

# **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](mailto:ProtecttheVillage@gmail.com)

## **SUBMISSION TO THE LANDMARKS PRESERVATION COMMISSION BY PROTECT THE VILLAGE HISTORIC DISTRICT ON THE RUDIN AND ST. VINCENT'S DEVELOPMENTS (Phase 2)**

This submission is made on behalf of Protect the Village Historic District in opposition to the follow applications to demolish certain buildings and construct other new buildings in the Greenwich Village Historic District:

(1) the application of the Rudin Organization for a certificate of appropriateness allowing it to (a) demolish four existing buildings in the Historic District, (b) construct in the place of the demolished structures a 235 foot high luxury residential building and several lesser buildings and (c) modify the external appearance of four existing building that it plans to adaptively reuse for residential development; and

(2) two applications of St. Vincent's Hospital: (a) a hardship application seeking approval to demolish the O'Toole Building within the Historic District and (b) a certificate of appropriateness application to construct a 300 foot high Hospital Tower on the site of the O'Toole Building.

PVHD is an organization of Greenwich Village residents that has been formed as a project of Open Space Institute to oppose the Rudin/St. Vincent's proposals. PVHD does not oppose the modernization of the Hospital, but believes it can, and must, be done in a manner that is appropriate to the Historic District and compatible with the surrounding neighborhoods.

PVHD participated in the initial phase of this proceeding, in which the Commissioners indicated, informally, that they had serious problems with the original Rudin/St. Vincent's proposals. The applicants have now returned to the Commission with somewhat modified proposals. On the East Campus, the Rudins now propose to (i) adaptively reuse for residential purposes four of the handsome brick buildings that are currently used for hospital operations, (ii) demolish four other existing buildings, and (iii) construct a large condominium residential project on the footprint of the demolished buildings. On the west side of Seventh Avenue, St. Vincent's has applied, on the basis of claimed hardship, for permission to (i) demolish the existing O'Toole Building, which the Commissioners informally found to be of high historic and architectural value, and (ii) construct a new Hospital Tower, approximately 300 feet high, on that site.

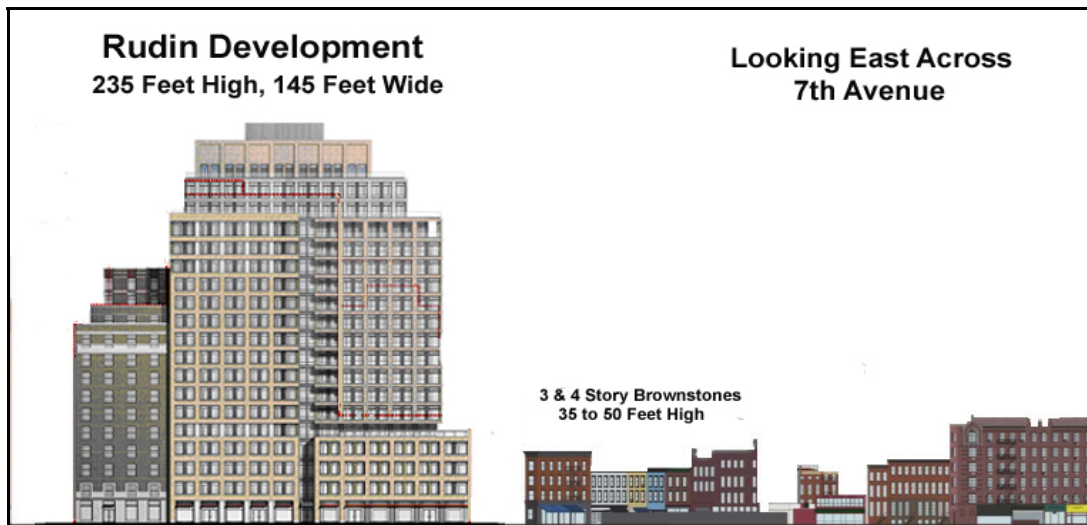
PVHD opposes both proposals as currently configured.

