

**TESTIMONY OF ALBERT K. BUTZEL
ATTORNEY FOR PROTECT THE VILLAGE HISTORIC DISTRICT**

**Public Hearing on St. Vincent's Hospital Expansion Plan and
Rudin Management Unit Residential Development (Phase 2)**

before the

New York City Landmarks Preservation Commission

July 15, 2008

Mr. Chairman, Honorable Commissioners:

My name is Albert K. Butzel. I am an attorney and represent Protect the Village Historic District, which, as you know by know, opposes the hardship application pursuant to which St. Vincent's seeks to demolish the O'Toole Building.

I have prepared for each of you, and have submitted, a legal brief that may seem intimidating to those of you who are not attorneys. But I think looks more intimidating that in is. Indeed, the entire first part of the Brief is a lay presentation regarding the importance of the Curran/O'Toole Building, which you have already found worthy. But I felt it would be helpful to collect some of the important evaluations that have been made of O'Toole over the years, starting with Ada Louise Huxtable's review in 1964. I have also included extensive references to the most recent evaluation – that of the State Historic Preservation Office, which, on June 2, found that the Building is eligible for listing on both the State and National Registers and provided a detailed report on why that is the case. I have included a copy of the SHPO documents in your package.

The rest of the Brief deals with legal points I believe are critical not only to this proceeding but to the future effectiveness of the Landmarks Preservation Law. I have

tried to lay out the points in non-legalise, and I hope each of you will take the time to read these sections, since I cannot present all the points in the three minutes I have to speak. I will simply summarize the two most important points.

First, the law applicable here flows directly from the Commission's Grand Central and St. Bartholomew's decisions and the judicial opinions that upheld them. The key point derived from those cases is that there is no hardship if a historic structure can continue to be used to support its existing activities – in Grand Central's case, as a station, in St. Bart's, for church programs. There is no doubt that this is the case with the O'Toole Building. It was acquired for the purpose of providing space for outpatient clinics and doctors' offices; it has been used for those purposes for 35 years; and there is no claim that it cannot continue to be used effectively for those same purposes. Under the Penn Central and St. Bart's decisions, that last fact is decisive.

Second, St. Vincent's bought the Curran/O'Toole Building **after** the landmarks restrictions were in place. Under both the Supreme Court decisions and New York law, this factor is critical, because with those protections already in place, St. Vincent's could not have had reasonable investment- backed expectations that it could demolish the Building. It effectively took SUBJECT TO THE RESTRICTIONS and, as a result, cannot claim hardship deriving from them.

If it were otherwise, the Landmarks Law would be rendered ineffective as against charities. This is the case because any charity could buy property that was landmarked or in a historic district, wait a few years, then turn around and say that it

needed to demolish the property and build something else to meet its charitable mission. For example, NYU could buy a row of brownstones and later conclude that it could only meet its charitable mission by tearing them down and replacing them with a dormitory for its students. Or a few years from now, St. Vincent's could make a like claim with regard to the Triangle Site, asserting that it had to have a nearby facility for outpatient services and doctors' office in order to fulfill its mission and the Triangle was the only site available for a new high-rise building to accomplish that goal.

These two points and others are spelled out in greater detail in my Brief. It is sufficient for me to say that if you reject St. Vincent's hardship application, you will not only be respecting and supporting the critical precedents of the Grand Central and St. Bartholomew's cases – you will also be strengthening the future of historic preservation in our City.

Thank you.

Dated: July 15, 2008

Albert K. Butzel
Attorney for Protect the Village Historic District
Albert K. Butzel Law Offices
249 West 34th St, Ste 400
New York, NY 10001
Tel: 212.643.0375
Fax: 212.643.0376
Email: albutzel@nyc.rr.com