Development Workshop, Inc.
Room 5170
51st Floor
1735 Market Street
Philadelphia, PA 19103-7599

January 21, 2011

Ms. Eva Gladstein
Executive Director
Zoning Code Commission
1515 Arch Street, 9th Floor
Philadelphia, PA 19102

Re: Development Workshop, Inc. Comments on December 2010 Referral Draft of the Proposed New Philadelphia Zoning Code

Dear Eva:

Enclosed are the Development Workshop comments on the December 10 Referral Draft of the proposed new Philadelphia Zoning Code. Also included in the submission are our comments on the Consolidated Draft of November 2010 and memoranda provided by Workshop zoning committee members Tom Witt, Neil Sklaroff and Jerry Roller.

We will be forwarding comments on the Administrative Manual when it is further along as you requested at our meeting January 20.

Since the rewrite of the Referral Draft will not be available to the ZCC until February 9, 2011 -- the same day you have scheduled the vote -- it would seem in the interest of transparency, clarity and best practices, that a minimum 30-day review period is required to give members of the ZCC the opportunity to read the document in full and consider its contents. Moreover, it is equally important to give stakeholders an opportunity to comment on the final draft.

Sincerely,

G. Craig Schelter
Executive Director

GCS/djh
enclosures

cc: Alan J. Greenberger, AIA (w/enclosures)
Michael Sklaroff, Esquire (w/enclosures)
Development Workshop members

DEVELOPMENT WORKSHOP ZONING COMMITTEE

ANALYSIS OF ZONING CODE COMMISSION REFERRAL DRAFT (DECEMBER 2010)

This memorandum is the product of the Development Workshop's ongoing analysis of draft provisions of the work product of the Zoning Code Commission ("ZCC"), beginning with Modules 1, 2 and 3, and continuing through the Consolidated Draft of September 2010 and the ZCC Referral Draft of December 2010. At the meeting Thursday, January 20 with representatives of the ZCC, many of the issues were clarified or resolved.[1]

Our analysis of November 12, 2010 is attached, together with detailed memoranda concerning various provisions of the draft code. The comments here address the mandate of the ZCC as stated on the website, especially the proposed "fix," which is centered on these values: simplicity, conciseness, user-friendly, up-to-date, fair and predictable, common sense, rational and consistent, clear vision, positive growth and good planning, good design and best practices and easy to enforce.

The proposed code reorganizes the relationships and redistributes zoning powers among the various agencies involved in the development process (City Council, the Planning Commission, L&I and others that were intended by the City Charter). In some instances, the Planning Commission appears to have been given the power to legislate zoning, rather than, as provided in the City Charter, advise City Council and the Mayor on zoning matters. This needs further thought.

The Workshop's concerns center on the same themes identified on November 12: (1) planning and zoning – getting it right; (2) purpose; (3) civic design review; (4) "development standards" Section 14-600 (now 14-700); (5) subordinating the Code to plans; and (6) unfunded mandate. Many of the comments in our November 12 report were not addressed until the January 20 meeting, so we shall not repeat them at length here, but incorporate them in the attachment, because many remain essential.

We focus first on a major theme for the purpose of this analysis: preserving as-of-right zoning, which is critical in creating jobs, bringing new people to the city and strengthening the tax base (all of which are critical goals that we understand shall now be incorporated into the purpose clause in Section 14-101). To this we add suggestions critical to assuring clarity, avoiding unnecessary confusion and preserving due process in proceedings before the Zoning Board, as well as enhancing transparency and efficiency in other administrative activities under the code. We also address certain other specifics.

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[1] In the meeting of January 20, we also made suggestions regarding the administrative manual, which is to be redrafted.

As a general matter, we were concerned that the draft presents unintended obstacles in that it uses a new vocabulary, establishes a maze of potential procedural cul-de-sacs and contains many complex and confusing cross-references. The draft will benefit from a better organized redraft, including an index (which we have long advocated).

AS-OF-RIGHT

Unlike the current code, there is little opportunity for a landowner to know what can be built on a site. We do note that the draft restores in part the fundamental concept in the existing code of some as-of-right zoning and permitting, Section 14-304 (c) (.3), but as now written, these provisions are freighted with design requirements in Section 14-700 that invite numerous trips to the Zoning Board for dimensional variances. As-of-right is also encumbered by the provisions of Section 14-304(9)(c)(.3)(a)(iii), (iv), (v) (vi) and, especially, (viii). Nevertheless, we understand the current time frame from submission to issuance of an initial permit by L&I will be reduced to five weeks, unless Civic Design Review is triggered. Where Civic Design Review is required, the time frames remain uncertain, excessive and an obstacle to private investment in the City essential to job creation and population growth.

Throughout the draft "as-of-right" is compromised by considerations beyond the express provisions of the zoning code, which is City Council's legislative work product under the Charter. The administration of the code is subordinated to (a) interpretation by the Planning Commission and the Department of Licenses & Inspections (and not the Law Department as would be required under the City Charter); (b) federal and state, and local non-zoning, laws and regulations; (c) interpretations of the code by the Commission and L&I in light of the Comprehensive Plan and other plans adopted (or accepted?) by the Commission; and, as stated above, (d) the myriad Development Standards, whose origin is unclear, which are set out in Section 14-700. In addition, each of the reviewing agencies (L&I, Streets, Water, Planning Commission, Art Commission, Parks and Recreation and Historical Commission) may extend the approval process excessively and may also attach conditions on permits and approvals if they are related to "anticipated adverse impacts." See Sections 14-301(3) to (10) and 14-303(9).

How to make an as-of-right code as-of-right? Not complicated. The provisions described in the paragraph above should be stricken. The code should be recognized as the exercise by City Council of its legislative prerogative under the Charter in accordance with the Comprehensive Plan. The code is the law of the land on zoning. Those who administer the code carry out the will of Council. We understand that the full redraft scheduled for publication on February 9 will address many of these issues.

While City agencies work with the code and inevitably interpret the code as they go, the only authoritative interpretation of City legislation comes from the Law Department. Accordingly, the Commission is not free to provide definitive interpretations of the code that are binding on other agencies or even landowners, neighbors or other citizens. **Neither the Commission nor L&I may modify the code based on their interpretations of the Comprehensive Plan.** The power to amend the code resides solely with Council.[2] We

[2] Section 14-303(12)(b) through (f) should be stricken.

understand that the Law Department's paramount role to interpret legislation under the Charter will be restored in the new draft.

Once a permit is issued that evidences compliance with use and dimensional requirements, that permit should not be subject to conditions based on value judgments made by administrative employees of the City to "mitigate" adverse effects or capture the spirit or intent of the Comprehensive Plan. L&I officials, for example, are neither equipped nor authorized under the Charter to condition permits on extrinsic issues, including interpretations of what may in someone's opinion be desirable under the Comprehensive Plan (which invades the province of Council) or what may be required under federal law (for which they are not trained and which, in any event, is not the business of L&I under the Charter). A note in the Charter provides that Council does not enact the Comprehensive Plan because the Plan is not intended to become law. See Philadelphia Home Rule Charter, § 4-604, Annotation. As above, we understand that these concerns will be addressed.

DEVELOPMENT STANDARDS

In order to restore as-of-right, the Development Standards[3] contained in Section 14-700 should be placed in a manual as design guidelines that inform the Civic Design Review process. These design guidelines do not belong in Philadelphia's zoning code. They defeat as-of-right zoning. They invite incessant appeals to the Zoning Board and further litigation. Section 14-700 takes on major planning and policy issues.[4] These planning issues will have a major impact on projects covered under Section 14-502/CTR, Center City Overlay 5-1 thru 33. The ZCC Working Committee in Center City should be reconvened before final action is taken on this Section to reconsider the 125' height limit ZCC draft at 5-4, 10 (Sky Plane) 11, 12, 13, 18 (Old City), 24 (Curb Cut Restriction), 25 (Parking Controls).

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3 A likely exception is §§ 14-701 and 702. Portions of § 14-710(3), however, that make the code subordinate to the Commission's reading of the Comprehensive Plan, must be stricken.

4 The Development Standards contained in Sections 14-703 through 14-709 are the sort of design criteria which are usually contained in a Land Development Ordinance. They are generally subjective and require interpretation, including some leeway in adapting them to specific situations. This works well in those communities where there is a Land Development process which is ultimately decided by a Planning Commission and then a Board of Supervisors, both of which have discretion.

SOME EXAMPLES OF SPECIFIC ZONING POLICY ISSUES THAT REQUIRE FURTHER THOUGHT.

Transit Oriented and Other Development in Center City

The map (page 7-8 and Chart 7-9 in Section IV-701) seems too restrictive. It excludes areas that should be available for more intense development. In addition, Section §14-402(1)(c)(.6) states that the CMX-5 District is normally intended to apply within 1200 feet of Market East Station, Suburban Station and 30th Street Station or any underground concourse connected to those stations. This is unnecessary since the map will speak for itself.

The dimensional standards -- now set out in Sections 14-701 and 702 -- should be placed elsewhere in the draft. The logical place is Section 14-400, Base Zoning Districts or Section 14-500, Overlay Zoning Districts, as applicable.

The Sky Plane and the One Hundred Twenty-Five Foot Height Restriction West of Broad Street

The Sky Plane Controls will not likely yield any public benefit either in terms of better buildings or greater light and air on our streets. Chestnut and Walnut Streets demonstrate a vibrant mix of building heights, some of which meet the Sky Plane controls and some of which do not. A series of photographs taken along these streets demonstrates that, almost without exception, without looking up from the middle of the street, there is no perceptible difference in light and air at the street level regardless of the height of the adjacent buildings. Given that there is no real benefit from imposing the Sky Plane standard and building space, Section 14-502 (4) (a) and (c) should be stricken and the overall bulk and area controls of the underlying zoning control development. To the extent the Sky Plane may in a rare case have some relevance, the controls should be placed in the manual used in the Civic Design Review Process.

The 125' height limitation in portions of the C-5 district west of Broad is designed to drive projects to the Zoning Board. It is contrary to comprehensive planning. The restriction does not belong in the code and should be stricken from the draft.

Dimensional Standards for Residential Development

In Section 14-701 (2), Zones RSA-5 and RM-1 (both of which deal with urban rowhouse areas currently zoned R9, R9A, R10, and R10A) currently retain the 1,440 square feet minimum lot size. This is too large and was inserted in the old code specifically to send projects to the Zoning Board. If the intention is to write a code that encourages development by-right, the minimum lot size should be changed to an area that is reasonable and practical today. The minimum area should be reduced to 720 square feet, which is more than double that required for a dwelling unit. This would correspond to the 18' by 40' or 16' by 45' lots that are today's economic standard for new townhouse developments.

In Section 14-701 (2), the height limit has been raised from 35 to 38 feet, which is movement in the right direction. This is not, however, sufficient to allow for a reasonable stoop and four floors at 9 foot ceilings, which is today's standard townhouse. The height limit should

be set at 42'. While that is still not high enough to allow anything taller than four stories, it would allow for development of high-quality housing for today's market.

We understand these issues are being addressed in the ZCC's further review.