## SUBSTANTIVE OBJECTIONS

As was the case with the initial Rudin-St. Vincent proposal, the underlying and inescapable problems with the revised plan are that (1) it still contemplates the demolition of the O'Toole Building and (2) the proposed new buildings are outsized – too tall and too bulky, far exceeding any other recent structures in the Historic District and having nothing to do with the essential fabric of the District. Moreover, the Hospital Tower would take a critical low-rise fulcrum site – where the O'Toole Building stands currently – and convert it into an immense high-rise structure that would loom over the Historic District and be visible for blocks around. Taken together, the two buildings would create a wall between 11<sup>th</sup> and 13<sup>th</sup> Streets that would effectively redraw the lines of the Historic District three blocks south, cutting off the area north of 11<sup>th</sup> Street from that to the south. At the same time, the buildings would sever the areas east of Seventh Avenue from those to the west.

### Objections to the Revised Rudin Proposal for the East Campus

- The proposed new condominium structure that would replace Coleman and Link is too large, too bulky and out of keeping with the fabric of the Greenwich Village Historic District. At 235 feet, it will rise higher than any surrounding structure, including the large neighboring apartment buildings whose excessive bulk led to the creation of the Historic District. The mistakes of the past should not be compounded by approving an even larger structure that also has nothing to do with the rhythm or character of the Historic District.

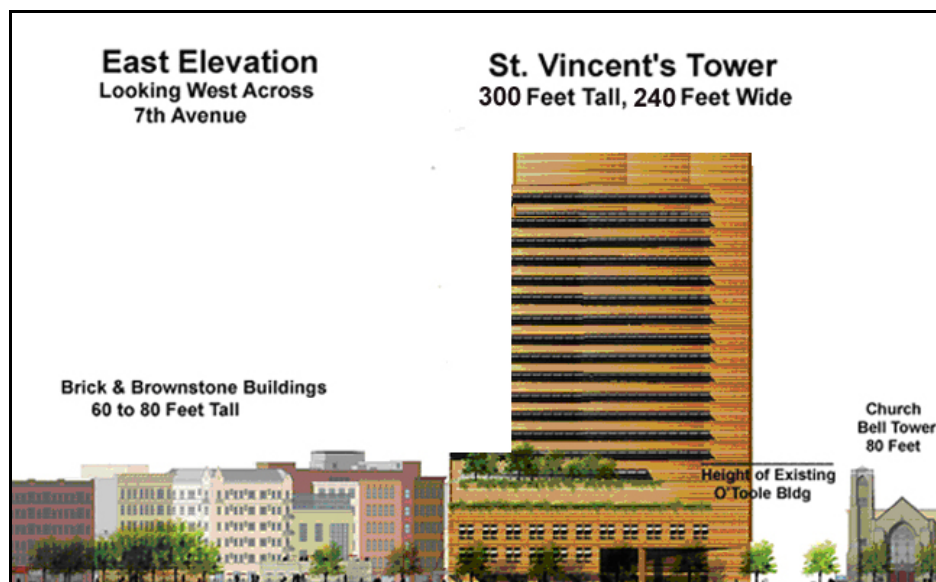


- The proposed new condominium development, taken together with the buildings proposed for adaptive reuse, would result in a residential density totally out of keeping with character of the Historic District. The resulting bulk, approaching an FAR of 10, would overwhelm the fabric of the District.
- The Reiss Building is a handsome brick structure that is of a whole with Nurses, Smith and Raskob and contributes equally with them to the fabric of the Historic District. It, like the others, was identified in the Designation Report as harmo-

- nizing remarkably well with the smaller midblock townhouses. It would be inappropriate to demolish Reiss, only to replace it with a so-called modernistic interpretation of approximately the same size but with two totally out-of-character new floors added on top. Moreover, the replacement structure would break the continuity of the row of historic buildings on the west end of 12<sup>th</sup> Street.
- The retail proposed for the side streets is inappropriate to, and incompatible with, this part of the Historic District. So, too, is the proposed garage on 12<sup>th</sup> Street, which would generate excessive traffic diminishing the quality of the District.

