existing landmark structures, or any structures within a historic district, or to build new structures within a district, to seek approval from the LPC before taking any of those actions. The Law set up a two-tiered system for LPC review. The first tier is the "appropriateness" proceeding. The second tier, which follows in limited cases when any of the above actions are found to be "inappropriate," is the "hardship" process, in which the LPC is authorized to allow demolition and the construction of new structures even if they are not appropriate because the applicant would otherwise be unable to make a reasonable return or pursue the mission for which it was created.

The current proceeding is the first tier of review – i.e. "appropriateness" – the applicable standards for which were spelled out in PVHD's initial submission and will not be repeated here. Suffice it to say that nowhere in the sections of the Law dealing with "appropriateness" is there any reference to "need" or "necessity" or "institutional continuity." The language of the Law is specific and clear: "appropriateness" is measured by physical impacts within the historic district, including impacts on property values. Given these statutory limitations, it is hard to conceive how the Commission could find that the St. Vincent's demolition and new building proposals are "appropriate."

That does not mean that St. Vincent's cannot raise its "necessity" claims under the Landmarks Law. To the contrary, Section 25-309 of the Law sets out in detail a hardship process to allow a determination of whether there is indeed real hardship; and if that is proved, the Commission can authorize demolition and other actions even though they are not "appropriate" to the historic district. This section has been invoked a number of times before, and if St. Vincent's can prove its "need" claims, it

may be entitled to such relief. But this cannot be done legally by taking “need” into account in an “appropriateness” proceeding, such as that now before the LPC.

If the Commission was to take “need” considerations into account, explicitly or otherwise, in the current proceeding, it would not only undermine the Landmarks Law, it would violate it. The City Council, the legislative body of the City, has determined in the statute that claims of hardship deserve a forum and, if proved, relief from the Law. It is not for the Commission to abrogate that determination by taking claimed hardship into account in deciding whether a proposal is “appropriate.”

There is a further reason why “hardship” or “necessity” should play no role in this proceeding. This is that St. Vincent’s claims are only that – they have been validated only by its own rhetoric and studies that it commissioned to justify a result that, in fact, was the outcome of the bankruptcy process, not the public interest, and took no account of landmark considerations. The provision in the Landmark Law for a hardship process is not simply to give an applicant the opportunity to state its case; it is the forum in which it has to *prove* its case and in which others can question that case or even show it is not true. The Commission should not subvert that process by letting the issue of appropriateness be affected the St. Vincent’s claim of need.

Rebuttal Points

1. St. Vincent’s as the Focus of Historic Preservation. In his remarks and several times in the course of the hearings, Mr. Friedman argued that the Landmarks Preservation Law should be read to protect St. Vincent’s as an institution with a long history in Greenwich Village and thus it should be allowed to rebuild to meet its asserted needs in order to maintain the continuity of the institution in the Village. As we already noted above, the Landmarks Law provides no support for this assertion, and if it were ever read to do so, it would eviscerate the effectiveness of the Law for any institution with a considerable history.

2. St. Vincent’s as its Own Precedent. Mr. Friedman asserted that there was precedent for allowing St. Vincent’s to demolish its entire East Campus – to wit, the LPC’s 1977 approval, at St. Vincent’s urgent behest, of the demolition of the Seton and Lowenstein Pavilions on the East Campus and their replacement with the Link and Coleman Pavilions. This argument is akin to saying because the LPC once authorized a small billboard in Grand Canyon, it is now obligated to approve a much larger one. From PVHD’s point of view, it is also akin to arguing that one bad mistake justifies an even worse one.

Perhaps more to the point, the approval the LPC gave to demolish the Seton and Lowenstein Pavilions was an agonizing one that was justified primarily because the new Link and Coleman facilities were to be built in a fashion that not only allowed St. Vincent’s to modernize but also integrated them with and preserved the other parts of the East Campus. By contrast, the current St. Vincent’s application would demolish everything on the East Campus and replace the existing structures with a building that has nothing to do with hospital services.