Residential Parking

There are a number of restrictions on residential parking that are overzealous. We understand the reluctance to avoid more with garage front houses. On the other hand, parking is absolutely essential to high-end housing. The following changes would permit reasonable garage parking, on rear alley streets which today serve as driveways. A provision stating that garages are not permitted on blocks where fewer than 25% of the homes on the block have garages would permit garages at the rear of homes on alley streets. Finally, Section 14-703 (8) (b) (.1) (.b) (requiring a 10 foot setback between any street and parking) should be modified to apply only to a primary street where setbacks are required. Where the rear of a property is served by an alley or driveway, parking in the rear of a building should be allowed to start at the property line. Adding a 10 foot setback from the street only adds area between the parking and the street which is unusable.

We understand these issues are being addressed.

Commercial Uses in CMX-2 (former C-2)

Section 14-602(4)(a)(.3) (requiring commercial uses on the ground floor of CMX-2) should be deleted. There are large areas currently zoned C-2 where there is really no commercial basis. With the creation of CMX-2.5 for genuine commercial corridors, CMX-2 should not require commercial uses.

Eating and Drinking Establishments

Table 14-502-2 generally now makes sense, restricting noxious uses in the downtown core. Eating and Drinking Establishments in the list of restricted uses. In general, these facilities are the hallmark of a vibrant downtown. Disallowing these uses entirely in Old City makes no sense, since it remains one of the main dining Meccas of Philadelphia. Where there is concern about a proliferation of restaurants, special exception relief should nonetheless be available.

ZONING BOARD

The guidelines applicable to the Zoning Board need rigorous review and significant revision. The standards for special exception relief in the draft place burdens on landowners that violate governing law (see Bray); notwithstanding the mandate for a "modern" code there is no language in the draft that acknowledges and incorporates the Pennsylvania Supreme Court's modernization of variance law by providing for adjustments when dimensional variances are reasonable (see Hertzberg); the draft authorizes the Board to make decisions without a hearing; and there are provisions that would permit the Board to decide cases on documents not of record. Moreover, while Civic Design Review had previously been heralded as being advisory only, the new draft, for the first time, opens up the avenue of incorporating the

results of the review into decisions of the Zoning Board. Not only would this exceed the scope of what is advisory, but could very well have a coercive effect on the landowner during the review process. The code or Zoning Board regulations should require that each voting member read the findings of fact and conclusions of law and sign his or her decision.

CENTRAL WATERFRONT ZONING

Section 14-506 et. seq. establishes a Central Delaware Riverfront Overlay District. On its face, this section is designed to "help implement" the so-called Civic Vision for the Central Delaware (2007), which is neither a product of the Planning Commission nor a comprehensive plan. We are advised that those drafting this portion of the code have not communicated with the consultants who are engaged on behalf of the Delaware River Waterfront Corporation to prepare a comprehensive plan or the corporation's planning staff.

Accordingly, the interim Overlay should not be placed in the new code until the legislation is supported by a relevant and useful comprehensive plan or master plan adopted by the Planning Commission after hearings and engagement with all stakeholders.

MEASURES REQUIRED BY THE CHARTER

This subject requires additional thought and analysis by the ZCC and the Law Department. We have suggested, among other things, that in addressing the transition period that the "temporary table shown at the top of Use Charts and zoning Classification Charts be retained for at least a one-year period between enactment and effective date. Moreover, until remapping occurs, the draft code should be using new zoning classifications.

CONCLUSION

The ZCC and those commenting on the draft seem to be coming closer to finding common ground. We look forward to reviewing the new draft and the opportunity to comment in advance of final consideration by the ZCC.

Development Workshop, Inc.
Room 5170
51st Floor
1735 Market Street
Philadelphia, PA 19103-7599

November 12, 2010

Via Hand Delivery

Ms. Eva Gladstein, Executive Director
Zoning Code Commission
1515 Arch Street, 9th Floor
Philadelphia, PA 19102

Dear Eva:

Enclosed is the Development Workshop's Analysis of Consolidated Draft of Proposed Zoning Code. This represents the work of a zoning committee comprised of former city planning directors, architects, developers and lawyers who, over the years, have participated in the preparation of City plans, drafted zoning ordinances and most importantly lived in Philadelphia and lived with the Zoning Code. Our report to the Zoning Code Commission is grounded in experience in the public and private sectors in getting development done, creating jobs, adding to the tax base, and enhancing the quality of life in the City.

The report follows our detailed written response to Module 1, as well as numerous comments on the draft at ZCC meetings. We have continued to recommend that more time be afforded to evaluate the myriad of fundamental changes proposed by the ZCC consultants. We consider these comments preliminary, especially in light of the substantial, numerous and ongoing changes put forth since the draft was first available in September and continuing to the present, including the ZCC meeting on Wednesday, November 10, 2010. The market is such that there is time to get this right.

We have endeavored to propose practical changes that would encourage investment in the City, while serving the interests of neighborhoods and the community as a whole. Our analysis is intended to be constructive, but also candid and direct. We are available at your convenience to discuss our analysis should you or staff consider it useful.

Sincerely,

G. Craig Schelter

G. Craig Schelter
Executive Director

GCS/djh

cc: Alan Jay Greenberger, AIA
Michael Sklaroff, Esquire
Richard L. Lombardo
Development Workshop Members

DEVELOPMENT WORKSHOP ZONING COMMITTEE

ANALYSIS OF CONSOLIDATED DRAFT OF PROPOSED ZONING CODE (SEPTEMBER 2010)

The Development Workshop has reviewed the draft ordinance prepared by the Zoning Code Commission ("ZCC") in the context of the larger issues facing the City of Philadelphia. The City, like many across the country, needs population growth, job creation and a stronger tax base just to sustain government, meet unfunded public sector obligations and support a crumbling infrastructure. These demands are exacerbated by the fact that the nation as a whole continues to suffer in the aftermath of the greatest economic crisis in memory.

We recognize the enormity of the task before the ZCC. The draft represents the input of many people from different backgrounds, of disparate viewpoints and with conflicting interests. The City is not monolithic. Our neighborhoods are diverse. Philadelphia is also a key resource in the region and in the nation.

The Workshop's Zoning Committee includes former planning directors, architects, developers and lawyers who, over the years, have participated in the preparation of city plans, drafted zoning ordinances and, most importantly, have lived in Philadelphia and lived with the zoning code. Our report to the ZCC, above everything, is grounded in experience in the public and private sectors in getting development done, creating jobs and adding to the City's tax base.

Because of the sheer size and its complexity,[1] the draft has not always been easy to understand, but we have done the best we can within the time constraints. Furthermore, while the document was made available in early September, there have been significant changes since -- October 6, October 27, November 8, and most recently, November 10 -- which makes it difficult, if not impossible, to complete a comprehensive review. These recent changes are not merely linear, but reverberate throughout the draft. Introduction of the draft of the Administrative Manual, presented for comment as integral to the Code, three days before the November 12 deadline, also precludes a complete, thorough review. This massive draft -- ever changing -- is truly a moving target.

Because of the magnitude of the draft itself and the on-going changes, the process would benefit from a longer time frame for serious consideration, not less than six months.[2] We also believe that the process would be far better if those involved in the drafting had additional time to improve the draft and respond to comments from the Philadelphia Bar Association, the American Institute of Architects, community groups, the Workshop and others. Nevertheless, we are pleased to offer this report in an effort to make the new zoning code "shorter, simpler and more user-friendly" and, most important to the future of Philadelphia, to assure that the new

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1 A user-friendly code requires an index, which make the text accessible to the public.

2 This is especially important because new changes appear on the ZCC website on a daily basis. Serious review should not be limited to insiders.

zoning code is welcoming to development, which is the lifeblood of population growth, job creation and strengthening the tax base.

Summary of Major Issues

The new Zoning Code was proposed as being "shorter, simpler and more user-friendly." It is unclear whether the draft is shorter, especially given the Administrative Manual, but it is surely neither simpler nor more user-friendly. Recommendations set forth below are offered to improve the draft.

Planning and Zoning: Getting it Right

A fundamental flaw in the draft is that it reverses planning and zoning best practices. The better practice would be as follows: (a) adopt a comprehensive plan with full community input; (b) remap the City to carryout the plan and strike archaic, dysfunctional classifications; and (c) modernize the Code by incorporating civic values in an as-of-right code and remove unnecessary obstacles that drive projects to the Zoning Board of Adjustment ("ZBA")[3]. The new code would be grounded in a comprehensive plan and carried out by City agencies in accordance with the roles assigned under the Charter. Unfortunately, the draft proceeds in a vacuum, embodying a cornucopia of value judgments detached from a comprehensive plan.

Purpose

Since there is no current City-wide comprehensive plan, the "Purpose" language of the draft serves as a guide for the drafters. The Purpose statement serves to preserve existing conditions, not to revitalize the City through growing population, creating jobs and strengthening the tax base. Examined in context, the draft itself appears to be anti-growth in a City that desperately needs new population, more jobs and a stronger tax base.

Civic Design Review

On major as-of-right projects, the draft imposes Civic Design Review, among other things, in a process that likely will take more than 180 days before issuance of a zoning permit. This is not conducive to moving development forward. In addition, as unintended consequences, the draft (a) encourages spot zoning to short-circuit the process; (b) exposes as-of-right projects to show-stopper spot zoning; and (c) increases exponentially the cost of plans necessary to navigate Civic Design Review and satisfy the detailed requirements of Section 14-600.

Section 14-600

The design criteria of Section 16-600 tend to micromanage projects, creating a site-design ordinance rather than a zoning ordinance. Zoning generally governs "what" you may

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[3] An example of best practice, the Center City Controls were enacted October 31, 1991 in accordance with the 1988 Plan for Center City.

build; land development the "how." This draft is more attentive to site design than zoning. Many of these provisions should function solely as guidelines to be published in the Administrative Manual.

Subordinating the Code to Plans

Throughout the draft, the Code is made subordinate to (a) the Planning Commission's interpretation of the Code; (b) the interpretation by the Department of Licenses & Inspections ("L&I") plan examiners of the Comprehensive Plan; and (c) plans for neighborhood groups "accepted" by the Planning Commission. This is a departure from the zoning anticipated by the City Charter and a rational system of land use. For example, as set forth in the traditional Standard Zoning Enabling Act, zoning codes are to be enacted in accordance with a comprehensive plan and, thereafter, zoning officials -- including L&I plan examiners and the ZBA -- administer the Code in accordance with its terms. Under the draft, the Code would be subject to on-going interpretation of the Comprehensive Plan and other plans for "consistency." There is no authority in the Charter for L&I staff to make discretionary decisions, especially involving interpreting the zoning code in light of the Comprehensive Plan and legislation and regulations apart from zoning. These major changes are not what the Charter contemplates and are bad policy.

Unfunded Mandate

The Commission and L&I appear to have insufficient staff to carry out the extensive new functions assigned under the draft. An analysis of hiring needs should be undertaken. Additional staffing needs to be priced and budgeted.

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Chapter 14-100: General Provisions

101 Purpose

Essentially, this is a stay-put, conservative statement that would "protect the character and stability of the city's neighborhoods" rather than "revitalize neighborhoods" and encourage development that would bring new people to the city, generate jobs and strengthen the tax base.