### **Objections to the Revised St. Vincent's Proposal for the O'Toole Site**

- As the Commissioners have observed, the O'Toole Building is a striking example of modernistic architecture within the Greenwich Village Historic District and is an important landmark in its own right. In addition, in its low-rise configuration, it is an integral part of the fabric of the Historic District, providing a transition from the taller structures to the north and an elevated plaza of light and air between 12<sup>th</sup> and 13<sup>th</sup> Streets. If the O'Toole Building was demolished, these critical features would be lost to the Historic District and future generations. The Commission must do everything within its power to preserve the Building. See Appendix A to this submission for a fuller explanation of the importance of O'Toole.
- The proposed new hospital tower that would replace the O'Toole Building is too high, too broad and totally out of keeping with the fabric of the Greenwich Village Historic District. At 300 feet, it will far surpass the height of any surrounding structures and will be widely visible from the adjoining neighborhoods. It will also transform what is effectively a low-rise elevated plaza that provides extensive light and air into a high-rise bulky building that would significantly and adversely affect the quality and character of the Historic District and the adjacent neighborhoods. The objections we expressed to the earlier iteration of the tower have not been resolved in any meaningful way. See Appendix B for a fuller discussion.



- If the LPC approved such a huge new structure within a Historic District, it would set a terrible precedent that would affect historic districts across the City. It would be an invitation to other charities to follow the St. Vincent's example, selling off parts of their property to private developers to generate funding for expansion and then claiming hardship as the basis for avoiding the Landmarks Law restrictions.

## **LEGAL DEFICIENCIES AND RELATED ISSUES**

In the initial phase of this proceeding, the central issue was that of "appropriateness" and the Commission properly confined itself to that issue, focusing, without reference to necessity, on the proposed demolition of historic buildings and the designs for the new high-rise structures. In this second phase of the proceeding, "appropriateness" remains a central issue in terms of the demolition of Reiss, the revised design of the Rudin development and the slightly-revised design of the Hospital Tower. However, the new element of "hardship" has been introduced in St. Vincent's continuing quest to demolish the O'Toole Building.

The concept of "hardship" under the Landmarks Preservation Law and applicable judicial decisions is a complex one in any circumstances. But it is particularly difficult – and confusing -- in this case, because at the same time St. Vincent's is seeking to demolish O'Toole on the basis of hardship, it is planning to sell off its existing hospital facilities on the East Campus, and the Rudin application seeks approval for the residential development that would follow from that sale. The Commission appears ready to entertain and treat both applications separately. In our view, this is improper and violates the law. Moreover, there are other legal issues of critical importance that underlie key aspects of the "hardship" claim and the Commission's consideration of that claim. Without going into great detail at this point, we set forth below our positions regarding these issues and urge the Commission to conduct this phase of the proceeding accordingly.

### **The Applications Cannot be Separated.**

In our view, it is improper for the Commission to separate (or allow separation of) the Rudin proposal for the East Campus and St. Vincent's hardship application for the O'Toole site. These are simply two elements of the same overall plan, and the one cannot be considered independent of the other. For the LPC to separate the two not only makes no practical sense, it portends the prejudgment of one aspect of the plan before any meaningful investigation of the other. This is an improper segmentation that could and very likely will prejudice the outcome of the process.

The separation of the applications also runs counter to the resolutions of the City Planning Commission that set up and approved the current configuration of the hospital. The CPC resolution adopted on August 20, 1979 noted specifically that the entire hospital property, comprised of the East Campus, the O'Toole site and the Triangle, had been designated by St. Vincent's "as a tract, all of which is to be used, developed or enlarged as a unit under single ownership and therefore is to be con-

sidered a large-scale community facility development under the Section 79-00 of the Zoning Resolution.” It was on this basis of a tract under single ownership that the City Planning Commission approved the current configuration of the Hospital. Under these circumstances, we believe that the LPC cannot now break the single tract into separate parts for the purposes its review. If that is to be done, the City Planning Commission and City Council would first have to reverse the earlier merger of the lots.

