

November 26, 2003

Dr. Robert Bogomolny
President, University of Baltimore
1420 North Charles Street
Baltimore, MD 21201

Re: Maryland Historical Trust Review Regarding the University of Baltimore Student Center and the "Odorite Building," corner of Maryland and Mount Royal Avenues, Baltimore

Dear Dr. Bogomolny:

On October 30, 2003, the Maryland Historical Trust (Trust) received your most recent letter regarding the University of Baltimore's (University) proposal to construct a new student center on the site of the Monumental Motor Car Company Building (a.k.a. the "Odorite Building"). We understand that this letter was provided to support the University's position that it has met the requirements of Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland and the Financial Institutions Article §§13-1112(b) as they relate to the proposed undertaking.

Unfortunately, your letter was not accompanied by the design alternatives which we have identified on numerous occasions as being essential to comply with applicable law. Despite this, we also understand that the University issued a press release on October 30, 2003, which announced that the University is "moving forward" with the construction of the new student center. Given these circumstances, we are writing to formally notify you that the Trust has determined that the University has foreclosed the Trust's opportunity to provide meaningful review and input and, in so doing, has failed to meet the requirements of applicable law for this undertaking. Therefore, it is our conclusion that the University cannot lawfully demolish the Odorite Building.

Although your letter was extensive, the majority of its contents essentially reiterated information which previously had been submitted for our review, and subsequently was determined insufficient. This letter outlines the basis for our foreclosure determination.

Failure to Consult as Required by Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland:

The Trust has determined that the University has avoided any effort to consult meaningfully with the Trust and other parties in this matter. The purpose of such consultation is to determine if a feasible and practicable means to avoid, mitigate, or satisfactorily reduce the adverse effect of

demolition exists. In other words, the University has failed to follow the consultation process required by Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland.

We appreciate receiving the detailed response in your most recent letter. Unfortunately, that response failed to establish that a feasible and practicable means to avoid, mitigate, or satisfactorily reduce the adverse effect does not exist. We will elaborate further on this matter, but first we point out that our records establish a number of facts related to timing and procedural steps taken by the University which support our determination that the University has failed to properly consult according to relevant State historic preservation laws. The following background information, chronology, and pertinent points were compiled based upon our records.

Article 83B, § 5-617 establishes that the University has a responsibility to consult with the Director of the Trust "...to determine if a feasible and practicable means to avoid, mitigate, or satisfactorily reduce..." adverse effects exists. In order for the Trust to provide meaningful review and input in this regard, the responsible State agency or unit must consult with the Trust as early as possible. The importance of early consultation is stressed in each subsection as follows:

Article 83B, § 5-617(a)(2) requires consultation with the Trust "[t]o the extent feasible, prior to the submission of a request for a capital project... or prior to or as part of the final project planning phase for a major transportation capital project...."

Article 83B, § 5-617(a)(3) requires that consultation occur "...prior to approval of the use of the proceeds of State general obligation bonds by the Board of Public Works...."

Article 83B, § 5-617(a)(4) requires State units utilizing non-budgeted funds for capital projects to consult "[t]o the extent feasible, and as early in the planning process as possible...."

Also, it is important to note that Article 83B, § 5-618(a)(3) requires each State unit, in cooperation with the Trust and subject to available resources, to use any historic building under its control and available to the unit "...[p]rior to acquiring, constructing, or leasing a building for the purpose of carrying out the unit's responsibilities... to the extent prudent and practicable...."

According to information gathered from the Maryland Department of Planning's State Clearinghouse for Intergovernmental Assistance (Clearinghouse), the University sought and won approval from the Board of Public Works for contracts to build a new student center and demolish the Odorite on October 16, 2002. But it was not until February, 2003, that the University, as required by law, requested comments from other State agencies by submitting the proposed undertaking to the Clearinghouse. Since no Clearinghouse comments could have been submitted prior to the request for Board of Public Works' approval, we presume that the Board of Public Works, when it acted on the proposed University project, did not have available any of the comments from concerned State and local agencies subsequently received through the Clearinghouse process.

Our records contain no formal notification or request from the University, prior to the Clearinghouse submittal, for consultation with the Trust regarding the current student center project. Instead, they indicate that we wrote to former UB President Mebane Turner on March 12, 2002, because we had learned that the University "...may be considering plans to construct a new student union..." Our letter requested "...any plans that may exist for the new student union as soon as possible."

Mr. Turner's March 16, 2002 response referred to previous studies carried out by the University and stated that, "When we have a plan of action, we will contact not only your office, but all the others who have an interest in these kinds of projects, especially our neighborhood organizations." This statement and the fact that we still have not received any plans for the new student center illustrate our position that the University has failed to adequately consult with the Trust, and others. Consultation after "a plan of action" and fully developed building plans have been produced meets neither the requirements nor the intent of historic preservation law. It also does not facilitate the consideration of alternatives.

Since no further information was provided by Mr. Turner during the remainder of his tenure, we wrote to you on October 9, 2002, to once again ask that the University "...provide the Trust with any preliminary plans and/or elevations that may have been developed for the new student union." This letter went on to state:

While the Trust would prefer to see the Odorite building restored in its entirety, we are aware that historic preservation concerns are merely one factor that must be taken into account while planning for the larger project. We also understand that the square footage required for the new student union exceeds the space available within the original building. As such, significant alterations to the Odorite are likely to be required if the new student union is to become a reality. Nevertheless, we consider this option preferable to allowing the Odorite to languish further or to be destroyed.

The University responded to our October 9, 2002 letter by requesting a meeting with my staff. On January 21, 2003, Mr. Andrew Lewis met with you and other representatives from the University to explain the requirements of law.