Recommendation: the purpose provision should state expressly the fundamental goal of population growth, generating jobs and strengthening the tax base.

105 Relationship to Plan Documents

(1) **The Comprehensive Plan**

A City-wide comprehensive planning and remapping effort should have preceded the draft. Much of the variance traffic going to the ZBA in major projects stems from the City's failure to enact a zoning map consistent with the City's current needs.

(2) **Amendments to the Comprehensive Plan**

(b) The provision that plans adopted by the Planning Commission and treated as an amendment to the Comprehensive Plan would serve as an "additional guide for the administration of the Zoning Code" and the following provision, section 14-105 (3), misconceive the proper function of zoning officers. These provisions would empower L&I officials to make "discretionary" decisions based upon the Comprehensive Plan. This provision adds confusion and ambiguity where there should be certainty and clarity. Under the City Charter, the Zoning Code should be enacted in accordance with the Comprehensive Plan and the Code should be enforced in accordance with its express provisions without reference back to the Plan. To allow zoning officials to override the Zoning Code based on their interpretations of the Comprehensive Plan places legislative actions of City Council in a subordinate position to the Planning Commission and abridges powers of Council to enact ordinances under the Charter. This is bad policy because it makes zoning decisions by L&I officials, heretofore ministerial and predictable, discretionary and subjective.

Recommendation: strike all provisions of the draft that authorize L&I and other officials to make discretionary decisions placing the Comprehensive Plan and other plans above the Code.

(c) The provision that a "plan" prepared by an organization other than the City or a public agency, when "accepted" by the Planning Commission, may "serve as a guide for administration of this Zoning Code at the discretion" of the Planning Commission, ZBA, or L&I is ambiguous and uncertain, and adds an element of mystery and unfettered discretion (and likely is an improper delegation) in a process that calls out for clear and transparent rules. The guide for the administration of the Zoning Code is the Code itself. Again, this provision would contravene powers of Council under the Charter.

Recommendation: strike subparagraphs (1), (2) and (3).

108 Relationship to Other Regulations

(1) **Conflict**

Bringing federal, state and local regulations into the mix with the Code makes little sense and adds confusion and uncertainty. The Code should effectuate the Comprehensive Plan, and should be the exclusive governing document for land-use regulation in the City.

Recommendation: strike subparagraph (1).

(2) **Overlay Districts**

Putting aside the merits of specific overlay districts, the primacy of an overlay district in Chapter 14-400 over more general zoning regulations whether more or less restrictive makes good sense.

Chapter 14-200: Administration and Procedures

201 Reviewers and Decision Makers

(3) **City Planning Commission**

(b) (.9) References to the Planning Commission's recommendations to Council for the capital program and the sale of acquisition or sale of City real estate do not belong in the Zoning Code.

Recommendation: strike the provision.

(5) **Department of Licenses and Inspections**

(b) Does L&I have sufficient staff to inspect and certify every property that comes before the Department for a permit or license? What additional training and staff would L&I need? Is this an unfunded mandate? If staffing is insufficient, development could be adversely impacted.

Recommendation: make an assessment of staff requirements and, if appropriate, prepare a budget request that would be presented at Council hearings on the Code.

(6) **Board of License and Inspection Review**

Appeals from the decisions of the Historic Commission should go to the Court of Common Pleas under the Local Public Agency Law and not to the Board of License and Inspection Review.

Recommendation: require the Historic Commission to follow the Local Public Agency Law with procedures like those of the ZBA, with sworn testimony, a formal transcript and findings of fact and conclusions of law. Strike provision that appeals from the Commission go the Board.

(9) Art Commission.

Recommendation: require Art Commission to adopt standards consistent with due process.

203 Common Procedures and Requirements

(1) Neighborhood Meetings

The requirement to conduct a neighborhood meeting with a Registered Community Organization (RCO) before a ZBA hearing raises numerous issues. Can anyone form an RCO? Are there any geographic limits? Can people establish an RCO for the whole of Center City, or the whole City? Does the RCO need to be open to all? Election requirements? Doesn't this provision unnecessarily entangle government and voluntary community organizations?

Recommendation: rethink this provision.

(2)(a) The Charter does not authorize the Planning Commission to "accept" unofficial community plans. This is ambiguous and confusing. If a plan is worthy of adoption, it should become part of the Commission's own planning process.

Recommendation: the authorization for "accepting" non-Commission plans should be stricken.

(5) Referrals

L&I, the ZBA and the Planning Commission should not be permitted to "refer" an application to any other department or agency outside of the City government structure. This appears to be an improper delegation of powers reserved to L&I, the ZBA and the Planning Commission under the Charter (and may otherwise be unconstitutional). Also, bad policy.

Recommendation: strike this provision.

(7) Public Hearings

(e) To place upon an applicant "the burden of demonstrating that an application meets all of the applicable requirements of the [zoning code]" in special exception (certificate) cases violates governing Pennsylvania law (Bray).

Recommendation: provision should be stricken or restated to comply with governing law.

(9) Conditions on Permits and Approvals

As a general matter, the new draft encourages the Planning Commission and ZBA to impose conditions on approvals, which makes the Code more subjective and uncertain, and less transparent, and invites bargaining with special interests.

(a)(.1)(.a) Relief should be granted for a special exception or variance application that satisfies the criteria. What is the point of imposing conditions on approvals that

"bring the application into compliance with the requirements of the Zoning Code or any previously adopted plan of development for the property?"

(a)(.1)(.b) This is ambiguous and confusing. Assuming that an approval is warranted -- any "adverse effects upon surrounding areas or upon public facilities and services" are part of what is implicit in the legislation of City Council. In addition, the word "zoning change" generally means actions of City Council, i.e., legislative actions, and not ZBA approvals (or Planning Commission approvals).

Recommendations: these provisions should be rewritten to limit conditions to what may be necessary to rationalize variances granted by the ZBA, but only to the extent connected to the variance issue and not the development in general.

The term "consistent with the purposes of the Zoning Code" is ambiguous and would open up a universe of unnecessary conditions. In another context, the draft appropriately eliminates the variance requirement that a variance be consistent with the "spirit of the Code." Same reasoning should apply here.

Recommendation: strike the language "consistent with the purposes of the Zoning Code."

(a)(.2) The provision for "mitigation" of impacts assumes -- without explanation -- that impacts that flow from compliance with the Zoning Code require mitigation. In addition, since there is no basis for extracting land dedication or the payment of money, there should be no reference to it. If this refers to the Waterfront Overlay, however, it should so state. In the last sentence, reference to a subsection (d) is probably an error. There is no such subsection.

Recommendation: strike this provision.

(b) L&I's function under the City Charter does not include the power to impose conditions on permits to which a landowner is entitled under the Code. There are no standards and no authority under the Charter. This is **really** bad.

Recommendation: strike this provision.

(c) **All Review and Approval Bodies**

(.1) Recommendation: should read "All conditions imposed shall be reasonably related to the anticipated impacts of the proposed **special exception or variance** and the purposes of this Zoning Code." Otherwise, a minor issue could be a springboard to imposing conditions regarding unrelated matters to which the specific exception or variance is not germane.

(12)(e) **Code Interpretations**

Recommendation: provide that the ZBA should be free to make independent interpretations of the Code (in consultation with the Law Department, if requested) under the facts before it as a matter of due process.

(13) **Appeals**

(a) (.4) L&I should not issue a new statement of "reasons" after an appeal has been filed. The filing of the appeal closes the record before L&I.

(.6) The ZBA should be required to hold a hearing as a matter of due process and the Charter.

(.8) The ZBA should be required to make a decision within a set period of time, i.e., 30 days.

Recommendation: revise language to reflect comments on subsections (a)(.4)(.6) and (.8).

204 Specific Procedures

(1)(b)(.4) Provision that the Planning Commission may "accept a plan" prepared by a group other than the City or public or quasi-public agency is confusing, probably not within the Charter, and should not be the basis of zoning decisions under the Code.

Recommendation: strike this provision.

(c) Effect of Approval. Plans should be deemed embodied in the Code, and not a separate basis for discretionary decisions by the ZBA, the Planning Commission, or L&I in carrying out their duties under the Code. L&I and ZBA should be enforcing the Code, not modifying the Code by ad hoc interpretations of Planning Commission plans or "accepted plans" in their discretion.

Recommendation: strike this provision.

(2) **Zoning Map and Text Amendments**

(b)(.1) Planning Commission review is basic, but important.

(.5) The provision that a new overlay district should not be approved where the planning result can be achieved through amendments to the base Code or an existing overlay district is a good one.

(4) **Special Exception Approval**

The draft would require plan examiners to review applications, not only for compliance with the Code, but also with regard to consistency with the Comprehensive Plan and other plans of the City. See 14-204(4)(d). This is a fundamental change from what a plan

examiner is supposed to do, which is to enforce a written code, rather than go outside the code for interpretations of "consistency" with extrinsic documents. This is bad. This violates Pennsylvania law and the Charter.

Recommendation: strike provision and return to L&I's current role under the Charter, which is to review an application in accordance with the express provisions of the Code.

(6) **Civic Design Review**

(a)(.2) "Other reviews" -- and "additional reviews under 14-204(6)(a)(.1)" to "cover additional aspects of project design not included in the earlier review" is unclear, and could be open-ended and endless.

Recommendation: rewrite to provide that all required reviews take place concurrently within a specified time frame.

(b) Preliminary review by L&I has no time limit and its purpose is unclear.

(c) **Advisory Review**

While the language states that design review shall be "advisory", the results of design review might well be incorporated into the ZBA's decisions through its condition-making powers notwithstanding provisions to the contrary.

Recommendation: specify that the Civic Design Review findings and testimony regarding the process may not be presented to the ZBA in any form.

In projects where design review is required, including as-of-right projects, the process requires (1) pre-application review by L&I (open-ended time frame); (2) pre-application neighborhood meeting (30 days); (3) pre-application design review (126 days plus); and (4) L&I or ZBA decision (open-ended). Moreover, there is a provision for subsequent review by the Planning Commission where "required by other requirements" of the Code. Contrast this with an as-of-right code where owners and lenders know where they stand from the beginning.

(d) Review by Civic Design Review Committee. Seventy-five working days implies 105 calendar days (not taking into account holidays) just for design review. This is far too long when other time delays are added in. The delay itself could be a showstopper for attracting development capital to the City. The unintended consequence is to encourage landowners to seek spot zoning.

* * *

Special Note and Recommendation Regarding Zoning Process for As-Of-Right Development

In its practical analysis of the as-of-right procedures under the draft code, the Workshop concluded that the proposal presents a fundamental obstacle to development. Currently, with conceptual approval from the Water Department, preliminary review by the Streets Department and the Planning Commission, a landowner may apply to L&I for a Zoning and Use Permit based on straightforward use and dimensional requirements. Timing is about 30 days. The permit establishes the right to build a project in accordance with the terms of the Code. The landowner and lender (and proposed owners, users and tenants) can be assured there will be a project. Thereafter, plans for building permits are submitted to L&I for approval.