The impropriety of separating the Rudin and St. Vincent’s applications is further underscored by St. Vincent’s statement in its hardship application that the Hospital cannot use the East Campus for a replacement hospital because the LPC has refused to give approval to the demolition of Spellman, Nurses, Smith or Raskob, “rendering this option closed for consideration.” But the Commissioners also spoke against the demolition of O’Toole, yet for St. Vincent’s this has not “rendered that option closed for consideration.” There are, of course, reasons why St. Vincent’s is not seeking a hardship finding for the East Campus – it wants to sell the buildings to the Rudins. But this is no longer mentioned due to the artificial separation of the applications.

### **Physical and Financial Hardship Cannot be Separated in this Case.**

In our view, the Commission cannot limit its consideration to “physical” hardship at the O’Toole site. It must also consider the financial situation of St. Vincent’s, since, as just noted, the plan to sell the East Campus for residential use is based on St. Vincent’s earlier claim that it needs the proceeds from the sale of the property to build the new Hospital Tower. This was one of the main arguments advanced by St. Vincent’s in the appropriateness proceeding, and while the Hospital has not highlighted the interconnection in its hardship application, the facts are well known to, and cannot be ignored by, the LPC.

Moreover, we do not believe that the narrow construction the applicant has placed on the judicial “hardship” standard is applicable in this case. The reliance on the single-sentence standard initially articulated in ***Snug Harbor*** and later repeated in ***Lutheran Church*** is misplaced, as that standard has clearly been modified by the subsequent ***Penn Central*** and ***Saint Bartholomew’s*** decisions. It is, we think, quite clear from the last two cases that as long as a facility can be used in manner that provides a reasonable return or financially allows a charity to pursue its purposes, the fact that a larger, more advantageous (or more profitable) use might be made of the property is irrelevant. There has been no showing by St. Vincent’s that O’Toole is a drain on its resources (as was the case in ***Snug Harbor*** and ***Lutheran Church***), nor has there been any showing that the O’Toole Building cannot support medical services (just as Grand Central supported rail services and St. Bartholomew’s supported church-related functions). Given the more recent judicial decisions, as well as the realities regarding the sale of the East Campus, we believe that St. Vincent must prove financial hardship if it is to be permitted to demolish O’Toole.

### **The O'Toole Building Does Not Create Any Hardship for St. Vincent's.**

There is no basis for the underlying premise of St. Vincent's hardship application – namely, that the O'Toole Building cannot be used to support the Hospital's claimed charitable purposes. The evidence is indisputable that the O'Toole facility **can be used** to support these purposes because **it has been used** to support the Hospital's mission for many years and **continues to be used** for that purpose today. Moreover, the building could be renovated (or expanded consistent with Landmark guidelines) to provide modernized services. *St. Vincent's claim is that O'Toole cannot be used for the hospital it wants – i.e., a new high-rise tower. But that is not the proper test under the Landmarks Law or the judicial precedent.* The O'Toole Building contributes significantly to the carrying out of what St. Vincent's describes as its charitable purposes, and it can continue to do so.