On February 27, 2003, the Trust received its copy of the University's Clearinghouse request for comments. Attached to the request was a letter from Mr. James B. Salt of the University System of Maryland which stated that "...the University of Baltimore and the System requests Clearinghouse endorsement for the University to raze this structure [the Odorite] for the purpose of constructing its Student Center project." On March 25, 2003, we commented within our standard thirty (30) day timeframe that, "The Trust is opposed to the demolition of the Odorite Building and has already written two letters explaining our concerns. Further consultation is required." To ensure that the University was aware of our Clearinghouse response, we faxed a copy of our comments to you on March 26, 2003, with a cover sheet stating that Mr. Salt's letter "...does not reflect what we discussed on January 21, 2003," and asking you to notify us if his letter accurately reflected the University's current position.

On May 8, 2003, the University hosted a follow-up meeting which we had hoped would be attended by a limited group so that a detailed and productive discussion of alternatives could be held. Instead, the majority of the meeting consisted of a formal presentation given by the University which included a general overview of the plans for the new student center. Although the meeting was attended by a very large number of people representing a wide variety of interested parties, no alternative design schemes were presented to the group for consideration and no detailed discussion regarding alternatives was carried out beyond the University's reiteration of its position that the Odorite would be demolished.

On May 12 and May 21, 2003, the University forwarded copies of the studies it cited as justification for demolition.

On May 30, 2003, Mr. Lewis and Mr. Philip Deters, the Trust's Counsel from the Office of Attorney General (OAG), met with you and other University representatives – including your OAG Counsel – to discuss, in detail, the requirements of the laws which applied to this undertaking and the steps the University must take in order to meet those requirements.

Additional information was provided by the University to the Trust on June 2, 2003. This additional information included portions of the 2001 Brailsford and Dunlavey Facility Program Study and the most recent version of the Facilities Master Plan. These studies did not provide detailed design alternatives, however, they did address some matters relating to the University's preferred location and components for the student center.

Our letter of June 4, 2003, was provided in response to the prior studies and to those that had been submitted more recently. It also elaborated further on the discussions held during the May 30, 2003 meeting. In this letter we raised a number of questions and concerns regarding the sufficiency of the studies and specifically requested once again that the University submit more fully developed design alternatives in order to comply with applicable law.

Instead, on June 11, 2003, the University wrote the Trust asking the Trust to document the historic significance of the Odorite Building. This request was made even though our previous letters had summarized the significance of the building and the University's prior studies contained the text of a 1990 Baltimore Commission for Historical and Architectural Preservation (CHAP) report which provided a detailed summary of the property's historic significance.

Ms. Linda Janey, Director of the Clearinghouse, on June 24, 2003, provided Mr. Salt with a formal Clearinghouse Recommendation on the proposed University action. This letter raised numerous concerns about flaws in the project planning and review procedures which support our conclusion that the lack of comments from other State agencies could have been a significant factor in the Board of Public Works' action on the project contract. The Clearinghouse Recommendation states:

We are concerned about the order of recent actions taken by the University System of Maryland regarding this project.... The proper order of actions would have been to first submit the project to the Clearinghouse for [the Maryland Intergovernmental

Review and Coordination process]. Then, upon receipt of the Clearinghouse recommendation letter, the University System of Maryland should have proceeded to the Board of Public Works with a request for its approval of the proposed demolition.... The act of submitting proposed excess property, substantial changes in use (i.e. proposed demolitions), and rights-of-way and easements to the State Clearinghouse before contracts are let and/or the transaction takes place is the approved State method of keeping the Board of Public Works properly informed.

The Clearinghouse Recommendation also identified the opposition expressed by the Trust, CHAP, and Baltimore City's Heritage Area Association (BCHAA). It states the views of the University and then recommends that the University, "...at a minimum, employ best efforts to reuse the Odorite Building's current façade." Finally, the Clearinghouse Recommendation suggested that the University "...explore possible assistance from the Maryland Historical Trust to help fund the cost of reusing the Odorite Building's current façade."

Despite the requests outlined in our June 4, 2003 letter and the June 24, 2003 Clearinghouse Recommendation, our records indicate that the University provided no further information to the Trust during the months that followed. Instead, the University continued to move forward with its plans to demolish the Odorite and construct a completely new student center on the site. During the month of July, the University made a presentation to the Department of General Services Architectural Review Board (ARB) regarding those new plans. Trust staff attended this meeting and there for the first time heard a detailed description of the specific functions that were programmed for the new student center and how and where those functions would be accommodated. When the status of the historic preservation review process was raised by the ARB, Trust staff pointed out that information requested of the University had not yet been submitted and, therefore, the concerns of the Trust remained unresolved.

The University's presentation to the ARB strongly suggested that the University had no intention to develop the detailed alternatives required by law. This led Baltimore Heritage, Inc., on August 6, 2003, to provide the University with architectural renderings for the new student center suggesting how the student center might incorporate the significant north and west portions of the Odorite into the design. Although these renderings were not based upon fully developed plans, they were sufficient to establish that such an alternative could be successful from an aesthetic standpoint and, thereby, allay the earlier doubts expressed by the University.

After receiving no response to the renderings or any other new information, we wrote to the University on August 26, 2003, to inquire as to when we could expect the requested design alternatives. Although the letter went on to state that the University's June 2, 2003 submittal did not adequately justify why some lesser functions could not be located in adjacent locations, it did document one point of concurrence. That letter stated that "we concur that the preferred location is a logical site for the student center." The letter also was accompanied by additional information the University had requested regarding the Odorite's historical significance.

In October you requested a meeting with Victor Hoskins, Secretary of the Maryland Department of Housing and Community Development, to discuss the issues surrounding this case. The meeting occurred during the latter half of the month and resulted in a letter from the Secretary that contained a bulleted list of specific steps the University must undertake to comply with applicable law. It is important to note that these steps had already been outlined in our previous letters. Secretary Hoskins' letter also offered a \$25,000 grant to assist the University in fulfilling these requirements, specifically, exploring required alternative designs, including reuse of the building. The University subsequently declined this offer.

