

Landmarks Preservation Commission
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LPC 08-8617

**DETERMINATION OF THE APPLICATION FOR A CERTIFICATE OF
APPROPRIATENESS OR NOTICE TO PROCEED TO DEMOLISH A
DESIGNATED BUILDING PURSUANT TO SECTION 25-309 OF THE
LANDMARKS LAW**

20 7th Avenue, Block 617, Lot 55, Greenwich Village Historic District

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I. The Application:

The St. Vincent's Catholic Medical Centers (hereafter "St. Vincent's", the "applicant" or the "hospital") filed an application with the Landmarks Preservation Commission (the "Commission") under sections 25-305 and 25-307 of the Administrative Code of the City of New York (the "Landmarks Law") on December 31, 2007, for a Certificate of Appropriateness to demolish the building located at 20 Seventh Avenue, Block 617, Lot 55, (the "O'Toole Building") and to construct a new replacement hospital on the site. The basis of the application was that the hospital and emergency buildings located across Seventh Avenue are, and were, becoming more outdated and substandard, and that without new hospital and emergency facilities St. Vincent's could not continue its charitable mission and provide state-of-the-art hospital and emergency care as one of the City's few Level One trauma centers, and the only one on the Lower West Side of Manhattan.

The O'Toole Building is part of St. Vincent's campus located in adjacent and contiguous buildings on West 11th, 12th and 13th Streets, Greenwich Avenue and Seventh Avenue, all of which are within the Greenwich Village Historic District. (The buildings across Seventh Avenue are: Coleman, Link, Smith, Raskob, Nurses Residence, Reiss, Spellman and Cronin. The building across West 12th Street is the Materials Handling Building.) This area has been the location of St. Vincent's for more than 150 years. During this time-span the hospital has expanded numerous times, acquiring new buildings and demolishing and constructing buildings as the need arose. The hospital acquired the O'Toole Building in 1973 and it has been part of the hospital campus since that time. Since the early 1980s, all of the buildings in the hospital campus were combined into a large scale zoning lot to enable the construction of new hospital and emergency buildings on Seventh Avenue, the Coleman Building and the Link Pavilion (approved by the Commission). All of the properties continue to be part of this large scale zoning lot (hereinafter the hospital "campus").

In comments at the May 6, 2008 public meeting, the Commissioners unanimously determined that it would be inappropriate to demolish the O'Toole Building. On May 12, 2008, the hospital reapplied pursuant to section 25-309 of the Landmarks Law to demolish the O'Toole Building and build a new hospital on the site on grounds of hardship. The proposed new hospital (including the Materials Handling Building) would continue St. Vincent's existing hospital and emergency activities, although it will have

fewer patient beds. In addition, all other non-hospital and emergency uses currently housed on the campus would be relocated off the site. The buildings on the East side of Seventh Avenue would be sold to a private developer.

II. The Hardship Process:

Section 25-309 of the Landmarks Law, sets forth the procedure for an applicant to alter a designated improvement in an inappropriate manner, including demolition, on grounds of “insufficient return,” also known as “hardship.” This procedure requires the applicant to first seek a Certificate of Appropriateness for the proposed work and, if that is denied, to satisfy the elements of the relevant hardship test. The hardship process recognizes two different types of property, and treats them differently for hardship purposes: property that is fully or partially exempt from real property taxes under specified provisions of law (not-for-profit or charitable owners) for a period of three years prior to the application, and property that is not so exempt. The hardship test for a not-for-profit is set forth in section 25-309(a)(2). However, this section only contemplates the situation where the not-for-profit owner intends to sell the property or enter into a long-term lease with another entity; it does not address the situation where the nonprofit owner intends to develop the property to further its charitable mission.