### **St. Vincent's Acquired the O'Toole Building Subject to the Restrictions of the Landmarks Law and Continues to be Bound by Them.**

At the time St. Vincent's acquired the O'Toole Building, the structure was already subject to the restrictions of the Landmarks Preservation Law, and the Hospital bought the building knowing this to be the case. So this is not a situation where a property became subject to restrictions **after** the owner purchased it, giving rise to a fairness claim based on reasonable expectation. *St. Vincent's acquired O'Toole with full knowledge of the restrictions (the purchase price presumably reflected this fact), and it should not now be allowed to argue that it is not bound by them.*

This conclusion is not merely logical – it is the law of the State as articulated by the New York Court of Appeals in *Gazza v. NYS Department of Environmental Conservation*, 89 N.Y.2d 603 (1997). This case involved a homeowner who sought relief from restrictive wetlands regulations that he said effected a “taking” of his property. Noting that the owner had acquired the property **after** the regulations were in place, the Court held that there was, and could be, no taking, since the owner had known of the restrictive regulations when he bought the property and thus taken it subject to the regulations. As a result, he had neither the right nor a basis to complain. St. Vincent's situation is identical, and it cannot complain that the landmark regulations which protect O'Toole constitute a “hardship” for it, any more than the wetlands regulations limiting Gazza's ability to use his property constituted a legal “taking” (the equivalent of “hardship” under the Landmarks Law).

If the Commission were to hold otherwise, it would be a disastrous precedent. Under such a legal interpretation, any charity could acquire a landmark property and then claim hardship because the building was not suited to its charitable mission. St. Vincent's could buy a landmarked commercial or residential property tomorrow (or *any* property in a Historic District), then turn around and say it needed the property for a new hospital tower and the existing building could not be used for the purpose. That is exactly the logic St. Vincent's is invoking in its current hardship claim. If it was accepted, it would make a mockery of the Landmarks Law.

### **Any Claimed Hardship by St. Vincent's Would Be Self-Created.**

By selling off its East Campus, St. Vincent's would self-create the hardship that it claims justifies the demolition of the O'Toole Building. This bootstrap argument, if upheld, would turn the Landmarks Preservation Law on its head.

### **A Full Investigation of Alternatives is Essential to the Hardship Proceeding**

Hardship supporting the demolition of the O'Toole Building could be justified, if at all, only if there were no feasible alternatives. There has been no showing that this is the case, whether by renovating some or all of the East Campus buildings or by building the tower at a new site on the West Side.

Among other things, St. Vincent's claim that alternative sites are limited to those it owns is without precedent and without basis. If St. Vincent's were to sell its East Campus to the Rudins and also sell O'Toole for adaptive reuse, it would generate hundreds of millions of dollars that could be used to acquire another site (or to expand its existing property on Sixth Avenue) and provide the equity for a new tower. This is a realistic alternative that could resolve many of the conflicts inherent in this case. In our view, the Commission cannot limit its consideration of alternatives to sites St. Vincent's owns. It certainly does not have to consider all possible sites, but realistic options on the West Side, including the possible acquisition of properties adjoining the Sixth Avenue site, need to be addressed.

Similarly, St. Vincent's claim that it cannot renovate its existing East Campus buildings because it would have to close its major services down for several years ignores the potential for phasing the modernization and using temporary facilities, such as those offered at **Cabrini Hospital**, in the meantime or for the longer term. *St. Vincent's is already moving its inpatient psychological services to Cabrini, taking three or four floors for this purpose. But that leaves the rest of Cabrini – eight floors, at least -- including emergency facilities and operating rooms, empty.* It is difficult to understand why this space could not be used by St. Vincent's, conjoined with a phased modernization of its East Campus facilities. At Lenox Hill Hospital, many of its major services have been moved to the former Manhattan Eye, Ear, Nose & Throat facility, which is almost exactly the same distance from the main Lenox Hill Campus as Cabrini is from the East Campus.

Finally, St. Vincent's claim regarding the impossibility of modernizing its existing East Campus facilities is belied by its representation to the creditors in its bankruptcy proceeding that if it could not build at the O'Toole site, it would need to, and would, upgrade its existing East Campus buildings. This was memorialized in the Disclosure Statement the Hospital provided to its creditors that served as the basis for its discharge from bankruptcy. To quote:

“Since it began working in July, 2006, CIT [the real estate consultant retained by St. Vincent's] 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.** (emphasis added)

### **The Commission Must Comply With SEQRA in this Proceeding**

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. However, to the extent the courts have supported this view, they have done so in connection with "appropriateness" determinations. A "hardship" proceeding is a very different kind of review process, involving many of issues that SEQRA is intended to address, not least of all alternatives and impact on irreplaceable resources. In this case, therefore, we believe that the Commission is obligated to comply with SEQRA before making its decision, and we urge it to do so. Since an EIS will be required in connection with St. Vincent's ULURP applications, it might be advisable for the Commission to piggy-back on that document, thereby avoiding the necessity of developing an impact statement on its own.