Moreover, the plans for Coleman made a considerable effort to blend its huge mass into the surrounding structures, presenting a relatively narrow façade to Seventh Avenue with its long north façade growing out of the Smith Building and the south façade set back behind the Link Pavilion. By contrast, the two new buildings would be free-standing structures, thrusting themselves up in ways that make them the unhappy center of attention. Finally, of course, the size of the new Hospital Tower would be dramatically greater than the Coleman Pavilion, which is already recognized as one of the most architecturally inappropriate buildings in the Greenwich Village Historic District.

3. Implications of the Bankruptcy Proceeding. At a number of points during the April 14 public hearing, Mr. Friedman and Mr. Amoroso implied that the proposal to sell the East Campus and build a new hospital on the O'Toole site was dictated by the St. Vincent's bankruptcy proceedings. Even if this were so, it would not go to the issue of "appropriateness", but only that of "hardship." Moreover, nothing in the Bankruptcy Law would have authorized the Bankruptcy Judge to approve a plan overriding local land use regulations. If it were otherwise, bankruptcy would be the easy path for any developers or institutions that wanted to avoid zoning or historic preservation restrictions on their properties; and it would also make the interests of creditors superior to those of local residents.

More to the point, perhaps, is that whatever the implications of the comments of Messrs. and Amoroso, the Bankruptcy Court did not approve the current plan or in any other way suggest that the Landmarks Law should give way to the financial interests of St. Vincent's or its creditors. To the contrary, the final Bankruptcy Disclosure Statement, which is the basic document provided to creditors in connection with St. Vincent's reorganization plan, noted that a professional consultant, CIT, had been hired to assist the Hospital in developing its future plans. The statement then continues as follows:

Since it began working in July, 2006, CIT has undertaken an extensive analysis of the Manhattan Campus and has determined that SVCMC *may* be able to maximize value by selling certain buildings in their Manhattan Campus and building a new state-of-the art hospital on the property currently occupied by the O'Toole Building (on the west side of Seventh Avenue). *The Debtors (and the Committees) have been advised that accomplishing such a reconfiguration of the SVCMC's real estate is dependent on numerous levels of regulatory approval, including zoning approvals, that could take three (3) to five (5) years, and actually completing the sale of certain buildings and the construction of a new hospital on the O'Toole Building location could take several more years after regulatory approvals are received. Furthermore, SVCMC understands that the success of this alternative requires not only finding an appropriate development partner but also substantial philanthropy. Given the length of time that this effort would require, the Plan is not based on this effort or its ultimate success. Success in this effort, however, would greatly enhance SVCMC's ability to perform in the future in accordance with the Plan. And if the effort is not successful, SVCMC will be required to expend*

substantial funds to rehabilitate the current Manhattan Campus to address identified deferred maintenance and capital improvements. (Italics added).

As is evident from the preceding excerpts from the Disclosure Document, not only is the Plan “not based on [the current Rudin/St. Vincent’s proposal] or its ultimate success,” it recognizes that the effort may not be successful, in which case, the option of rehabilitating the current campus appears to be the anticipated outcome. But St. Vincent’s cannot have it both ways. It cannot represent to its creditors that the viability of the Bankruptcy Plan does NOT depend on implementation of its current proposal and at the same time represent to this Commission that it does. Some fast and loose statements have been made in this proceeding, which should raise doubts about a great deal of the St. Vincent’s presentation.*

4. The Lenox Hill Precedent. The question of whether St. Vincent’s can modernize through the renovation of its existing East Campus buildings is not really relevant in this “appropriateness” proceeding. However, the subject was introduced in the statements of a few speakers, and St. Vincent’s has since taken the opportunity to “fill the Commission in” on why Lenox Hill is not a precedent that it could follow.

We are not hospital experts, but if this proceeding advances to the “hardship” phase, PVHD expects to present someone who is one. At this point, we simply emphasize that the distinctions St. Vincent’s has identified through Mr. Friedman are only claims, not facts; and we are confident that, put to the proof, the opportunities for St. Vincent’s to modernize its existing facilities will be shown to be much greater than it professes. Indeed, the Bankruptcy Disclosure Statement we have quoted above is itself evidence that this is the case.