In this situation, the Commission applies a hardship test defined by the courts. This test was first articulated by the Second Department in Matter of Trustees of Sailors’ Snug Harbor v. Platt, 29 AD2d 376 (2nd Dep’t 1968) and subsequently adopted by the Court of Appeals in Lutheran Church in America v. City of New York, 35 NY 2d 121 (1974) and Society for Ethical Culture v. Spatt, 51 NY2d 449 (1980). The test was adopted and further elaborated by the Second Circuit in The Rectors, Wardens and Members of the Vestry of St. Bartholomew’s Church v. City of New York, 914 F.2d 348 (1990). Under this test, a nonprofit owner is entitled to a hardship determination if it demonstrates that denial of its application will “physically or financially prevent or seriously interfere with the carrying out of the charitable purposes.” The Commission has interpreted this standard to include a requirement, taken from section 25-309(a)(2), that the applicant “intends, in good faith” to move forward with the work with “reasonable promptness.”

In reviewing the hospital’s application the Commission has bifurcated the issues into two parts: the demolition of the O’Toole Building and the construction of a new hospital. In each case the Commission first determines whether the work is appropriate and, if it isn’t, whether St. Vincent’s has satisfied the hardship standard.

III. Findings:

On the basis of the testimony presented at the public hearings and meetings of April 1st, April 15th, June 3rd, July 15th, and October 7th, October 28th, December 1st and December 16th of 2008, and the public meeting of March 10, 2009, the materials submitted by the Applicant and members of the public, other interested and expert parties

in connection with the application(s) and the expertise of the Commission, the Commission has determined that:

A. The Proposed Demolition of the O’Toole Building is Inappropriate.

On May 6, 2008, in connection with the hospital’s initial application, LPC Docket 08-4933, the Commission unanimously determined that the O’Toole Building was a contributing building to the Greenwich Village Historic District and that demolition of the building was inappropriate pursuant to the criteria of sections 25-305 and 307 of the Landmarks Law. All ten of the Commissioners present concurred with this conclusion. This determination was formally incorporated into the Commission’s October 28, 2008 hardship determination discussed below.

B. The Statutory Hardship Test is Inapplicable.

The hospital is organized as a not-for-profit corporation under section 501(c)(3) of the Internal Revenue Code. City records show that the property located at 20 Seventh Avenue has been partially exempt from real property taxes for the past three years. Therefore, the hospital’s application is reviewed as a not-for-profit hardship application. However, because the hospital seeks to build a new hospital on the site of the O’Toole Building, the statutory hardship test at section 25-309(a)(2) of the Landmarks Law is inapplicable.

C. Application of the Judicial Hardship Test.

Because of the facts set forth in B above, the judicial hardship test is the applicable standard for this application. In applying this test to the facts of this case, the Commission has recognized St. Vincent’s historical connection to this location and the interrelated, adjacent, contiguous and functional relationships of the various medical and hospital buildings on the campus, and that the entire campus is zoned as a large-scale zoning lot under the New York City Zoning Resolution. It has further recognized that a hospital is a public purpose of the highest order, that it is a large, complex and highly regulated activity that has specific and detailed requirements that are both technical and regulatory, and that it is not easily sited or relocated. The Commission has also recognized that the main hospital and emergency functions occur primarily at the Coleman and Link buildings, with lesser hospital and emergency functions occurring at other buildings on the campus. In addition, the Commission recognized, as both a practical operational matter and as a matter of public policy, that St. Vincent’s cannot close down and must continue to operate its hospital and emergency facilities while a new hospital is constructed. As a result of these factors and constraints, the Commission has interpreted the judicial hardship test to apply to the entire campus and to permit the demolition of other buildings on the campus, if St. Vincent’s could demonstrate that the existing hospital and emergency facilities are so inadequate as to satisfy the judicial hardship test, notwithstanding that these other buildings might be capable of continuing their current uses. In this specific context, the judicial hardship test is reasonably applied to allow the Commission to consider demolition of the O’Toole Building or other

contributing buildings on the campus as the proposed site of a new modern hospital and emergency facility if St. Vincent's can demonstrate that its existing facilities, especially Coleman and Link, are physically inadequate and that not permitting new facilities would physically prevent or seriously interfere with the carrying out of the charitable purpose on the site.