The purpose of the consultation process required by Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland is to develop and exchange information so that potential alternatives to adverse effects on historic properties can be identified and evaluated. The chronology outlined above demonstrates that the University has not consulted in this manner. Instead, the University effectively developed its plans on its own, failed to provide required notification of its plans, did not seek the views of other State agencies prior to soliciting Board of Public Works' approval, continually reiterated its position rather than producing the required alternative designs it was repeatedly requested to develop, and continued to move forward with its original plans while going through the motions of "consulting" with the Trust and others regarding a decision that had apparently already been made. In doing so, the University has foreclosed the Trust's opportunity to provide meaningful review and input regarding this undertaking, as mandated by law.

Failure to Adequately Investigate Alternatives as Required by Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland:

Your October 30, 2003 letter to Secretary Hoskins declining his offer acknowledges that, in its own opinion, the University has failed to comply with applicable laws to date. Secretary Hoskins' letter explained that the Trust's "...major difficulty with this project is that they cannot document that the University has adequately considered practicable alternatives to the demolition of the Odorite Building." Your response was as follows:

We agree with your assessment, and for that reason, the University had prepared a thorough written response to the Trust that sets forth our views on why a reconstruction of the Odorite building is not a prudent or practicable alternative. Rather than another study of the Odorite building, we believe that at this point the best way to address the Trust's concerns is to respond to their letters.

Failure to adequately identify and develop alternatives to complete demolition is the most critical fact upon which our determination of foreclosure is based. Page 14 of your most recent letter to the Trust acknowledges this. "It is not clear that it is possible to re-construct [adaptively use] the Odorite building and then incorporate it into a larger building." Without developing such detailed alternatives (including floor plans, elevations and specifications), precise estimates for project costs and square footage cannot be accurately determined and evaluated. Without such alternatives, questions regarding the aesthetics and the "image" an adaptively used student center would project will

remain unanswered. Without developing such alternatives, the University has failed to meet the requirements of applicable law.

It is important to note that the development of alternatives is not a requirement unique to this particular undertaking. Other State entities, including constituent institutions of the University System, routinely develop the alternatives required by law when historic properties will be adversely affected by State undertakings. For example, design alternatives were recently produced by the University of Maryland at Baltimore (UMAB) for its current Fayette Street Housing Project. This project involves the construction of a new student housing tower behind three historic row houses commonly referred to as the "Poe Houses." In order to provide adequate access to the new tower, UMAB originally considered demolition of all three of the row houses. Yet, detailed design alternatives (including plans and elevations) developed in consultation with the Trust resulted in an agreement that two of the buildings would be rehabilitated while the other could be significantly altered to serve as a "gatehouse" to the new tower. Although this plan constituted an "adverse effect" and did not represent the most ideal solution from a preservation perspective, it is far more desirable than the complete loss of three historic buildings. More importantly, it is an example of another State unit successfully complying with the requirements of law by developing design alternatives for a similar project.

According to your letter, the previous studies undertaken by the University constitute compliance with applicable law. We do not agree. While the studies may not expressly endorse adaptive use of the Odorite, they do provide some relevant and useful information to indicate that alternatives to the University's current plans are possible. For example, they establish that the building is historically significant and structurally sound, and that it can be adaptively used. The following statements were taken from those studies to provide a few examples:

...[T]he key issue of this study...must be balanced by an understanding of the building's history and its present contribution to the overall Historic District. (Ayers/Saint/Gross Architects, Inc. and The Hiller Group; 1990, page 1)

...[B]ased on the visual evidence and the building's history, it seems reasonable to assume that the Odorite could be reused... (Ayers/Saint/Gross Architects, Inc. and The Hiller Group; 1990, page 14)

...[I]t is our conclusion that the William H. Marcus [Odorite] Building is sound structurally, and is suitable for renovation. (Smith Architects, PA; 1993, page 34)

The building is not currently in a condition which could be occupied for any use; however, significant renovations and supplemental construction could make the building suitable and useable for academic functions. These renovations could be developed architecturally to overcome the current negative perception of the Marcus [Odorite] Building. The costs of renovation would be comparable to the cost of new construction. (Smith Architects, PA; 1993, page 1)

This study has also identified many facets of the Marcus [Odorite] Building which are unique and which are worthy of preservation. (Smith Architects; 1993, page 34)

Statements such as these establish that a thorough investigation of alternatives would not be a pointless exercise. Yet none of the information that these studies produced was ever utilized to develop alternative designs combining partial preservation with new construction. Therefore, the University's reliance on these studies as adequate justification for an analysis of alternatives is insufficient.

Despite this shortcoming and numerous other limitations which we have identified in previous correspondence and will outline in this letter, the University has selectively relied on information obtained from the studies to develop what we understand to be the two most significant arguments for why it believes portions of the Odorite should not be incorporated into the new student center. These two points are as follows:

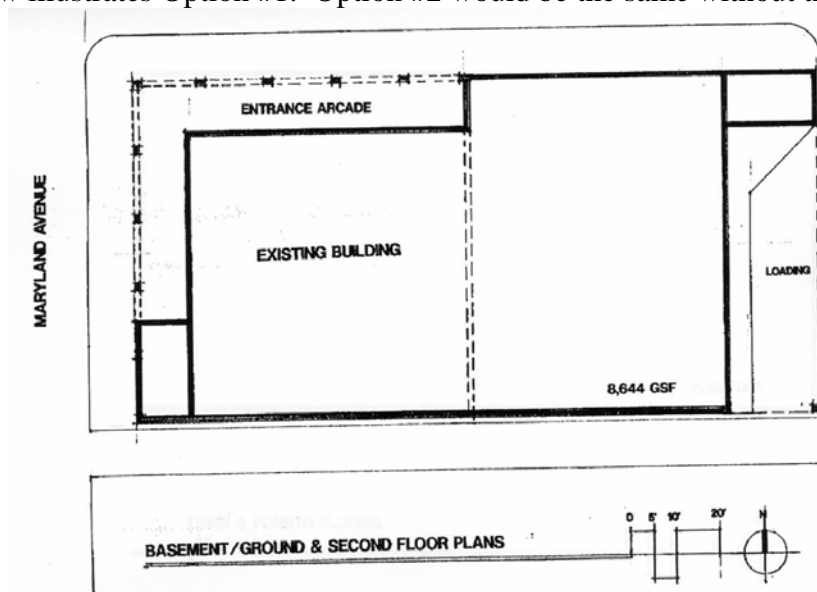
1. Additional Cost:

Of the various studies, the two most specifically tailored to the student center project are the Heery Study (Heery) and the University of Baltimore's Office of Facilities Management Study (UB). These studies compare the costs of two options:

Option #1: retaining the Maryland Avenue and Mt. Royal Avenue Odorite façades, with new construction on remainder of the site.

Option #2: total demolition of the Odorite and new construction on remainder of the site.

The diagram below illustrates Option #1. Option #2 would be the same without the "Entrance Arcade"



In a prior letter, we summarized the cost estimates for each option by stating that "[t]he UB Study provides evidence that the total project costs for Option #1 would be \$1,304,534 less expensive than Option #2, while the Heery Study finds that the total project costs for Option #1 would be \$327,000 more expensive than Option #2."

Your letter elaborates further by pointing out that Option #1 resulted in a smaller building than Option #2. It also points out that the cost for constructing a building which retained two Odorite façades and was of equal size to the Option #2 building would actually be \$1,656,911 more expensive than a building that did not retain the two Odorite walls. This figure was derived by multiplying the Heery Study cost per square foot for Option #1 by the square footage that would result from Option #2, and then subtracting the total cost of Option #2. While this figure may be technically correct when using the Heery costs per square foot, it is important to note that the Heery Study uses a higher cost per square foot for Option #1 than for Option #2 – \$219.34 versus \$193.72-- for a difference of \$25.62 per square foot.

As we understand the Heery Study, both options involve constructing the exact same new buildings. The only significant difference between the buildings would be that the original Odorite façades would be retained in Option #1. As such, it would appear that the only difference in cost per square foot would be attributable to expenses directly related to retaining and incorporating those façades. Yet some of the individual estimates contained in the Heery Study suggest that costs unrelated to retention of the façades are higher in Option #1 than Option #2. For example, the H.V.A.C. systems for Option #1 are estimated at \$33.77 per square foot, while the same costs for Option #2 are \$30.92 per square foot. This is particularly puzzling since Option #1 is supposed to result in a smaller building than Option #2. Similar differences exist for other non-façade related expenses such as interior stairs and rails, roofing, furnishings, and the General Contractor fee. While none of these differences are significant when considered on an individual basis, collectively they produce a sizeable unexplained difference in total cost per square foot.

Although there ultimately may be reasons for the difference in square footage costs, the most relevant facts are the ones we have identified on numerous occasions: The Heery and UB Studies, as well as all other studies, are based upon generalized estimates and simplistic schematic drawings rather than fully developed design alternatives. None of the studies include detailed floor plans or elevations. None of the studies adequately establish that, based upon cost, feasible and practicable means to avoid demolition of the Odorite Building do not exist.

2. A Reduction In Space:

The UB Study continues by stating that "... the decision should be based on the needs of the additional square footage for the University..." As stated in our prior correspondence, the matter of available square footage is understandably an issue of concern for the University. Your letter reinforces this fact by arguing that the building resulting from Option #1 described above would result in a reduction in square footage.

According to Page 2 of your letter, Option #1 "...would decrease the available space for the center by 10%...." Page 4 states that Option #1 would "...reduce the size of the student center by over 10%...." Page 11 claims it would represent "...a reduction of almost 10%." [Emphasis added] While these conflicting statements in different parts of your letter are seemingly minor, the point that they illustrate is not. As we have repeatedly stated, the University can not accurately determine the actual differences in available square footage for alternative plans without producing fully developed design alternatives for the student center, some of which incorporate significant portions of the Odorite Building.

For example, the only related design alternative that has been marginally investigated involves positioning a new building approximately eight feet behind the Odorite façades to create a "two story loggia" entrance arcade. As we understand this proposal, which is used in both the UB and Heery Studies, the loggia would be exterior space covered by designing the third through fifth floors to "...overhang eight feet to meet the façade walls." This approach raises questions as to whether or not an exterior loggia would be appropriate. Eliminating this feature while retaining the façades would allow the two floors of exterior space it would occupy to be more efficiently utilized as interior space, thus resulting in additional square footage for the student center.

Eliminating a two-story loggia is certainly not the only design alternative that could be further investigated to provide for more space in a student center which incorporated significant portions of the Odorite Building. The architectural massing study provided by Baltimore Heritage, Inc., suggests that a taller building could be designed in an appropriate manner. Your letter dismisses these renderings by stating that you "...do not believe that these two exterior walls are compatible with the surrounding architecture or with the image the University seeks to project...." We will address these comments further, but point out that the design scheme contained in the renderings is merely one possible approach. It remains to be demonstrated whether other design alternatives which utilize a taller building could meet the University's needs.

Another concern your letter expresses regarding a taller building is the possibility of height restrictions. You reference page 7 of the Ayers/Saint/Gross Architects, Inc. and The Hiller Group Study to justify the concern. This study establishes that "[a] seven-story building would be classified (for code purposes) as a high-rise structure." It does not raise the same concern for a building of any height under seven stories.