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PROTECT THE VILLAGE HISTORIC DISTRICT

By: \_\_\_\_\_

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

## APPENDIX A

**The Significance of the O'Toole Building.**

This 80' high building stands on the west side of Seventh Avenue between 12<sup>th</sup> and 13<sup>th</sup> Streets. St. Vincent's proposes to demolish the building and build a high rise hospital tower on the site. An image of the O'Toole Building is below.



The Designation Report identified the building by its owner at the time, stating:

“[This] five-story building of the National Maritime Union of America is a *striking contemporary structure...*”

The Report continued by describing the attractions of the structure, including its “glistening white” color, its curving glass-block walls, its overhangs dramatized by their scalloped edge profiles and the play of light and shade that they create.

Since the Report was issued, the ownership of the building has changed, but not its architectural distinction, rightly called “striking” in the Report. The architecture is not akin to that of the brownstones and Federal and Greek Revival houses that are the heart and soul of the Greenwich Village Historic District. But standing as it does on a site close to the entryway to the Village, its distinctiveness adds to the fabric of Historic District, albeit in contrast rather than homogeneity. Moreover, built as it was for the National Maritime Union, the building represents a very real link to the area’s maritime history and forms a pair with the renovated Maritime Hotel at 17<sup>th</sup> Street. Designed by Albert Lederer, O'Toole also represents a direct link to the architecture of Frank Lloyd Wright and Le Corbusier. *See the testimony of DoCoMoMo and Françoise Bollack presented in the initial phase of this proceeding.*

While the architecture of the O'Toole Building may be in sharp contrast to the historic homes, its low-rise character is not only compatible with, but essential to, the fabric of the Historic District. Virtually all the structures to the south and west of the site are at or below the height of O'Toole. With its flat roof, the Building is very much a continuation of the District’s low-rise configuration starting at 13<sup>th</sup> St. *This can be seen clearly in the relief images presented in Appendix B.* If O'Toole is demolished and replaced with anything taller than 100 feet (much less with a building 300' high), this essential feature of the Historic District will be destroyed.

## APPENDIX B

### The Deficiencies of the Proposed Hospital Tower

This huge structure would be 300 feet high and 240 feet across. Its ovoid design, supposedly devised to reflect the junction of the Dutch street system and the 1811 grid, results in a building that is at best an oddity and bears no reference to the Historic District or its architecture. It is a tower akin to the new medical buildings on the Upper East Side – sleek, possibly OK for a large medical campus such as New York Presbyterian's, but with no justification for the small, but very central, site where the O'Toole Building currently stands. In its height, width (bulk) and design, the Tower would overwhelm the adjacent areas of the Historic District and for many blocks west and south.

Moreover, height, bulk and design are not the only reasons the proposed Tower is inappropriate. It also falls short, because it would take a current critical low-rise site – the lot on which the O'Toole Building stands – and fill it completely with a massive high-rise building. The O'Toole site is, in effect, the fulcrum for the entire Historic District along Seventh Avenue. Because the O'Toole Building is low rise (only 80 feet in height), it provides a great feeling of space around it and an openness that is flooded with light and air. It is here the smaller historic structures to the south and west begin and continued uninterrupted for many blocks. The O'Toole site is critical to this essential aspect of the Historic District. The new Tower would destroy the openness and dominate the area for many blocks south and west. *This can be seen in the Relief Images below, derived from the earlier designs but still generally accurate in terms of scale and impact.*