Under the proposed procedure for as-of-right development, a zoning permit may not with certainty be obtained within 180 days of submission. The draft requires the following:

- A zoning plan ("Z-1") is prepared in accordance with the site design criteria of Section 14-600, which includes a complex set of site design standards.
- L&I pre-application (assume approximately 15 days).
- Meeting with community group (ROC) (30 days).
- Civic Design Review and recommendation to Planning Commission (126 days).
- L&I review to confirm as-of-right development (assume 15 days).

The process may well take 186 days.[4] The draft makes financing projects difficult, eliminates the transparency of the current as-of-right code and makes Philadelphia uncompetitive in projects that could go elsewhere in the region and, for that matter, in the country. This process is too long, too expensive and too unpredictable.

The Development Workshop recommends as follows[5]:

- Preparation of Z-1.
- Submission to L&I for compliance with Zoning Code, including Water Department's conceptual approval and cursory review by Streets Department and Planning Commission and issuance of permit (30 days).
- Meeting with community group (ROC) (30 days).

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4 There are many contingencies that could extend the schedule well beyond 186 days.

5 See chart attached as Appendix 1.

- Civic Design Review and recommendation to applicant and Planning Commission (60 days).

The Development Workshop proposal would assure that as-of-right zoning for larger projects remains as-of-right. If the drafters are serious that Civic Design Review is truly advisory, then there will be no objection that the review process follows the issuance of a zoning permit.

The Workshop also proposes that the detailed site design requirements of Section 14-600 be placed in the Administrative Manual as guidelines or greatly simplified. These requirements are largely site design as opposed to zoning criteria and because of their complexity and difficulty to administer, make it likely that many projects will require ZBA review and approval for variances.

* * *

204(b) Criteria for Review

The terms presented are ambiguous and confusing, e.g.: "contributes to street activity"; design of streets and open spaces are "appropriate for their intended function and reinforce the importance of public use of those spaces"; and design consistent with "the intended character" of streets, etc. Also, additional criteria are to be stated in the Administrative Manual, which has not been available for review and may add an element of uncertainty in a code which should strive for certainty and transparency. The manual may also supersede the legislative powers of Council.

Recommendation: review and restate criteria in concrete terms.

(8) **Zoning Variances**

Pages 2-47 n. 134 – deletion of phrase "provided that the purpose and spirit of this Chapter shall be observed and substantial justice done" from the former provision (§14-2107) is a good move to avoid subjectivity and ambiguity.

(d) **General Criteria for Approval**

(.1) **Use Variances**

Standard is unnecessary hardship. What does "unconstitutional taking of property" add? Standard under governing Pennsylvania law is unnecessary hardship. Is this language intended to make otherwise appropriate variances more difficult to obtain?

Recommendation: strike reference to "unconstitutional taking of property."

(.2) **Variance to Dimensional Standards or Conditions**

The limitations set forth in the Code do not seem to follow controlling authority of Pennsylvania law in Hertzberg, which does not contain arbitrary limits

on variances. Page 2-49 n. 140 references removing the existing criterion -- "that the grant of the variance will be in harmony with the spirit and purpose of this Title." Removing the language is a good idea because it is too vague.

Recommendation: strike numerical limits on height and gross floor area.

(9) **Zoning Permits**

(a) **Applicability**

Recommendation: The word *generally* should be stricken in the statement "Zoning Permits generally confirm that the application complies with all applicable provisions of this Zoning Code and that Civic Design Review is not required."

(c) **Permits**

Subsections (.1) and (.2) are unclear. Subsection (.2) refers to a plan described in (.1),yet subsection (.1) does not use the term "Plan."

Recommendation: clarify.

(c)(.3) refers to zoning permits for construction lasting three years. This is good. The expiration of permits where no construction is involved lasts only six months. Not so good.

Recommendation: extend timing for permits where no construction is involved to one year.

(d) **Criteria for Approval**

Subsection (d)(.2) refers to reasonable accommodations or structure modifications under Fair Housing and ADA. Who is making those decisions?

Recommendation: clarify.

Chapter 14-300: Base Zoning Districts

302 C, Commercial Mixed-use Districts

(1) **General**

(a) **Districts**

The chart incorrectly designates CMX-1 (formerly C-l) as "Corner Commercial Mixed-use" rather than low-impact neighborhood scale retail. This change will permit uses that have a greater impact on neighborhoods than the present Code and current mappings. The draft also characterizes RC-1 as Neighborhood Commercial Mixed-use, when it is a special purpose

mixed-use intended to be used on Venice Island (Manayunk) and along other waterfronts (see set-back from canals, rivers, etc.).

Recommendation: the descriptions of these two districts should be revised to be more accurate.

14-303 Industrial and Industrial Mixed-use Districts

(1)(a)(.1) **List**

Table 14-303-1: Industrial and Industrial Mixed-use Districts and footnote 200

Proposal to eliminate Food Distribution Center district and remap to an industrial zoning classification needs to be rethought.

304 SP-INS Institutional, (Special Purpose) District

(7) **Signs**

The sign restrictions are overly strict and generally do not reflect the signage found on modern institutional campuses, especially in terms of signs interior to the campus (as opposed to along bounding streets).

Recommendation: more expansive sign regulations should be included for accessory commercial, entertainment and sports uses.

(8) **Plan of Development**

This paragraph is unclear. How does the Code treat campus master plans approved before the passage of the proposed Code? Do buildings shown on existing approved plans now need to be subject to "POD's"?

Recommendation: specify that plans for specific sites within the district that were approved in the past (in terms of location, gross floor area, lot coverage, etc.) do not need to be reapproved when plans are submitted for zoning permits.[6]

306 SP-STA Sports Stadium, (Special Purpose) District

This district as drafted, predates the existing development at the sports complex (Lincoln Financial Stadium, Wells Fargo Center, and Citizens Bank Park).and proposed development of the complex.

Recommendation: the draft should acknowledge the current level of development and proposed development at the stadium complex.

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[6] Further analysis is required as a result of new draft amendment published November 10, 2010.

Chapter 14-400: Overlay Zoning Districts

402 (3)(a) Independence Mall and Independence National Historic Park

These height limits have little basis in reality. The Independence Hall area limits are exceeded by half of the existing buildings, and, given the expanse of the Mall, would not seem to be appropriate. Moreover, the language lists setbacks which have not been observed and which will not likely produce any benefit in construction. Streets should be allowed to develop as part of the a commercial core of the City.

Recommendation: delete this paragraph.

402 (3) (a and b)

(b) **Parkway Buffer Area 1 (b)(.1)(.b)(.2) and (f) Benjamin Franklin Parkway Area**

The 125 ft. height limit should be removed. There is no basis for this requirement aside from the desire to require projects to go to the ZBA.

Recommendation: The 125 foot height limitation should be stricken.

(c)(.3) **Religious Assembly**

Recommendation: height limitations should be stricken in general and governed by underlying zoning districts.

(h) through (n)

Recommendation: These regulations should be revisited to determine whether they are still relevant in the circumstances.

(4) **Set-back/Build to Regulations**

(a) through (e)

These regulations, now confusing, were much easier to follow and understand when they were attached to the RC-4, C-4 and C-5 Districts. This format appears to place these controls on all properties regardless of their underlying zoning district. The format mixes too many types of controls together and adds more places to "look up" additional controls.

Recommendation: clarify and move these provisions back into 14-302, Commercial Mixed-Use Districts.

(5) **Bulk and Massing Regulations**

(a) **Chestnut and Walnut Street Bulk Planes**

These regulations were about the penetration of sunlight to the north sidewalks of these streets and preservation of the low-scale buildings containing retail shopping (thus the 35 foot minimum and 50 foot maximum building height at the sidewalk). Once the Code allows height above 50 feet, this section should probably be removed.

Recommendation: delete these controls.

(a)(.2) **Sky Plane Bulk Controls**

The Sky Plane Bulk Controls are solutions in search of a problem. If zoning controls cannot be understood without the use of computer-generated images, they should be eliminated from the Code. What about provisions that are "simpler and more user-friendly?" This makes little sense.

Recommendation: delete.

(6) **Parking Regulations**

Recommendation: All parking standards should be in one place and organized so that a user of the Code has a better chance of understanding them.

(7) **Sign Regulations**

Recommendation: all sign regulations should be in one document, the sign code.

(e) **Public Restrooms**

Recommendation: delete. Apparently, this provision has already been stricken.

14-403 /NAC Neighborhood Commercial Area Overlay

The controls on building width, building size and building use are not any more effective in commercial corridors than they are in the center city area. The basic zoning in these areas, which tends to be CMX-2, will be sufficient to regulate the intensity of use appropriate to neighborhood corridors. Once that control is in place, there is no need for micro-managing the uses and building sizes. Indeed, the problem on commercial corridors is often that parcels and buildings are not big enough for today's retail requirements. The proposed limitations serve only to hinder proper development of retail corridors.

Recommendation: delete the provision.

The maps throughout this section of the proposed code are not legible enough to determine the applicability. Narrative descriptions of the boundaries of the various overlays should also be included.

Recommendation: include written descriptions of all Overlay boundaries and include clearer maps for each overlay.

Chapter 14-500: Use Regulations

501(2) Residential Use Category

(a) Household Living

The draft provides that "Household living" is identified as "Residential occupancy of a dwelling unit by a household," but there appears to be no definition of household or dwelling unit; neither of those terms is defined in §14-1003 (the "Definition" section).

Recommendation: provide definitions.

(.6) Twin House

A twin house is defined as "a principal residential building containing two dwelling units ..." Footnote 283 says that this section has been revised to clarify that this is two attached structures rather than a single structure. The phrase "a principal residential building" indicates one building, not two. The word "principal" appears in most of the residential definitions under §14-501(2)(a), and it is not clear what purpose that word serves.

(7)(f) Day Care

The penultimate sentence reads "Day care providers must comply with all applicable licensing and/or registration requirements of the Commonwealth of Pennsylvania and the City of Philadelphia." This is but one of many examples in which unnecessary references are made to other applicable laws. All businesses are required to comply with all applicable licensing and/or registration requirements of the Commonwealth and the City and nothing is gained by saying it here.

Recommendation: strike the provision.

(f)(.1) Family Day Care

A day care providing care for up to six children who [are] not related to the day care provider."

Recommendation: The word (are) should be added.

(f)(.1)(.2) and (.3) Day Care

"Family day care" does not count children who are "related" to the provider and "related" is defined as children, grandchildren, step-children and foster children. "Group day care" excludes children who are "related" to the provider and "related" is defined as children, grandchildren, step-children, foster children, brothers, sisters, half-brothers, half-sisters, aunts, uncles, nieces and nephews."

Definition of a "day care center" excludes children who are "related" to the provider and the term "related" is not defined. for daycare center (.3). Why there are two different definitions of "related" in subsections (.1) and (.2).

Recommendation: There should be a single definition of "related."

(h)(.1)(.b)(iii) **Pawn Shop**

"Pawn shop" is defined as an establishment engaged in "the purchase of personal property either from an individual or another pawn business with an express intent of offering the property for resale." This carryover from the present Code is overly broad and appears to include thrift stores, second hand stores, used car dealers, dealers in musical instruments and a great number of other businesses which are not pawn shops.

Recommendation : define more clearly.

(11)(a) **Animal Husbandry**

Uses involving animals are "subject to applicable Philadelphia Code regulations on farm animals (Code Sections 10-101(8) and 10-112)." This is another example of an unnecessary cross-reference to other legal requirements.