You continue by stating that the presence of groundwater is also a matter which could prevent the subsurface expansion required to provide additional basement space or to support a taller structure. To support these arguments, you reference the same study and the 1996-2006 Facilities Master Plan. The Facilities Master Plan raises an issue that there "...may be a subsurface groundwater problem....," but does not clearly establish that such a problem exists. The Ayers/Saint/Gross Architects, Inc. and The Hiller Group Study, which primarily addresses the site currently occupied by the Thumel Business Center, does not appear to address the Odorite site. While height restrictions and groundwater may ultimately prove to be issues of concern, further investigation is necessary to determine whether they would represent any significant limitations at all.

Several statements in your letter stress the need for all of the student center functions the University has identified to be located in a single building. We agree that this is a logical approach and would not have raised any related questions if the matter had no bearing on the fate of a historically significant building. Unfortunately, that is not the case. The University has relied on this argument to justify demolition of the Odorite Building. We requested the University to undertake an investigation to determine whether some of the lesser functions could be located in convenient, adjacent locations. Our letter of June 4, 2003, went so far as to suggest the possibility of connecting the student center to the Thumel Business Center to maximize shared functions and provide for ease of access between the two buildings. The University's decision to reiterate its previous position rather than conduct the requested investigation has not eliminated this approach as a potential option for addressing spatial problems. Instead, it highlights the types of questions that could be answered by a thorough investigation of design alternatives.

Additional Limitations and Questions Relating to Study Findings:

There are other questions and shortcomings related to these studies beyond the statements regarding cost and available space. The following statements establish further doubt concerning the sufficiency of these studies and their adequacy as tools to achieve compliance:

- Although they are not entirely irrelevant, many of the earlier studies were conducted for previous undertakings instead of the current student center project.
- None of these studies were developed in consultation with the Trust. Instead, some were submitted long after they were completed.
- These studies are based upon only one alternative which marginally investigates the feasibility of incorporating two Odorite façades rather than a full range of alternatives which evaluate retention of significant portions of the historic building and new construction.
- Given the plans, elevations, and renderings presented at the ARB meeting, none of these studies represent a level of effort remotely comparable to that which has been invested for the proposed new student center.
- The argument that preserving the two Odorite façades could not be done successfully is less convincing considering that the building was originally designed so that those two façades were the only ones meant to be seen. The east end of the Odorite was originally concealed by an attached structure while the rear faced an alley.
- As currently proposed, the new student center is purported to cost nearly \$16,000,000. The question whether that dollar figure could produce a student center meeting the University's needs while still preserving significant portions of the Odorite building remains unanswered by the studies.

Study Findings Compared to Current Proposal:

One additional discussion is necessary to conclude our evaluation of the University’s studies. Despite the studies’ limitations, we have already acknowledged that they do provide some relevant and useful information. Therefore, it would be appropriate to compare their square footage and project cost estimates to the University’s well-documented figures for its proposed new student center. The following table compares the UB and Heery Studies’ estimates for Option #1 (retaining two Odorite façades) to what we understand the University’s current project figures to be:

	<u>University</u>	<u>UB Study</u>	<u>Heery Study</u>
Total Square Feet:	58,892	58,616	58,616
Total Project Cost:	\$15,953,936	\$15,809,794	\$12,857,000

Since the University’s figures are based upon fully developed plans and specifications, it may be assumed they are the most accurate of the three. We will dismiss the Heery Study from further examination because we have already raised concerns regarding its cost per square foot estimate and its total project cost is over \$3 million less than the University’s well documented cost figure. On the other hand, we consider the UB Study to be worthy of further examination because we had no concerns regarding its cost per square foot estimate and because its total project cost estimate is surprisingly close to the University’s cost for a completely new building. Assuming the UB Study is the more accurate of the two studies, the conclusion one can draw is that the UB Study’s finding that “...there does not appear to be a significant cost basis to provide a direction to the University” is accurate.

When carefully comparing the UB Study’s estimates to the University’s figures, one discovers that retaining the Odorite’s two prominent façades would result in a building that is only 276 square feet smaller than what the University has positively affirmed would meet its space requirements. More importantly, the UB Study’s total project cost estimate establishes that a building which retains the façades would actually be \$144,142 less expensive than what the University already plans to spend.

It would seem unreasonable to argue that the loss of only 276 square feet is a valid basis for total demolition of the Odorite Building. Nevertheless, we recall that the UB Study states that “... the decision should be based on the needs of the additional square footage for the University...” With this in mind, we return to our earlier suggestion that the UB Study’s proposed two-story loggia be redesigned as interior space. This simple design approach would practically eliminate the 276 square foot difference or even result in a net gain in square footage.

Redesigning this feature as interior space could possibly result in even lower total project costs by eliminating some expenses related directly to preservation of the façades as exterior elements in the loggia. For example, eliminating the loggia could negate the costs the UB Study identifies as “...temporary steel supports to brace the wall during the construction period.” Lastly, redesigning the loggia space as interior space would result in a more favorable solution from a preservation standpoint because it would allow for more of the Odorite’s historic fabric to be retained. The Trust has consistently advocated retention of “significant portions” of the Odorite Building rather than simply preserving the building’s “façades.”

The University has maintained that the studies it has developed provide justification for demolition of the Odorite Building. To the contrary, this comparison of study findings and the University's figures for its new building provide very compelling evidence that a feasible and practicable means to avoid the adverse effect of demolition may have already been identified.

Other Compliance Deficiencies:

Up to this point, our letter has focused upon the University's failure to consult with, and provide adequate documentation to, the Trust for the current undertaking. Although this is the primary issue in question, it is also critical to point out that the University has an additional responsibility to consult with other interested parties – particularly those preservation and neighborhood organizations which have so adamantly voiced opposition to the University's current plans.

