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July 20, 2021

Philadelphia Historical Commission
1515 Arch Street – 13th Floor
Philadelphia, PA 19102

RE: In Re 8224 Germantown Avenue

To the Honorable Members of the Commission:

Our firm has been engaged by Stanley Baum, Jesse Carpino, and Emily Holland owner and occupiers, respectively, of 8224 Germantown Avenue (the “Property”). This correspondence serves as a formal objection to the Property’s recent nomination for inclusion on the City of Philadelphia’s Registry of Historic Places recently promulgated by the Chestnut Hill Conservancy.

At the outset we concede the Commission’s nearly unfettered legal prerogative to designate properties as historic, with or without an owner’s consent, where the property in question meets the enumerated criteria set forth in Philadelphia’s Historic Preservation Ordinance Philadelphia Code Section 14-100 *et seq.* As the Commission is no doubt aware, there is ample scholarly literature (from both inside and outside the legal academy), in addition to numerous decisions of courts nationwide, which wrestle with the inherent tension between historic preservation laws and individual property rights. *See e.g. United Artists’ Theater Circuit, Inc. v. City of Philadelphia*, 553 Pa. 370 (1993); *Penn Cent. Transp. Co. v. City of New York*, 439 U.S. 883 (1978); *State ex rel. R.T.G., Inc. v. Ohio*, 780 N.E.2d 998; Grace Blumberg, *Legal Methods of Historic Preservation*, 19 Buff. L. Rev. 611 (1969-1970); J. Peter Byrne, *Historic Preservation and its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, 19 Geo. Mason L. Rev. 665 (2011-2012); Jason Marques, *To Bear a Cross: The Establishment Clause, Historic Preservation, and Eminent Domain Intersect at the Mt. Soledad Veterans Memorial*, 59 Fla. L. Rev. 829 (2007); Donovan D. Rypkema, *Economics and Historic Preservation*, Forum Journal, Nat’l Trust for Historic Preservation, Vol. 27, Number, Fall 2012, at pp. 46-54).

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On the one hand the sanctity of ancient landmarks is routinely recognized as superior to individual property rights based on their allegedly ubiquitous social and cultural significance. On the other hand, however, an individual's right to dispose of their property as they see fit, without undue interference from government, does occasionally trump the dictates of historic preservation regulations. In that sense success in beating back over zealous historic preservation laws and their application sounds in a constitutionally significant melody, often touching upon the principles of eminent domain and the right to be free from unlawful search and seizure enshrined in the 5th and 14th Amendments. The latter notwithstanding, my clients are mindful of the fact that the Commission is almost certainly aware of the academic theories and related jurisprudence that might support this objection, but will nevertheless deem both inconsequential as they relate to the instant matter. To that end, in all candor, this objection is likely an exercise in futility. However, to the extent that the Commission has even an infinitesimal penchant for veering from its typically staunch preservationist mandate then maybe, just maybe, the Conservancy's nomination will not pass muster.

We take this opportunity to note that the Conservancy's nominating petition appears lacking in at least one critical respect – it offers very little to definitively establish what sort of people the Detweilers were. Yes they appear to have been early settlers to the Chestnut Hill area and the region more generally, and they appear to have built a house which is deemed by some, now, to be architecturally significant in terms of design, materials, and construction. However, if this past year's incidents of civil unrest – born of the struggle to combat the plague of structural racism which continues to pervade most aspects of modern American life – have taught us anything, it's that we must be acutely aware of perpetuating, even unwittingly, a version of white revisionist history, which poses on its surface as having some indicia of contemporary social, economic, and political utility for all, but in actuality serves only to reinforce perpetual systemic social inequality. Who were the Detweilers actually? Were they, for example, sympathetic to the abolitionist cause and the movement toward emancipation before, during, and after the Civil War? Did they take up a meaningful, socially conscious participation in post-war reconstruction? In other words, were they moral people and of good character, according to contemporary standards, such that they are truly deserving of an immutable monument to their life and times? With this in mind, at a minimum, we respectfully request that a broader inquiry into the Detweilers' character and social mores be conducted before the Commission passes final judgment on the nomination.

Additionally, we ask that you take note of the fact that my clients are indeed members of the community which the historical preservation ordinance allegedly purports to benefit. They are not fly by night developers looking to destroy Chestnut Hill's "gothic revival" charm in order to make a quick buck. On the contrary, they exist in the neighborhood in every aspect of their daily lives and have done so for many years. And, the reality is, the current structure is not fit for modern living and a growing young family in the 21st century – whatever the case may have been in the 19th century when the Detweilers inhabited the Property. The existing structure is simply not adequate in terms of space, amenities, and structural integrity for modern residential use. Nor does the owner have the means or inclination to turn the property into a museum for the

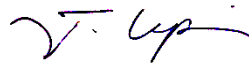
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sole purpose of preserving its historical legacy. It would be absolutely cost prohibitive for this property to be retrofit for modern living and it is not economically or operationally sustainable to maintain the property as some sort of public museum or tourist attraction. The proposed design scheme is exceedingly tasteful and pays sincere homage to the gothic revival style of the existing structure. We therefore ask that the Commission honor the past by allowing the future to take its own shape without slavish adherence to the practical limitations of a 130 year old house.

The nomination for 8224 Germantown Avenue's inclusion on the Philadelphia Registry of Historic Places should be denied accordingly.

We thank the Commission for its time and attention to this statement.

Kind Regards,



Joshua Upin