On October 28, 2008, the Commission found, by a vote of 6-4, that St. Vincent's had demonstrated that its existing hospital and emergency facilities at the campus were outdated and in need of replacement, and that if it could not demolish the O'Toole Building and build hospital facilities that complied with current design and performance standards that operation of the Landmarks Law would physically prevent or seriously interfere with the carrying out of its charitable purposes. In reaching this conclusion, the Commission found, among other things:

1. that demolition of the O'Toole Building would be inappropriate under the standards set forth in section 25-307 of the Landmarks Law;
2. that St. Vincent's has operated its charitable hospital from its current site for more than 150 years;
3. that in 1973 St. Vincent's acquired the O'Toole Building, which was directly across Seventh Avenue from the existing hospital, and that it acquired the building and site for general hospital and medical purposes, including expansion of the existing facilities;
4. that St. Vincent's has adaptively reused the O'Toole Building for medical offices and administrative functions since that time as part of the St. Vincent's campus;
5. that St. Vincent's is the only Level One trauma hospital on the West side below West 114th Street;
6. that the Commission on Health Care Facilities in the 21st Century (also known as the "Berger Commission") identified St. Vincent's as "an essential facility" for delivery of health care to the city;
7. that the Berger Commission found that St. Vincent's "requires major physical and programmatic reconfigurations, including complete overhaul of its hospital once they emerge from bankruptcy";
8. that the hospital seeks to continue the existing charitable uses on the property and is proposing to downsize the hospital from its current size in accordance with contemporary standards for hospital planning and design;
9. that the hospital analyzed its facilities and submitted an existing conditions report that sets forth the inadequacies of the existing facilities;

10. that the eight existing buildings on the East side of Seventh Avenue were built at different times over an 80 year period, as separate buildings with their own bearing walls, elevators and circulation systems, and separate mechanical systems;

11. that these eight buildings don't connect at all floors and their duplicative elevator and circulation systems mean that the existing buildings have a net ratio of usable space of only 50 percent;

12. that all of the existing mechanical systems, with the exception of Coleman and Link, need replacement, and Coleman and Link require significant upgrades;

13. that none of the eight buildings meet current fire safety codes because they are only partially sprinklered;

14. that none of the existing buildings meet current planning and design standards for floor to floor heights or column spacing;

15. that current hospital design and performance standards prescribe floor to floor heights of approximately 16 feet for diagnostic, emergency and operating facilities and Coleman and Link have only 12 foot floor-to-floor heights;

16. that current hospital design and performance standards prescribe floor-to-floor heights of approximately 13 feet for patient rooms and Nurses Residence, Smith/Raskob, and Spellman have 10 foot floor-to-floor heights, Reiss, Coleman and Cronin have 11 foot floor-to-floor heights and Link has 12 foot floor-to-floor heights;

17. that none of the buildings come close to meeting current hospital design and performance standards for column spacing/bay widths, which are approximately 30' x 30', and that Coleman comes the closest with column spacing of 25' x 25', but is still significantly smaller;

18. that none of the eight buildings meet current hospital and design and performance standards for gross departmental square feet for surgical, medical, ICU or emergency department suites;

19. that St. Vincent's existing facilities do not have many single-bedded patient rooms, which does not comply with the State Department of Health's direction that hospitals provide single-bedded patient rooms, which are more efficient to operate and have been found to contribute to patient care;

20. that retrofitting the existing buildings on the East side of Seventh Avenue is impractical, as retrofitting would not eliminate the most pressing of the

physical restrictions, the low floor-to-floor heights and small column spacing, and would be significantly more expensive, and take much longer to accomplish;

21. that for these reasons St. Vincent's needs to construct new hospital facilities that comply with current design and performance standards;

22. that St. Vincent's needs to fully operate its existing hospital facilities while the new facilities are being constructed;

23. that a hospital faces many hurdles in finding a suitable site to construct facilities, due to the large size of the buildings, the need to obtain governmental approvals for any move and construction, the highly regulated nature of medical activities, and the need to retain proximity to other related facilities;

24. that there are no feasible or practical alternatives to building on the new hospital on St. Vincent's existing campus, given the hospital's historic connection to this area of the city, the size of the lot required for the new facility, the restrictions on where it could be located, the substantial cost differential between building on the existing site and purchasing a new site, the uncertainty of attempting to assemble an alternative site, and the regulatory requirement and practical need to remain close to the hospital's cancer treatment facility;