In addition to our own correspondence, numerous letters of concern and opposition have been submitted to the University from other City, neighborhood, and preservation organizations such as the BCHAA, CHAP, the Baltimore City Department of Planning, Baltimore Heritage Inc., the Mt. Vernon-Belvedere Association, and Preservation Maryland. Despite this considerable local opposition, the University has refused to consider any alternatives to its current plans. Instead, it has characterized the new student center as planned as a benefit to the community and worked diligently to ensure that the new center is constructed according to those current plans. This approach by the University has fueled even stronger opposition in the community. The most recent letter from the Mt. Vernon-Belvedere Association states that:

Upon learning through its press release that the University of Baltimore (UB) will proceed with its plans without MHT or Baltimore City Heritage Area Association (BCHAA) support, the Mt. Vernon-Belvedere Association (MVBA) Board of Directors met to consider revising our position. Until that point, and in deference to the importance of UB in this community, the MVBA position had been to suspend consideration of the matter until such a time as all legal and process questions had been fully resolved to the satisfaction of MHT. With the University's recent announcement, we have taken a firm position in favor of preservation of the building as follows:

Resolved, that MVBA actively oppose full or partial demolition of the Monumental Motor Car Company Building, and suspend further consideration of the merits of any proposal related to full or partial demolition until such a time as all legal and process questions are resolved to the satisfaction of both the Maryland Historical Trust (MHT) and the Baltimore City Heritage Area Association (BCHAA).

This is not to imply support for demolition once the legal and process issues have been resolved, but that only then will we have sufficient information to fully and fairly consider the matter.

We understand that there are other community organizations which support the University's current plans. There also are some groups who prefer that the Odorite in its current condition be demolished. As previously stated, we have taken those views into account. However, Trust staff recalls that the University was initially reluctant to allow representatives from the groups who did not support its plans even to attend the May 8, 2003 meeting. While the University ultimately agreed to allow them to attend, it is important to note that the University has not allowed their participation or their subsequent stronger opposition to have influence on the University's direction.

There has been a longstanding history of disagreement among the University, the Trust, and the preservation community at large with regard to the fate of the Odorite Building. The current undertaking is not the first University project to propose demolition of the Odorite Building. While we do not know whether the University had local support for its previous attempts to demolish the building for a parking lot or business school, our records do establish that the preservation community was adamantly opposed. Our files contain a number of letters written to the University over the years from CHAP and other preservation organizations expressing hope that the University would become a responsible steward of this important resource. It is also worth noting that at least one of the University's studies documents the public opposition that has existed for more than a decade to the proposed demolition of the Odorite Building.

The suggestion to remove the [Odorite] building resulted in fierce opposition from historic preservationists and community activists throughout the city, resulting in a directive from Governor William Donald Schaefer that the building be retained.
(Smith Architects, PA; 1993, page 3)

In summary, it is our determination that the University has failed to meet the requirements of Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland.

Failure to Comply with Financial Institutions Article §§ 13-1112(b):

The information outlined prior to this juncture establishes that the University has not complied with Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland because it has failed to enter into consultation as required, and it has failed to determine that a feasible and practicable means to avoid, mitigate, or satisfactorily reduce the adverse effect of demolition does not exist. Since the University has failed to meet the standard set by applicable sections of Article 83B, it has clearly failed to meet the higher standard required by Financial Institutions Article §§13-1112(b) (the Heritage Areas Act). This standard is applicable because the Odorite Building is a historic property located within, and contributing to, the City of Baltimore's Certified Heritage Area.

Under the Financial Institutions Article § 13-1112(b)(3), the University must assure that activities which are subject to review under Article 83B, §§ 5-617 or 5-618 "...will not have an adverse effect on the historical and cultural resources of the certified heritage area, unless there is no prudent and feasible alternative."

Since the Baltimore City Heritage Area Association (BCHAA) is the City entity responsible for management of Baltimore's Certified Heritage Area, the University is also required to "consult, cooperate, and, to the maximum extent feasible, coordinate" its activities with BCHAA and carry out those activities, to the maximum extent practicable, "...in a manner that is consistent with the approved management plan for the certified heritage area." Financial Institutions Article §§13-1112(b)(1) and 13-1112(b)(2).

According to our records, we formally notified the University of the Heritage Area "no prudent and feasible" standard in our letter of June 4, 2003. This followed Mr. William Pencek of the BCHAA attending the earlier meeting hosted by the University on May 8, 2003, during which he informed the University that the proposed undertaking was not consistent with the approved Management Plan for the Baltimore City Heritage Area and he explained the requirements of the Heritage Areas Act. Shortly thereafter, he provided a memorandum to the University which outlined in detail what was necessary to establish that no prudent and feasible alternative to demolition of the Odorite Building exists. This outline, which essentially mirrored the steps we had requested the University to undertake, was also attached to our June 4, 2003 correspondence. Documentation provided to the Trust by the University under a June 2, 2003 cover letter indicates that a second meeting with Mr. Pencek was held on May 23, 2003. At that point the University was fully aware of the requirements of the Heritage Areas Act.

When considering the higher standard of the Heritage Areas Act, the level of effort the University must undertake to comply with law becomes even greater and the detailed design alternatives we have requested become even more critical. This is particularly true when considering that the earlier comparison of UB Study estimates and University figures for new construction strongly suggest that a feasible and practicable means to avoid the adverse effect of demolition may already exist. Regardless of whether the UB Study definitely identifies a *feasible and practicable* means to avoid the adverse effect, however, the University has clearly not established that a *prudent and feasible* means to avoid the adverse effect does not exist. Consequently, the University is not in compliance with the Heritage Areas Act.

Points of Concurrence:

Although the Trust maintains that fully developed design alternatives which incorporate significant portions of the Odorite Building are essential to meet the requirements of applicable law, there are a number of points in the University's most recent letter which the Trust has never questioned. Other points address issues which the Trust previously conceded do not require further investigation or effort of any sort. For clarification, we offer the following summary:

- The Trust is not, and never has been, opposed to the University's desire to create a student center. Nor have we ever questioned whether or not such a facility is necessary.
- We concur that a "reconstruction," more accurately described as a "rehabilitation," of the Odorite Building alone will not meet the University's square footage requirements for a student

center. It is for this reason we agreed that "significant alterations" to the building would be necessary if the student center were to become a reality.