We will take this opportunity to respond to two points made by Mr. Friedman. :

First, Mr. Friedman asserts that those who have referenced Lenox Hill as a precedent have ignored the fact that it has added more than 300,000 square feet to its plant since 1990. No doubt this is true – no one at PVHD ever denied it. What is of greater interest, however, is how this space has been added. Almost 50,000 square feet has been provided by reusing existing brownstone structures (not tearing them down), and the main bulk of the added space – 263,000 square feet – came when the existing Manhattan Eye, Ear & Throat Hospital was merged into Lenox Hill. Here, again, no buildings were torn down, nor were any new structures built. This could be done just as well by St. Vincent’s. **Cabrini Hospital** has recently been closed (except

* The effect of the statements made by St. Vincent’s consultants is reflected in the report of the April 15 hearing by The New York Times, which stated, among other things, that “The plan is intended ‘to hold off creditors from getting control of St. Vincent’s assets,’ said Shelly S. Friedman, a lawyer advising the hospital, adding the it would ‘shake off the specter of the liquidation of the hospital. He said ‘it would not be viable financially to build anywhere but on property that St. Vincent’s owns.’” Either Mr. Friedman knows something that St. Vincent’s failed to disclose to its creditors or he is mistaken. What is clear from the Disclosure Statement is that the Rudin-St. Vincent’s proposal is neither dictated by nor essential to the bankruptcy reorganization.

for a very few operations), but its 19th Street Building, which is relatively modern, remains and would likely be available to St. Vincent's to use. Moreover, Cabrini is almost exactly the same distance (just less than one mile) from St. Vincent's as Manhattan Eye, Ear & Throat is from Lenox Hill. Thus, Lenox Hill may be even more of a precedent for St. Vincent's than had been thought.

Second, at the April 15 hearing and in his written submission, Mr. Friedman bemoaned the fact that of all the hospitals in Manhattan, St. Vincent's properties are zoned for the lowest FAR of any hospital in Manhattan. This might have something to do with the fact that the zoning reflects the built character of this part of the Village, something also reflected in the existence of the Greenwich Village Historic District (which it appears St. Vincent's would be happy to ignore). The environments where other hospitals are located are quite different from that surrounding St. Vincent's. It is to stand things on their head for St. Vincent's to argue that because other hospitals are allowed greater FAR, the same should follow for it. If this is the Hospital's goal, then it should move; there are many other areas on the West Side that would provide the greater FAR.

Perhaps of equal importance, St. Vincent's is currently built far beyond the allowed FAR. It is simply a distraction for Mr. Friedman to complain about St. Vincent's zoning, when its physical plant already exceeds the legal allowance and, in terms of density, probably exceed that of most, if not all, other hospitals in Manhattan.

5. Issues of Re-use. Again, the potential to reuse some or all of the existing East Campus buildings is not really relevant in an "appropriateness" proceeding. We note, however, that developers have reused buildings less attractive and, on their face, less adaptable than those of the East Campus structures (for example, firehouses, police stations, churches and, perhaps most significantly, the industrial loft buildings in SoHo that developers initially asserted could not be adapted for residential reuse because of their unique configuration). As noted in the preceding point, we believe that reuse of the existing buildings for hospital purposes is feasible. (This could include razing Coleman and Link and replacing them with more modern facilities – as Coleman and Link were themselves replacements for Lowenstein and Seton – while preserving the remaining brick structures.) But if that is not the case, it is inconceivable they are not adaptable to residential use, which might include medical space. (Recent examples of older hospital buildings converted to residential use include the Beacon condominiums in Jersey City, which were adapted from New Jersey Medical Center hospital structures, and the Urban Horizons residential project in the South Bronx, which reused for affordable housing the main Morrisania Hospital building that had been abandoned for 20 years.) There may be challenges in adapting the St. Vincent's buildings, including the size of the windows, but as these have been overcome, profitably, in many other cases, we are confident they would be overcome here. As for O'Toole, Francoise Bollack, an architect with extensive experience in historic restorations, testified that it is eminently reusable, including for, among other things, a school or continuing support of the hospital. We have no doubt that this is the case.

6. The Value of the Existing Buildings. We have discussed at some length in our Initial Submission the reasons why the existing East Campus structures (other than Coleman and Link) and the O’Toole Building deserve to be preserved, and we will not repeat that discussion here. However, we would like to respond to three points made by the St. Vincent’s and Rudin consultants.