25. that if St. Vincent's builds the new facility on its existing campus historic buildings will have to be demolished;

26. that St. Vincent's has analyzed various midblock alternatives, that some of these alternatives would not result in sufficient patient beds or would require the incorporation of Coleman with all of its structural limitations;

27. that these alternatives would require demolition of Nurses Residence and Spellman, the two oldest buildings remaining from St. Vincent's 150 year occupation of the site;

28. that, while the O'Toole Building is a contributing modern building, it is more appropriate to preserve Nurses Residence and Spellman and the history of St. Vincent's on the site;

29. that a tall, bulky midblock building will detract more from the other buildings in the historic district than a tall building on Seventh Avenue;

30. and for these reasons, St. Vincent's has demonstrated that maintenance of its existing facilities seriously interferes with the carrying out of its charitable purpose, that it needs to build new state-of-the-art facilities in order to continue its current operation as the only Level One trauma hospital on the West Side below 114th Street, and that constructing a hospital facility on the O'Toole Site is the least

objectionable option and will have the least deleterious effect on the Greenwich Village Historic District.

D. The Hospital Intends in Good Faith to Move Forward with the Proposed Work with Reasonable Promptness.

The hospital has stated in writing and testimony its good faith intention to move forward with reasonable promptness and construct the new hospital building after it has obtained all necessary approvals from the City Planning Commission, the New York City Council, the New York State Department of Health and the New York City Department of Buildings. The Landmarks Commission recognizes that obtaining all necessary governmental approvals will take a period of time, most likely well over a year from the date of decision for this application. In this context the Commission determines that St. Vincent's satisfies the requirement for a good faith intention to proceed with reasonable promptness.

However, because additional approvals are required before St. Vincent's can actually construct a new hospital facility, St. Vincent's shall be prohibited from performing demolition of the O'Toole Building until (i) all land use approvals under the procedures set forth in Chapter 8 of the New York City Charter necessary for the redevelopment of the site have been granted; (ii) the New York State Department of Health has issued a Certificate of Need ("CON") approval to commence construction indicating that all contingencies have been met in connection with St. Vincent's CON application; and (iii) the Chair of the Commission shall determine that the all financing, including cash and executed loan commitments, necessary for building the new hospital has been secured and is in place.

E. The Design of the New Hospital is Appropriate

On March 10, 2009, the Commission voted to approve the new hospital design by a vote of 8-3, finding that its height, massing, design and details were appropriate to the Greenwich Village Historic District. Therefore, no hardship analysis is required for the proposed new building and this part of the application is finished.

F. There is No Feasible Alternative Plan

The Landmarks Law gives the Commission up to 180 days after making a preliminary determination of hardship to "endeavor to devise . . . a plan" to ameliorate the conditions giving rise to the hardship. While the judicial hardship test has never explicitly included a reference to such a time period or a "plan", the Commission has interpreted it to include this provision. With only a few exceptions, which are inapplicable to the St. Vincent's application, any plan devised by the Commission is not mandatory and the applicant can reject it.

In the course of making the initial determination of hardship on October 28, 2008, given the unique circumstances of this application, the Commission looked into various

alternatives, including the feasibility of using St. Vincent's Staff Housing site a few blocks away, the availability and feasibility of other sites in the general area, and different schemes for building a new hospital in the mid-block between West 11th and 12th Streets. In voting on October 28, 2008, the Commission found that these alternatives were neither feasible nor desirable. Since the vote, the Economic Development Corporation updated its analysis of alternative sites but still concluded that there were no practical or feasible alternative sites in comparison to building on the O'Toole Site. Therefore, in this context and given St. Vincent's statements that it intends to build on the current campus, additional inquiries into an alternative plan would not be fruitful.

IV. Conclusion:

Based on the foregoing, a Notice to Proceed should be issued to permit St. Vincent's to carry out the inappropriate work of demolishing the O'Toole Building, as found by the Commission on October 28, 2008, and a Certificate of Appropriateness should be issued to permit the construction of the new hospital as approved by the Commission on March 10, 2009.