- We agree that the proposed site is the most logical location for the student center.
- We have no concerns regarding the functions the University has identified as student center functions beyond how those functions are construed as justification for demolition of the Odorite Building.

Applicable Law:

The University's most recent letter cites what the Trust considers to be unsupportable grounds for why the University should be allowed to proceed with its plans for a completely new student center. This notion is based upon "significant doubt" as to whether the University's actions are subject to the laws cited in this correspondence. We disagree. The University of Baltimore is the entity of the University System of Maryland which is carrying out this undertaking and is, therefore, the responsible State unit. The Odorite Building is a historic, State-owned property which is located within, and contributes to, the Baltimore City Certified Heritage Area. This undertaking, therefore, is subject to Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland and Financial Institutions Article §§13-1112(b).

Historic Significance, Historical Context and Building Context:

Another argument the University cites for being allowed to move forward with its plans is that there is "significant doubt" that the Odorite Building is historically significant. Your letter states that the Odorite is "...not one of the 76,000 properties listed in the National Register of Historic Places and it is not listed in the Maryland Register of Historic Properties." We disagree.

Since this is a State undertaking, we will clarify issues relating to the Maryland Register of Historic Properties first. Our previous correspondence identified both the Odorite Building and the surrounding Mt. Vernon local historic district as being eligible for listing in the Maryland Register. They are, in fact, listed in the Maryland Register of Historic Properties. State historic preservation legislation is equally applicable to properties which are listed in, and those eligible for listing in, the Maryland Register. However, Article 83B § 5-617 states that the Maryland Register includes "all properties listed in or determined...to be eligible for listing in the National Register of Historic Places by the United States Department of the Interior." One method by which a locally designated historic district can be determined eligible for listing in the National Register of Historic Places is for the district to be certified by the U.S. Department of the Interior for purposes of the Federal preservation tax incentive program. The Mt. Vernon local historic district, of which the Odorite is a part, was formally certified for this program in a letter from the U.S. Department of the Interior dated June 9, 1980. A subsequent letter dated January 14, 1991 from the U.S. Department of the Interior reaffirms the National Register eligibility of the historic district.

While it is correct that neither the Mt. Vernon local historic district nor the Odorite Building itself have been formally listed in the National Register of Historic Places, it is important to note that Section 106 of the National Historic Preservation Act, the Federal equivalent to Article 83B, §§ 5-617 through 5-619, is also equally applicable to properties which are eligible for listing, and those listed, in the National Register of Historic Places.

As we have pointed out in previous correspondence, our library contains approximately twenty-five volumes of information that establish the Odorite's significance as a contributing element of the Mt. Vernon local historic district. We have also provided documentation to the University regarding the Odorite's significance as an example of the work of the historically important local architecture firm, Smith & May, who designed the building. Our records also contain documentation to establish that we considered the Odorite individually significant long before the University purchased the building in 1989. According to our letter of November 13, 1979, a copy of which was previously provided to the University, the Trust "...has felt for several years that [the Odorite] is an important element in the Mount Royal Streetscape and, individually, a significant structure in 20th century history."

It is appropriate to address an additional argument relating to historical significance which the University has used to support demolition. This argument is based upon historic "context." According to studies you cite in your most recent letter, the Odorite:

...appears to be a building with little or no contextual or historic reference in an area which has radically changed and, as such, stands isolated in time and place. The Odorite's uniqueness may, in fact, be its greatest weakness as the area struggles to incorporate it as an outmoded form and function.

The Odorite Building has been determined eligible for the Maryland Register, and therefore listed on the Maryland Register, in part as one of several historic automobile structures in the Mount Vernon historic district, itself eligible for the Maryland Register as an early 20th century concentration of automobile transportation-related structures. While there can be no doubt that this historic context has experienced some change over the years, one might question if the author of that statement had actually visited the area. Immediately across the street from the Odorite is the University's Academic Center, a building originally constructed as an automobile showroom during the same era. This historic building was successfully adapted for University purposes. A block to the east stands the historic automobile showroom known as the Towne Building, while historic Penn Station, a building of obvious transportation-related significance, provides additional nearby historic context. Numerous other non-transportation related buildings which contribute to the historic district are also located in the blocks surrounding the Odorite. It should be noted that several of these buildings have also been rehabilitated to house other University functions. But of particular relevance is the Girard Building, historically known as the Cleveland Automobile Company. Though located a few blocks away on Cathedral Street, this historic automobile showroom is important not only because it was designed by Smith & May, but also because it has been adapted to house the City Café, one of the most successful gathering places in the area. Its expansive glass façades and sidewalk seating contribute to the popularity of this establishment. The Odorite's similar façades could become equally appealing if

restored to their original condition. Yet the University insists that these historic automobile showroom picture windows are a detriment rather than an advantage. Even though the Ayers and Hillier Study was developed primarily to evaluate the Odorite's potential to house a business school and did not fully consider the possibilities of new construction combined with partial rehabilitation, your letter includes quotes from the study to support the negative perception about the Odorite's windows by stating:

It [the Odorite] will not work as classroom space because of the problems associated with light control, privacy at street level, and a structural bay spacing which is too small for a clear span and would result in a column somewhere in the space. It will not work as a computer center for similar reasons, including a possible problem with security. It will not work for faculty offices because partitions separating the individual offices will not marry with the exterior wall which is primarily glass. It will not work as the building's main auditorium because the space would contain columns and the sight lines would be interrupted throughout.