Recommendation: delete.

(11)(b)(c) **Community Garden and Market or Community Supportive Farm**

The first sentence of each of these definitions is identical to each other, as are the last sentences. It will not be possible for the zoning examiners to distinguish a community garden from a market or community supportive farm based on these definitions.

Recommendation: clarify.

(11)(d) **Horticulture Nurseries and Greenhouses**

This provides for wholesale sales and distribution of plants. Some of these businesses have a retail component as well. Why would retail sales be prohibited?

Recommendation: allow retail sales also.

14-502 Use Tables

(2)(d) **Prohibited Uses**

It is difficult to understand the meaning of expressly prohibited uses given that all uses are prohibited except those expressly permitted.

Recommendation: eliminate the category of prohibited uses.

(3) **Residential Districts**

In the RM-1 (formerly R-5A, R-8, R-9, R-10, R-10B, R-18 and R-19), multi-dwelling buildings (without yard area limitations, i.e., no limit on the number of units) will now be permitted and single room occupancy buildings will be permitted with a special permit. Is this intended or an oversight?

Recommendation: clarify intention.

In the RSD-1, -2 and -3 (formerly R-1, R-2, and R-3) bed and breakfast - 4 to 8 "guest rooms" (not defined) would be permitted. This would appear to be the same as a dwelling unit or rooming unit. Is this intended or an oversight?

Recommendation: clarify intention.

Table 14-502-(1) Uses Allowed in Residential Districts

There is a substantial expansion of multifamily dwellings and group living compared to existing code. For example, in the current R-5A, which allows single family and duplex, the proposed new code would add multi-family dwellings. This will likely increase the number of apartment conversions in these neighborhoods, which is something that most of the civic associations have opposed. Similarly, in R-5A, the new code would allow assisted living group homes and would make single room residences a special exception use.

Recommendation: if it is regarded as desirable to increase the number of zoning districts in which multi-family and group living are permitted, this should be more clearly stated as an objective and perhaps the larger lot districts should be allowed to share some of these uses.

(O)(.1) **Bed and Breakfast**

Bed and breakfast is proposed as a special exception use in the three large lot districts and a permitted use in all of the remaining residential districts. The owner of the property is required to be the operator. If this is such a great idea, why do we deprive the large lot districts of the opportunity as-of-right? It is hard to imagine why this is a good idea - has someone in the hospitality sector advocated a need for rooms? It will be difficult or impossible to enforce the owner operator requirement.

Recommendation: reconsider this use category.

Table 14-502-1 Note 1

After "March 1, 2003, no building permits may be issued for construction of an (sic) row house building in the RSA-4 district containing more than four attached units." The second sentence of this note says "All other row house buildings ... may contain a maximum of 10 attached units." As noted elsewhere, the Code should not be controlling building permits. Presumably, the "other" are those buildings for which building permits were issued on or before March 1, 2003 and they are pre-existing non-conforming as far as this rule goes no matter how many attached units they have. This note is a carry over from the existing code and makes no more sense now than it did in the original.

Recommendation: delete.

Table 14-502 Use Tables

502-2 Uses Allowed in C Districts

(4) **Commercial Mixed-use Districts**

In the CMX-1 (formerly C-1) Adult-oriented Merchandise sale and Adult-oriented Service would still not be permitted, but the definition of these uses would be changed for the most part to "An establishment **having 33% or more** of its stock-in-trade . . .or business" involved in "adult" activity. It would appear that this change of definition, rather than limiting these uses, would now allow them to occupy up to 33% of the floor area of a commercial use. Also, in the CMX-2, CMX-3, CMX-4 and CMX-5 (formerly C-2 to C-5) adult merchandise and services (as defined above), amusement arcades, pool halls, body art services, single room residence, group home, detention and correctional facilities will be permitted with a Special Use Permit (CMX-2) or as-of-right CMX-3, CMX-4 and CMX-5. Read literally, adult uses would be permitted in all commercial districts as-of-right up to 33% of floor area. A proliferation of adult uses could spring up, embedded in larger commercial buildings. Is this intended?

Recommendation: consider the consequences.

Table 14-502-2 Note 6

The draft continues the requirement in C-2 that attached buildings may not be used solely for dwelling purposes - the language of the draft is clearer than the existing code in saying that "row house dwellings must contain a commercial use." Given that this district allows group living, detached houses, twin houses and multifamily, is there a good reason for continuing to insist that attached buildings (and only attached buildings) must contain a commercial use?

Recommendation: delete.

Table 14-502-(3) - Uses in Industrial Districts

Fresh Food Market

The sale of food, beverages and groceries is prohibited in the districts which will replace L-1, L-2, L-3, G-1 and G-2. However, a "fresh food market" is permitted in each of these districts. It is not a good idea to encourage high traffic retailers into the industrial districts.

Recommendation: delete.

Day Care

Day care is prohibited in all but the mixed-use industrial districts. Do any industrial employers provide day care and, if so, should provision be made for it?

Recommendation: consider whether provision makes sense.

Parking, Non-Accessory

Code provides that non-accessory parking is prohibited in the IRMX and I-TU districts, although accessory parking is extremely inefficient. Spaces sit unused when the use or person for which they are reserved has no need of them. Non-accessory parking, by contrast, serves as a utility available to all persons visiting the neighborhood and can accommodate far more cars on far less land as a result. The Code is backward in encouraging accessory parking and discouraging non-accessory parking.

Recommendation: reconsider this prohibition.

Table 14-502-(3) - Industrial Districts Vehicle and Vehicular Equipment Sales and Services

Personal vehicle sales and rental are proposed to be prohibited in the districts, replacing the current L-1, L-2, L-3, G-1 and G-2. Under the existing Code, Section 14-511-4, the Philadelphia Auto Mall is a G-2 district which has as a special overlay permission for various auto related uses.

Recommendation: consider further.

Table 14-502-(3) - Uses Allowed in Industrial Districts

Existing Code Section 14-508(11) provides for certain protections for commercial uses located in G-2 districts or in least restricted districts for which permits were issued prior to December 15, 1987. These protections are important for such things as changing uses in shopping centers. But there is no comparable provision in the new code.

Recommendation: this should be reconsidered.

Table 14-502-(3) - Uses Allowed in Industrial Districts - Marine Related Industrial

Marine-related industrial uses are prohibited in all of the industrial districts except the proposed port district. While it may be likely that marine-related industrial uses would wish to locate only in the port district, there does not seem to be any good reason to exclude them from the other heavy industry districts.

Recommendation: this should be reconsidered.

503 (1) – Assisted Living

The entire text under Assisted Living reads: "Assisted Living facilities are subject to PA 2007 SB704." If the purpose is to define an assisted living facility as a facility which is subject to that particular bill, then it would be appropriate to say that assisted living facilities for purposes of the Code are as defined in .... If the purpose is to impose a requirement on assisted living facilities, then this is entirely unnecessary since the state statute is self-operative and does not need to be enforced through the Philadelphia Zoning Ordinance. Further, referring to its Senate Bill number is not the appropriate statutory reference.

Recommendation: clarify, and if appropriate, use the pamphlet law reference.

(6)(a)(.2) **Take Out Restaurant**

The Zoning Board may require the posting of signs stating that "the consumption of food or beverages outside of the principal building on the premises is prohibited."

Recommendation: clarify wording to add italicized language "*on public space* outside of the principal building on the premises."

In the final sentence of (.2), the ZBA may require the name and address of the establishment printed on all disposable food and beverage containers. This may present an undue burden for small businesses. Some pizza shops uses generic boxes that do not have the name and address.

Recommendation: reconsider this requirement.

(7)(b) **Fresh Food Market Exemption From District Floor Area Limits**

In districts with maximum floor area limits for retail uses, fresh food markets may exceed such floor area limits by up to 50%. Are there zoning districts in which there are maximum floor area limits for retail uses? If so, why? If there is a good reason to have maximum floor areas for retail uses, why would fresh food markets be exempt? The use of such exemptions for favored uses is nothing more than evidence that the limitation itself is questionable.

Recommendation: delete.

(7)(c) **Fresh Food Market Additional Floor Area**

New code would allow additional floor area of one square foot for each square foot of fresh food market floor area up to a maximum of 25,000 square of additional area. It

should be made clear whether the additional floor area in (c) is counted in calculating the 50% allowance in subsection (b). The allowance of additional floor area for fresh food markets is evidence that the actual density limitation is not necessary in the public interest.

Recommendation: reconsider.

(7)(d) **Fresh Food Market - Reduced Parking**

The first 10,000 square feet of floor area in a fresh food market is exempt from minimum off-street parking requirements. The minimum off-street parking requirements are either important or they are not and if they are not, they should be eliminated from the Code. If they are important, the fact that the motorist is buying fresh food instead of alcohol is irrelevant.

Recommendation: reconsider.

(10) **Regulated Uses**

Separation requirements appear to be unchanged in substance from the present Code. The present Code has a measuring method in 14-1605(4)(c), which does not appear to be repeated or replaced in the draft Code.

Recommendation: restore the measuring method.

(12)(a)(.2) **Urban Agriculture**

The site must be designed and maintained so that water and fertilizer will not drain onto adjacent property. Secondly, as to this provision, is it technologically possible that water will not drain downhill? Generally, the draft uses the terms "site", "parcel" and "lot" interchangeably.

Recommendation: the draft should be carefully reviewed throughout to determine whether "site" and "parcel" are appropriate. If so, they should be defined and distinctions made among "site", "parcel" and "lot."

(12)(b)(.5) **Community Gardens**

Animal husbandry is subject to the applicable Code regulations on farm animals in Chapter 10. References to other applicable laws are unnecessary and should be avoided.

Recommendation: delete this paragraph.

504 (1)(d) Accessory Structures

Accessory structures must be constructed in conjunction with or after the principal structure. They may not be constructed before the principal structure. This may not always be practical: consider accessory underground parking which cannot wait until after the building above has been built.

Recommendation: provide that an accessory structure is not permitted without a primary structure.

504 (4) and Footnote 377 - Small Wind Energy Conversion Systems

The text refers to "small wind energy conversion systems" and footnote 377 describes such systems as those with a power rated capacity of no more than 100 kW (primarily intended for on-site consumption). In this same section, subsections (c) and (d) make reference to the noise limitations elsewhere in the Philadelphia Code and to the requirement for a building permit, and subsection (e) states that storage battery enclosures must meet the requirements of the building code is unnecessary.

Recommendation: the text in the footnote should be made into a definition of small wind energy conversion systems and made part of the Code. Again, references to other Philadelphia Code provisions -- noise limitations -- are unnecessary.

504 (5)(b)(.l) and (.4) - Solar Collectors

Subsection (.1) requires that ground-mounted and freestanding solar collectors must comply with all applicable setback and yard requirements, while (.4) provides that the ground-mounted and freestanding solar collectors may be located only in side or rear yards. The question is whether the yard is a place free of such collectors, which must be behind the line defining the minimum yard, or, as stated in (.4), may they be located in the yard itself? The draft is internally inconsistent.

Recommendation: clarify location issues.

504 (5)(b)(.3) - Solar Collectors

The total surface area of all ground-mounted and freestanding solar collectors on the lot may not exceed 1,000 square feet.