First, Mr. Higgins and Ms. Schneider placed considerable emphasis on the fact that none of the East Campus buildings were described in the “standard architectural references,” citing, among other things, the AIA Guide to New York and Robert Stern’s work. But if this were the basis for determining whether buildings should be protected, the vast majority – probably more than 95% -- of the buildings that comprise the Greenwich Village Historic District would not receive protection. But the opposite is true, as reflected by the Commission’s practice of holding all buildings in the District to a very high standard of maintenance, from paint colors to replacement windows. As the name implies, a “historic district” is not as much about individual buildings as it is about an overall historic fabric – a fabric in which virtually all the threads are important.

Second, Mr. Kaplan described his plan for the Rudin structure as in the service of “restoring the historic pattern of the Village.” This is fallacious on several counts. To begin with, the Greenwich Village Historic District is an authentic urban community whose evolution and growth have been gradual, whereas the Rudin proposal would introduce a massive singularly-conceived component. Beyond this, the “bookend building” is out of scale with even the post-war Greenwich Village apartment buildings. Today, we look at these post-war buildings as historic examples of a time when we failed to appreciate the city-wide importance of our architectural, urbanistic and historic resources, a time before the designation of the Historic District. For the most part, we look at those buildings as bad examples. It would be ironic if those buildings became the justification for a retreat to the commitment to preserve of City’s landmarks and historic fabric.

Third, the effort of St. Vincent’s consultants to downplay and derogate the significance of the O’Toole Buildings is a sad commentary on the willingness of so-called experts to shape their opinions to suit their employers’ wishes. The submissions of DOCOMOMO-New York and Francoise Bollack provide objective assessments of the importance of O’Toole, confirming and expanding upon the original Designation Report for the Historic District. It is all too easy to brush O’Toole aside as a quirky expression of a certain time, but as Ms. Bollack testified, it is far more than that, continuing an architectural line that began with Le Corbusier and Frank Lloyd Wright. It is a distinct and in many ways distinguished example of its kind and time that has a citywide importance, however unusual it may be in the Greenwich Village Historic District. It should not be abandoned to the wrecker’s ball simply because our times do not value it as they value the Whitney or the Guggenheim. The next generation will be the poorer if that happens.

7. St. Vincent’s Limited Future Options. While this issue is not relevant in the “appropriateness” proceeding, PVHD thinks it is important to point out that 30 years ago, St. Vincent’s obtained a certificate of appropriateness for the demolition of

the Seton and Lowenstein Pavilions and the construction of Coleman and Link on the grounds that the Hospital needed to modernize. Now, less than 25 years after the new structures were completed, St. Vincent has returned with an application to demolish all its East Campus structures and sell the property to the Rudins. All that will be left is the O'Toole site, where St. Vincent's wants to build its massive new hospital tower. But how long will that remain up to date? If past is prelude for the present, 25 years at the most (innovation arrives far more quickly these days), and then what? Having sold off its East Campus, St. Vincent's will have no place to go and, if 15 foot ceilings are the fad by then, no way to rebuild. At that point, the institution will have no option except to move, probably selling its building to a developer to convert on the grounds it needs the money to continue its mission. You may think "so be it" – that will be St. Vincent's problem at the time. But, of course, it will not be just St. Vincent's problem – it will be the community's as well. So a little forward thinking now might be in order. If the scenario we have just sketched – 25 years or so of hospital usefulness and then something else as yet unknown – is accurate, does it make sense to approve a project that is clearly inappropriate to the Historic District? Perhaps it would be better to encourage St. Vincent's to bite the bullet and look for a new West Side location today.

State Environmental Quality Review Act

Recognizing that the Commission has taken the position that the State Environmental Quality Review Act, and the State and City regulations issued pursuant to the Act, do not apply to its actions, but also knowing that the State's highest court has yet to rule and that the particular circumstances of the Rudin/St. Vincent's applications are different from many others, PVHD respectfully asks the Commission to comply with SEQRA in connection with these applications and reserves its right to assert that claim in other forums if need be.

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PROTECT THE VILLAGE HISTORIC DISTRICT

By: _____

Albert K. Butzel
 Attorney for PVHD
 Albert K. Butzel Law Offices
 249 West 34th St, Ste 400
 New York, NY 10001
 Tel: (212) 643-0375
 Email: albutzel@nyc.rr.com