Although the study's findings suggest that a rehabilitated Odorite would not be ideal for some student center related functions, page 13 of your letter includes a quote stating that "the University of Baltimore is the only Maryland public university without a student center or any large, central gathering place for students to meet, eat, and study together." Other statements in your letter also stress the importance of establishing a "home base" for students to gather in and establish this goal as one of the most critical reasons a student center is required. As the popularity of the City Café attests, large windows and the natural light they afford are conducive to and well suited for social gatherings. Therefore, the Odorite's "large open bays" could prove ideally suited for providing what page 3 of your letter describes as the "...out-of-classroom experience considered essential to comprehensive higher education."

A final relevant contextual matter relates to the Odorite's relationship to Gordon Plaza and Mount Royal Avenue. Page 2 of your letter states that:

Although Charles Street has historically been perceived as the public face of the campus, the plaza across Mount Royal Avenue from the Odorite site is the actual physical heart of the campus.... [L]ocating the Student Center directly across the Mount Royal Avenue will complete the encirclement of the plaza by buildings associated with the University of Baltimore, and the potential for the Student Center and the Angelos Law Center to face one another across the plaza will strengthen the presence of this zone as a central focus for the campus. These concepts are consistent with the planning principles of the original 1975 Program and Campus Plan.

To date, the University has consistently referred to these findings as justification for demolition of the Odorite. In fact, this is actually a stronger argument to support preservation of the historic building when considering the Odorite's large, open windows and the excellent views they provide of Mount Royal Avenue and "the physical heart of the campus," Gordon Plaza.

When considered in this "context," the most reasonable conclusions that could be drawn from the quotations listed above are that adaptive reuse of the Odorite is not only possible, but also likely to be successful and consistent with University planning. And since there are a limited number of these important historic automobile showrooms remaining, the urgency to preserve the Odorite is even greater.

Subjective Arguments:

Numerous statements in your most recent letter suggest that the Odorite Building should be demolished because it does not fit the "image" the University would like to project:

As noted earlier, the architecture of the Odorite building is out-of-place with its surroundings and does not project the image the University desires.

...[W]e do not believe that these [Odorite's] two exterior walls are compatible with the surrounding architecture or with the image the University seeks to project...

While the University has the right to pursue its own distinctive image, that prerogative does not obviate its responsibilities under the State's historic preservation laws. These laws require the University to follow a process whereby a good faith effort is made, in consultation with the Trust, to identify and evaluate alternatives to adverse effects. The University has failed to follow this process and that fact is alarming because it could have far more devastating consequences than demolition of the Odorite Building.

In addition to discussing the importance the University places on its image, your letter also characterizes the Odorite as an "eyesore." We should note that any building which has been completely neglected for more than a decade, as your letter clearly establishes, might be considered an eyesore. However, Article 83B, § 5-618(a)(3) requires State units, in cooperation with the Trust and subject to available resources, to:

Exercise caution to ensure that any property that is listed in or determined eligible for the Maryland Register of Historic Properties is not inadvertently transferred, sold, demolished, destroyed, substantially altered, or allowed to deteriorate significantly.

Conclusion:

Nearly every action, or lack of action, by the University to date suggests that demolishing the Odorite and constructing a new student center on the site was a foregone conclusion. Page 18 of your letter states:

Over a decade ago, the State and the University System of Maryland authorized the University to purchase the property at 24-31 West Mount Royal Avenue and to demolish the Odorite building in order to use the site for University purposes. That the Odorite building has been slated for demolishing is not a surprise, and yet since

the acquisition of the property in 1989, none of the interested commentators have proposed a prudent alternative to what the State authorized.

According to applicable historic preservation law, it is the University which is responsible for establishing that no such alternative exists. Yet, the University rejected Secretary Hoskins' recent offer to assist in the cost of developing an alternative that could preserve and respect the historic integrity of the Odorite Building and the surrounding historic district. According to page 2 of your response to Secretary Hoskins, the University believes that "...the proposal outlined in your letter could lead to substantial delays, and substantial additional costs." Any such delays or costs, of course, could have been avoided by the University's fulfilling its legal responsibilities during planning for the project.

In light of this issue, we find the following comments from the Mt. Vernon-Belvedere Association's letter of January 28, 2003 to the University to be worth noting:

...[Y]our community does not take demolition of the Monumental Motorcar building to be a foregone conclusion.... We have been informed that your architectural firm, Murphy & Dittenhafer, Inc., has been directed to proceed with its design under the assumption that the current building will be demolished.

We have worked with Murphy & Dittenhafer, Inc., on several other preservation-related projects in Baltimore. In fact, this firm was involved in the UMAB Fayette Street Housing Project we referred to earlier as an example of successful compliance. Therefore, we do question why Murphy & Dittenhafer, Inc., was directed not to produce similar design alternatives in this case.

We are disappointed that a reasonable solution has not been sought or reached. By moving so far in its planning without adequately consulting with the Trust and considering prudent and feasible alternatives, the University has foreclosed the Trust's opportunity to provide meaningful review and input, and, in so doing, has failed to comply with the requirements of Article 83B, §§ 5-617 through 5-619 of the Annotated Code of Maryland and Financial Institutions Article §§13-1112(b). Therefore, it is our conclusion that the University cannot lawfully demolish the Odorite Building.

Sincerely,

J. Rodney Little

Director

Maryland Historical Trust

Dr. Robert Bogomolny

Maryland Historical Trust Review Regarding the University of Baltimore Student Center and the "Odorite Building,"
corner of Maryland and Mount Royal Avenues, Baltimore

November 26, 2003

Page 21

JRL/CAL

cc: Tyler Gearhart, Preservation Maryland
Secretary Victor Hoskins, DHCD
Kathleen Kotarba, CHAP
John Maclay, Baltimore Heritage, Inc.
William J. Pencek, Baltimore City Heritage Area Assn.
Paul Warren, Mt. Vernon-Belvedere Assn.