Recommendation: redraft to relate the size of the surface area of the collectors to the area of the lot.

504 (5)(c) and (e) - Solar Collectors

Subsection (c) requires compliance of the storage container with the Building Code and (e) provides that building permits are required for all solar collectors.

Recommendation: delete (reference to other applicable codes is unnecessary).

504 (8)(a), (b), (c) and (d) - Home Occupations

Sections (a), (b), (c) and (d) use the word "regulations" to describe this section of the Code. The Code is the Code, not "regulations." Subsection (d) is headed "regulations" as with the other subsections.

Recommendation: the Code should not describe itself as a regulation.

504 (8)(d)(.2) - Home Occupations

Home Occupations must be "accessory and secondary to the use of a dwelling unit for residential purposes." The description of a home occupation as "accessory" has always been troubling. The intent of the draft appears to be to broaden the activities that can constitute permitted home occupations, with protections to make sure that the home occupations do not become a problem in the residential districts.

Recommendation: delete the phrase "accessory and" since the home occupation is not related to the residential use. The word "secondary" seems to be a very good and appropriate word to describe the relationship that is intended.

504 (8)(d)(.6) - Home Occupations

In addition to the resident owner of the home occupation, up to three nonresident persons may be present on the property at any time. Note again the use of the undefined word "property."

Recommendation: the phrase "non-resident persons" might better be replaced with the phrase "persons who are not residents of the property in which the home occupation is conducted may be present on the property at any time in connection with the home occupation."

504 (9)(a)(.2)

This section refers to the "regulations of this section."

Recommendation: delete reference to regulations. The Code is not "regulations."

504 (9)(d) - Accessory Dwelling Units - Owner Occupancy Requirement

The draft provides that the principal dwelling unit or the accessory dwelling unit must be occupied by the owner of the subject lot.[7] Property owner must record an affidavit and deed restriction stating that the property owner will reside in the property. It is bad policy to commingle land-use regulations with encumbering title to private property. The covenant in favor of owner-occupancy is likely unenforceable, whereas it may be entirely lawful to require as a condition to a zoning permit that there be to have two dwelling units on the property, one that must be owner occupied. The draft should be revised so to state rather than to simply have a promise to reside in a particular location.

[7] This is one of the many examples of use of different terms for the same idea ("subject lot" here), but also "premises," "property," "site" or "lot."

Recommendation: owner-occupancy requirements are extraordinarily difficult to enforce and if the enforcement of an owner occupancy requirement is important to the permitting of the use, consideration should be given to not permitting this use. (The same point applies to the bed and breakfast provisions).

504 (9)(f) and (g) - Density of Accessory Dwelling Units

Minimum lot size for an accessory dwelling is the minimum lot size required for a detached house in the subject zoning district. Section (g) refers to a detached house containing an accessory dwelling unit, while Section 14.504(9)(c) provides that accessory dwelling units are allowed on lots occupied by single detached houses and twin houses.

Recommendation: if twin houses are intended to be included, then subsections (f) and (g) should be conformed.

Chapter 14-600: Development Standards

601 Dimensional Standards

This chapter is divided into two areas: (1) the specific zoning dimensions and setbacks for each classification (generally similar to the existing zoning) and (2) a long recitation of design issues intended to control building form.

The design controls have added to the Code elements that belong in a planning code, but not as part of zoning. Zoning is intended to advise property owners as to exactly WHAT can be built on a property. Planning codes, which deal in HOW buildings can be built, should be separate. The degree of detail required to satisfy the HOW is rarely available when development starts. The first question is WHAT, and if that is answered in the positive, then there is time, and money, to deal with the HOW.

Recommendation: all design controls in 14-600, except 601-Dimensional Standards, 602-Floor Area Bonuses and 610-Subdivision Standards, should be deleted and added as recommendations to the Administrative Manual.

(1) General Provisions

(a) Dimensional Tables

In addition to the dimensional standards that exist in the present code, the draft imposes additional dimensional standards listed in 14-601(5) through 14-601(7). In case of a conflict between the dimensions listed in Tables 14-601-1 through 14-601-4 and the additional design standards of 14-601(5) through 14-601(8), the latter shall control. **As a result, the design standards would override as-of-right dimensional provisions and potentially drive many projects to the ZBA for dimensional variances. The cost of presenting applications to L&I for advisory design review would likely be in the hundreds of thousands of dollars for important projects, including affordable housing.** The additional standards for the most part would be more appropriate as suggestions or recommendations rather than requirements.

Recommendation: 14-601(5) through 14-601(8) should be deleted from the Code and placed in the Administrative Manual.

(d) **Driveways**

Recommendation: suggest "8 ft." should read "18 ft."

(e) **Limitations on Areas of Use**

Where a use is limited to a certain defined area, floor area, gross floor area, or a percentage of those areas, the limitation shall apply to the total of all uses on the property of the type so limited. This is unnecessary and could be confusing.

Recommendation: delete.

601 (2), (3) and (4)

Special waterfront setbacks for ITD and WRD are not carried over. This is unwise given the fact that these setbacks were well thought out when these districts were created. The consultants to Delaware River Waterfront Corporation were not charged to look at the entire waterfront, including these areas.

Recommendation: current setbacks should be preserved.

Special recommendation on interim zoning classifications: retain "temporary row" as top line of chart. Also, delete second sentence in Table 14-601-1 note [2] at footnote 396. Also, amend Table 14-500-2 note [4] to add "except where solar orientation is improved by an alternate configuration."

601 (2) Residential Dimensional Tables

The dimensions in this table are generally consistent with current zoning, but are unrealistic. There are two specific issues, however, with districts RSA-5 and RM -1, both of which deal with urban row houses currently zoned R-9, R-9A, R-10 and R-10A.

First, although earlier drafts reduced the minimum lot area to 720 sq. ft., which is what is normally built today (e.g., 18' x 40' or 16' x 45'), the current draft retains the 1,440 sq. ft., which was inserted in the current Code specifically to send projects to the ZBA. If the intention is to write a code that can be followed for development, this provision should be changed to what is reasonable and practical today. Second, there is an apparent typo in the front-yard setbacks for these zones. The table lists 8', while almost all buildings in these zones come to the street line. Indeed, except in rare blocks where there are unusual conditions, it is desirable that buildings come to the street line.

Recommendations: lot area should be changed to 720 sq. ft.; front yard need not be provided (if provided, should be a minimum of 18 ft).

Third, the rear yard area requirement still does not take into account the many properties where there are substantial side yards but little or no rear yard.

Recommendation: this requirement should be modified to "yard area" requirement, which may be satisfied by either side yards or rear yards or a combination of both. (See 14-601 (5)(b)(3).

Fourth, there is an absolute requirement of a side yard in the RM-1 zone. This is inappropriate for a row house district.

Recommendation: delete the requirement.

Finally, there is no reason why attached dwellings are limited to 10 in number. That should be a function of existing blocks and available land, not an arbitrary limit.

Recommendation: delete the restriction.

(3) **Commercial Mixed Use Dimensional Table**

Dimensional standards for Commercial Mixed-use Districts are a constantly moving target. Based on the ZCC meeting November 10, 2010, they remain open to comments after the November 12 deadline.

(7)(a)(.6)

Why is there a special treatment for the bulk requirement in the block bounded by Arch, 18th, Cuthbert and 19th Streets? Every other block of C-5 limits lot coverage to 30% above 700 ft., while this block is allowed 48.5%?

Recommendation: consider why is this site different from all other sites?

602 Floor Area Bonuses

Recommendation: consider changing title to "Additional Floor Area Allowable." In addition to referring, to "creation of specific amenities in the public interest," recognize that additional floor area may allow projects to be financed and development needs to be met.

602 (4) Maximum Floor Area Bonus Amounts

Maximum floor area bonuses are still under active consideration. We await availability of November 10 ZCC powerpoint and reasonable opportunity to review.

Recommendation: underground parking should qualify project for larger bonus.

603 Form and Design

This chapter is extremely troublesome for numerous reasons, including the process required by L&I examiners to review each of the specific design requirements; the procedure that would allow Civic Design Review to overrule express provisions of the Code, even though their role is to be otherwise advisory; and, mainly, because these standards are so overly prescriptive, with no accompanying back-up as to where they come from, and no concern about whether they are affordable. Putting aside the overall inappropriateness of these provisions in a zoning code, here are specific comments.

Recommendations: 603(2)(b) should be deleted since the advisory Civic Design Review Committee is not empowered under the Charter to make code provisions go away.[8]

603 (4)(a)(.7)

References to LEED certification throughout the draft, for bonus provisions or otherwise, should be stricken. LEED certification is determined after completion of a project

[8] This may already have been removed from the draft in late-breaking news.

and it is put in service and there is no reliable basis for conditioning permitting on LEED certification at the beginning of a project. The trend toward LEED buildings is now driven by market acceptance and user and lender demand.

Recommendation: LEED references should be addressed as guidelines in the Administrative Manual.

(4)(b)(.1)

The requirement of two entrances to a corner property may not be practical and is certainly not necessary to good design. Having only one entrance, which is typical, would drive a landowner to the ZBA for a variance. Why this is tied to grade change is perplexing. A standard requiring an entrance on a primary facade makes sense. Otherwise, this is obscure. The same comment goes for 14-603 (5) (d) (.1).

Recommendation: delete.

(4)(b)(.4)

The limitation on property zoned CMX-3 within 50 feet of a residential district is inappropriate in a vibrant city, since that kind of interface occurs wherever the growing downtown meets the adjacent neighborhoods. The jump from residential to downtown scale must occur somewhere, and limiting it to 20' will impede normal growth.

Recommendation: delete.

(5)(d)(.7)

Recommendation: confirm whether these provisions on party walls conflict with the Building Code, party-wall legislation and common law.

(6)(a)

The limitation on retail buildings in the middle of parking is inappropriate for standard shopping center development.

Recommendation: delete this provision.

604 Connectivity and Circulation

These provisions present a confusing process, especially since it is proposed that enforcement will be by the Planning Commission. There is no need for City officials to enforce federal law, such as the ADA.

Recommendation: the administration of these provisions should be further thought out and assigned to specific agencies and included as guidelines in the Administrative Manual.

604 (3) General Standards

(a) Is L&I to enforce ADA standards?

Recommendation: clarify.

(c) Street Grid

Is it not always optimal for new development to connect with the "existing street grids" to the "maximum extent feasible."

Recommendation: change to a rule of reason.

(e) Bicycle and Pedestrian Routes.

This provision suggests that the Planning Commission may require as a condition of granting as-of-right and other zoning approvals the taking of private property for public bicycle and pedestrian paths or trails. This suggests an unlawful taking.

Recommendation: strike this provision.

605 (5) Transit-Oriented Development (TOD)

Further review of this section is necessary in light of bonus provisions discussed at ZCC meeting on November 10, 2010. Again, these provisions are overly prescriptive.

Recommendation: move Section 605 to the Administrative Manual as guidelines rather than requirements.

(5)(b)(.5)

The requirement of 15' first floors may be appropriate in Center City, but not in other neighborhoods. Building floor-to-floor height should be governed by use, not the Code.

Recommendation: strike the requirement or make 15' a recommendation.

(9)(a) through (h)

Should be looked at on a site-by-site basis and again should be moved to the Administrative Manual.

(9)(b)

Buildings should be allowed to accommodate today's retail uses. The Code should facilitate leasing, not be an impediment.

Recommendation: glazing requirements should be rethought.

(10) Regulations

(c) **Prohibited Uses and Development**

Subparagraphs (c)(.2) and (.4) appear to preclude Zipcar or Philly Carshare. Makes little sense. Car rental and car-share should be encouraged at TOD sites.

Recommendation: strike prohibition of vehicle rentals.

606 Open Space and Natural Resources

(2)(b) **General Standards**

The proposed standards for open space are inappropriate for an urban area. Urban design should not require that high-rise buildings focus on an open area, which is not even required by the density of the base zoning. The open-space requirements listed here may be appropriate for a land-conservation area in the suburbs, but will stifle development in the urban core of Philadelphia. Furthermore, calculating urban open space which is hard surfaced at only half value, discourages the most useful type of open space. When further restrictions are placed on using rear and side yards, this entire section is impractical for downtown developed areas.

Recommendation: rethink the guidelines.

(2)(b)(.4) and (.8)

General standards are questionable, especially (.4) half credit for hard surface space and (.8) deed restriction to insure permanent open space. A deed restriction is a completely inappropriate way to deal with maintaining open space. What is good open space for a property today may very well not be good open space in 10, 50 or 100 years. To saddle properties with areas dictated by 2010 decisions is bad land management and should be avoided.

Recommendation: delete (.4) and (.8).

(3) **Steep Slope Protection**

There was actual science to back recommendations when Wissahickon Watershed legislation was passed in the 1970's. This may not simply be transferable to other watersheds. More importantly, in many ways the Water Department's Stormwater Management Plan requirements update and actually supersede the Wissahickon controls, since they protect against excessive erosion, while not precluding innovative solutions.

Recommendation: demonstrate why Wissahickon controls are applicable to other watersheds.

(4)(b)

The permitting process of the Water Department should not be part of the zoning process. They may both be required for development, and the Water Department could be referenced here, but one should not be contingent on the other.

Recommendation: rethink relationship between Water Department approvals and zoning approvals, which can be referenced in the Administrative Manual.

(4)(c)

Recommendation: as stated above, the Code should not incorporate federal and state requirements, or Water Department requirements.

607 Landscaping and Trees

This is among the most prescriptive portions of Chapter 600.

Recommendation: this section should be deleted from the Code and moved to the Administrative Manual or made part of a guidelines section of the Comprehensive Plan on the Greening of Philadelphia.

(2) **General Landscaping Standards**

A listing of plant materials is not appropriate in a zoning code.

Recommendation: delete.

(4) **Parking Lot Landscaping**

Landscape buffers do not need to be 5' wide. Even current requirements of 4' are wider than needed in urban areas.

Recommendation: delete or revise downward.

(b)(.1)

Buffer planting at 5' high is too high for urban areas where pedestrian surveillance is desirable. Buffer planting will work just fine at 3', which will not allow people to lurk in parking areas.

Recommendation: delete or revise.

(7) **Tree Preservation**

This provision is excessive, especially preservation of heritage trees. The landowner bears the legal liability here and should be able to make reasonable judgments without going to the ZBA.

Recommendation: delete.

610 Subdivision Standards

The Subdivision Code is administered by the Planning Commission, not L&I, and therefore is not subject to Zoning Board of Adjustment review. It should remain under the administration of the Planning Commission.

Recommendation: confirm that subdivision remains the prerogative of the Commission. Also, "Connectivity Index" needs further explanation.

700: Parking and Loading

702 Motor Vehicle Parking

(10)(c)(.3)

"...ZBA may grant a special exception permit for all or part of the required parking area to be provided on another lot not more than 550 ft. from the nearest lot line of the property it serves, provided that the off-site parking spaces are under direct ownership or control of the owner(s) of the building(s) served by that parking."

Recommendation: consistent standards for satisfying "direct ownership or control" should be set-out in the Administrative Manual.

(10)(g) **Delaware River Waterfront**

"Parking for Eating and Drinking Establishments ...shall meet he following standards..."

Recommendation: the phrase "Eating and Drinking Establishments" should be defined in §14-1003. In any event, the parking provisions should be subject to further analysis.

(13) **Lot and Structure Design Standards**

(a) **Parking Space and Drive Aisle Dimensions:**

Table 14-702-7 Note 3

This provides that where one-way traffic is proposed, the aisle width may be reduced to 12 ft.

Recommendation: 12 feet is too narrow for one-way traffic and should be increased to 22 feet.

(13)(e) **Locational Requirements for Surface Parking Areas**

This section retains the limitations on the location of parking in residential areas. Parking should be permitted in side and rear yards, particularly in the denser zones.

Requiring parking to be set back from the street line when property is served by a rear or alley street is a bad idea. It leaves an added 10 feet of driveway, while pushing the car closer to the dwelling. Parking should be allowed to abut the lot line in these cases.

Recommendation: reconsider these requirements.

(13)(e)(.1) and (.2)

Conversions in RM-1 Districts.

Recommendation: "conversions" should be defined.

(13)(g)(.6) **Vehicle Access Points**

"Along any street frontage, a surface parking lot shall have no more than one curb cut for both ingress and egress, the maximum width of which shall not exceed 24 ft., or two one-way curb cuts the maximum width of which for each shall not exceed 12 ft., provided that the curb cuts shall not occupy more than 50% of the street frontage."

Recommendation: this narrower width of 12 ft. (as opposed to 15 ft.) is problematic due to rear wheel drag factor. Two-way curb cuts of 24 ft. (as opposed to 30 ft.) will result in a serious conflict of incoming cars and outgoing cars as drivers generally move to the center to avoid cutting too close on narrow turn from rear wheel drag (i.e. head-on accidents).

(13)(h)(.2) **Facades**

(.a) "Façade openings that face any public street or publicly accessible open space shall be vertically and horizontally aligned and all floors fronting on those facades shall be level

(not inclined)." Requiring all floors to be level that face a street or public open space will make it impossible to build above-grade parking on most sites in Center City due to dimensional that do not allow two-way ramps. Underground or mechanical parking would add 50% to 100% to the cost and in most instances make the primary use un-economical. This is a show-stopper to development, in effect a moratorium on most development that requires parking.

Recommendation: strike language requiring that all floors fronting on facades shall be level, but require vertical and horizontal screening.

(13)(h)(.1)(.b) **Design Standards for Detached Garage Structures in RMX-3 and C Districts**

"At every point where a driveway, whether for ingress or for egress, crosses a public sidewalk, the area of the sidewalk between the building line and the curb line, equal wide to the driveway(s), shall be of a different color, texture or paving material, in accordance with the standards of the Department of Streets, so as to indicate and warn pedestrians of the existence of the driveway."

Recommendation: this provision describes a specific design approach, where the solution may be worse than the problem. This prescription results in large, dark patches of contrasting material for the numerous vehicular access points crossing sidewalks. It is more beneficial to keep the pedestrian surface material consistent along the length of the sidewalk with warning bands (aprons) of contrasting color/texture 24 to 36 inches wide at the two sides of the driveway. Otherwise, drivers may ignore the pedestrian right-of-way.

704 Drive-throughs and Vehicle Stacking Areas

704 (2)(.2) – Design of Stacking Lanes

"When stacking lanes are separated from other stacking lanes, or from other site areas, the separation shall be by means of a raised concrete median, concrete curb or landscaping." This is micro-managing the details of site design and it is impossible to know whether it will be beneficial in all situations. The illustration of stacking lanes at a fast food restaurant at Table 14-704-1 shows a situation where, if required, a raised curb would in fact do more harm than good.

Recommendation: rephrase this provision as a recommendation (not a requirement) or just delete it entirely.

705 Off-Street Loading

705-2 – Minimum Dimensions for Loading

Chart (Table 14-705-1) shows off-street loading spaces 1, 2, 3, 4 and 5 with required dimensions respectively 10x40, 11x60, 10x30, 10x40 and 11x60.

Comment: it is unclear whether the numbers represent the first loading space or, second, third and so on. Dimensional requirements seem random.

Recommendation: clarify.

705 (2)(c) – Ingress and Egress

"In addition, at every point where a driveway crosses a public sidewalk, the area of the sidewalk between the building line and the curb line, equally wide to the driveway(s) shall be of a different color, texture or paving material as required by the standards of Department of Streets, so as to warn pedestrians of the existence of the driveway." Similar concern as with §14-702 (13)(h)(.1)(.b) above. Warning bands (aprons) at the two sides of the driveway are a more effective solution from a safety perspective, rather than treating the entire sidewalk in the area of the driveway with a contrasting color/texture.

705 (2)(e) – Common Loading

"All parties that will share the loading area shall enter into a mutually binding agreement running with the land that is satisfactory to the Law Department and that indicates the rights of common usage and obligations of each party." This is another requirement for private contracts as a condition for zoning permit. As with §14-702 (10) and §14-702 (10)(c)(.3) above, it is a bad idea to mix zoning and title matters.

Recommendation: make this requirement a condition of obtaining a zoning permit.

Chapter 14-800: Signs

There will be a separate draft of a proposed sign code for later review.

Chapter 14-900 Historic Preservation

Recommendation: require that Historic Commission should observe formalities of sworn testimony, stenographic record and issuance of written opinion with findings of fact and conclusions of law. Appeal should go directly to Court of Common Pleas under Local Agency Law.

Chapter 14-1001 Rules of Construction

The Code states that "standards" and "guidelines" have different meanings. Standards are a specific course of action that an applicant must incorporate in their application. Compliance with standards is mandatory and a failure to meet a standard may be a basis for the denial of a permit. In comparison, guidelines are voluntary, but compliance is strongly encouraged to fulfill the intent of the provision. A failure to meet a voluntary guideline cannot be used by the City as a basis for denial. As a general comment, the entire Code should be reviewed and reconsidered to determine what should be a standard and what should be a guideline. Too many provisions of the Code are drafted to be standards. For example, much of what is in 14-601 through 14-603 under "Additional Standards," "Additional Regulations." "Form and Design," and much of what follows in 14-604 through 14-610 should be guidelines, not standards.

Recommendation: reconsider how the various provisions of the Code are categorized (standard or guideline).

Chapter 14-1003 Definitions

Definitions are scattered throughout the draft. Many terms are not well defined. In several instances, different terms (mostly undefined) are used to describe the same thing. Finally, some definitions are poorly drafted so as to render them ambiguous, confusing or unclear.

Recommendation: Review current draft to assure that all terms that need to be defined are in fact defined in 14-1300.

Index

As a final comment, if the Code is to be user-friendly and easy to navigate, it should have an accurate and complete list of the uses and terms used throughout the code in an index.

Recommendation: a comprehensive Index should be included at the end of the current draft as in the current Code.

November 12, 2010

Current Process (as-of-right)

Pre-application

Prepare zoning plan (Z-1), which must comply with applicable use and dimensional requirements (and obtain Water Department conceptual review)

Application, Review and Decision

L&I Review (including Streets Dept. and Planning Commission review)

30 days (15 if expedited)

↓

Issuance of Zoning Permit

ZCC Proposed Draft (as-of-right)[2]

Pre-application

Prepare Z-1, which must comply with applicable use requirements and **14-600 design standards**[1] (and obtain Water Department conceptual review)

Application

L&I Presubmission Review (including Streets Department and Planning Commission Review)

15 days

Advisory Design Review

Community Group (ROC) Meeting and Submission of Minutes

30 days

Civic Design Review and Report to Planning Commission

126 days

Decision

L&I Review

15 days

186 days

Issuance of Zoning Permit (or refusal or referral)

Development Workshop Proposal (as-of-right)

Pre-application

Prepare Z-1, which must comply with applicable use requirement at and **14-600 design standards**[1] (and obtain Water Department conceptual review)

Application, Review and Decision

L&I Review, including Streets Department and Planning Commission review

30 days (15 if expedited)

↓

Issuance of Zoning Permit

Advisory Design Review

Community Group (ROC) Meetings and Submission of Minutes

30 days

Civic Design Review and Report to Planning Commission

60 days

[1] The design standards of 14-600 need thorough revision.

2 Where design review is required. See Table 14-204-2: Civic Design Triggers.

APPENDIX 1

MEMORANDUM

TO:	File
FROM:	Thomas P. Witt
DATE:	January 13, 2011
RE:	Zoning Code Commission December 2010 Draft - Comments on Chapter 14-400

Chapter 14-400 Base Zoning Districts

§14-401(1)(a)(.2)(.a) – Use of terms "single detached house", "attached houses" and "multi-dwelling buildings". These terms are not defined and are not used consistently throughout. (pp. 4-1, 2). [1]

§14-401(1)(c)(.1)(.2) and (.3) - These sections use the headings "Single-Dwelling Detached" "Single-Dwelling Attached" and "Multi-Dwelling" and within the text "Detached Houses," "Attached Houses," "Semi Detached Houses," "Multi-Unit Residential Buildings" and (in (.3)) "Unit." (p. 4-2).

§14-401(4)(b) - The first and second sentences are mutually inconsistent as to whether one building or multiple buildings are permitted in the RM district. The text in the third line does not form a sentence. This sub-section uses the phrase "Residential Dwellings" to mean, presumably some of the things that are elsewhere called houses, units, etc. (p. 4-3).

§14-402(1)(c)(.6) – Section states that the CMX-5 District is normally intended to apply within 1200 feet of Market East Station, Suburban Station and 30th Street Station or any underground concourse connected to those stations. This is unnecessary since the map will speak for itself. It is also likely to lead to a great deal of mischief and there is not standard for the starting point for measuring – is it the closest point of any of these stations or concourses, the ticket counter? Better to leave it out and rely on the map. (p. 4-5).

§14-402(2)(b) - The reference in the last line to "Residential" should be to "Commercial." (p. 4-6).

§14-403(1)(a)(.1) - (the list of industrial and mixed use districts) – has provision been made for the Auto Mall? (p. 4-6).

§14-404(4)(b)(.1) - "real" should be "rear." (p. 4-9).

[1] Page references in the comments to Chapter 14-400 are to the December 2010 redlined version.

§14-404(4)(b)(.3) - The term "street" is used where the distance from curb to curb is intended – "cartway" would be a better choice and "street" should be used uniformly to mean the entire right of way. (p. 4-9).

§14-404(8) - The SP-INS District is not listed in the table 14-304-1 on page 3-26. (pp. 4-10 and 3-26).

§14-405(6)(a)(.1) - The existing code was amended to allow the use of parking lots in the commercial entertainment district for interim casino facilities. This should be kept in the new code, and to do so, delete the words "up to" and insert the following text from the existing ordinance: "Except for interim facilities with 1700 or fewer gaming positions, not more than ..." (p. 4-13).

§14-405(6)(b)(.5) - To conform to the existing code, after the word "area" in the first line there should be inserted the phrase "for the protection of surrounding buildings and pedestrians ..." There is no reason not to continue the practice of the existing code in this respect. (p. 4-13).

§14-405(7) - (off-street loading in the special entertainment district). The incorporation by reference of the "commercial district loading requirements" of §14-805 represents a substantial increase from the current ordinance loading requirements for this district (as well as for most other non-residential districts where loading is required). There is no reason to believe that a increase of any kind, let alone the substantial increase, is necessary in the special entertainment district. The solution would be to refer to the residential district loading requirements of §14-805 (which are the same as the current loading district requirements of the commercial entertainment district), or, perhaps more appropriately, to use as the commercial district loading standards in §14-805 the standards that currently apply in the commercial entertainment district and for many commercial uses in other commercial districts. (p. 4-15).

§14-405(8)(c)(.3)(.a) through (.f) - Items (.a) through (.f) are indented one step in the outline compared to the existing. This does not appear to make any sense, since they are not sub-points of (.3). (p. 4-16).

§14-407(9)(a), (b), and (d) - Signs in the stadium district. These subsections have the new phrase "and/or public record sign" which is not defined. The existing §14-1005(1) has detail on the contents of the sign and could be retained. (p. 4-21).

§14-407(3) – (Parks and open space district height regulations). This subsection provides that size and locations of buildings must "comply with the dimensional regulations of the most restrictive abutting zoning district that is not separated by a street or waterway." It would be interesting to know whether any of our parks have abutting property which is not separated by a street or waterway – at the very least it must be a rare situation. (p.4-21).

§14-407(4) – Lighting in the parks and open space district. The syntax is incorrect. "All lighting must be prevent glare ..." The standard has changed from a "minimize" standard to an absolute "prevent" standard which may not be attainable. (p. 4-22).

TPW/jaj

MEMORANDUM

TO:	File
FROM:	Thomas P. Witt
DATE:	January 13, 2011
RE:	Zoning Code Commission December 2010 Draft - Comments on Chapter 14-600

Chapter 14-600 Use Regulations

§14-601(1)(e) – Determination of Use Categories. The general statement of use categories leaves a great amount to the discretion of the code official in determining what uses are permitted. No provision appears to have been made for any fitness or recreation facilities other than public facilities, for example. Similarly there is no provision for retail plant nurseries. Shoes are not provided for, unless they are either under the category consumer goods or apparel – several dictionaries and the SIC codes distinguish between apparel and shoes. Several customary uses combine sales and service, such as bicycle shops and dress makers. (p. 6-2).[1]

§14-601(2)(a)(.1)(.2)(.3)(.4) – In the section on household living as a use, the terms "dwelling unit" "dwelling" "unit" and "single dwelling unit" are used inconsistently. It appears that a "dwelling unit" is the same thing as a "unit" and as a "single dwelling unit" whereas a "dwelling" may contain multiple "units" and "dwelling units." (p. 6-3).

§14-601(2)(b) – Group living is the residential occupancy of a "dwelling". Examples include "temporary overnight shelters." This is contrary to §14-601(2)(a) which provides that "uses where tenancy may be arranged for a period [shorter than 30 days] are not considered residential ..." (p. 6-4 compared to p. 6-3).

§14-601(b)(.3) – This section on group living, community home, family refers at the beginning to "a group of eight or more unrelated disabled persons ...". The last sentence reads "the eight person limit does not include rotating staff" – but there is no limit, the reference to eight in the opening phrase is a floor. Perhaps it was intended that the distinction between community home, family and community home, group would be that community home, family would be restricted to eight or fewer people, in which case the last case the last sentence of (.3) would make sense and the beginning should be revised. (p. 6-4).

§14-601(3)(c) – Active recreation. Note that active recreation is limited to "public park facilities." There does not appear to be any provision in the draft code for privately owned recreation facilities such as golf courses, tennis courts or gymnasiums. (p. 6-5).

[1] Page references in the comments to Chapter 14-600 are to the December 2010 redlined version.

§14-601(5)(a) – Business and professional offices are defined as office uses "for companies and nongovernmental organizations." Many offices are occupied by individuals not companies.

§14-601(6)(f) – The reference to "the day – today maintenance of personal health ..." was probably intended to be "day-to-day" but the sentence would make more sense if the offending phrase was simply deleted. (p. 6-9).

§14-601(7)(c)(.2) – Nightclubs and private clubs are defined as "an establishment defined as a special assembly occupancy in §9-703 of the Philadelphia Code." §9-703 of the Code defines a special assembly occupancy to include every restaurant with fifty or more seats. We have thus defined every restaurant with fifty or more seats as a nightclub, which is probably not intended. (p. 6-11).

§14-601(7)(f) – Daycare. This has been much improved from the prior draft. Notice, however, that in the introductory paragraph (f) the term "relative" is defined and then in each of the subsections the phrase "who are not related to ..." is used. It would be better drafting for the same term to be used in the definition as in the operative subsections. (pp. 6-12 and 6-13).

§14-601(7)(g) – Eating and drinking establishments. The reference to establishments "that also include occasional live entertainment ..." would leave a great deal of discretion in the zoning officer and a great deal of uncertainty in the law – what is occasional? More importantly, see the comment above regarding §14-601(7)(c)(.2) in which the incorporation of §9-703 special assembly occupancy renders all restaurants with fifty or more seats as nightclubs and private clubs. (p. 6-13).

§14-601(7)(g)(.1) – Prepared food shop – the reference to non-alcoholic beverages and delis is confusing, since delis sell beer both for on-premises consumption and for take-out. (p. 6-13).

§14-601(7)(h) – Financial services. Note that the definition would not include the storefront office of a stock broker or financial services or investment services firm, and none of the other use categories appear to apply. (p. 6-14).

§14-601(7)(l) – Parking, non-accessory. The first sentence refers to non-accessory parking as that which serves other than "occupants of or visitors to" a use. The second sentence classifies spaces as non-accessory if more than a certain percentage are leased to "non-occupants" – omitting visitors. Perhaps the phrase "parties who are neither occupants nor visitors" would correctly express the point. (p. 6-15).

§14-601(7)(l) – The practice of reserving accessory spaces and prohibiting multiple use of such spaces is inefficient and is destructive of density. (p. 6-15).

§14-601(8)(c) – Gasoline station – the limitation to "personal automobile" seems inappropriate – most commercial vehicles refuel at the same stations used by personal automobiles. (p. 6-16).

§14-601(11)(d) – Horticultural nurseries and green houses – provision has been made here for wholesale sales and distribution but the draft does not appear to make any provision for retail sale of nursery and green house products. (p. 6-18).

Table 14-602(1) – Uses allowed in residential districts. What public policy supports excluding assisted living and community home, group from the lowest density residential districts while allowing them in the higher density districts? (p. 6-21).

Table 14-602-1 – Uses allowed in residential districts. R5A is being changed from 1 and 2 family to 1 family, 2 family and multi-family. This will allow the resumption of conversions of large houses to multi-family buildings, something that many neighborhood organizations have opposed. (p. 6-21).

Table 14-602- 1 – Uses allowed in residential districts. What is the public policy behind prohibiting active recreation in the low density residential districts while allowing it in all of the higher density districts? (p. 6-21).

Table 14-602-1 – Uses allowed in residential districts. What is the public policy justification for prohibiting freestanding cell towers in the two least dense residential districts while allowing them as special exceptions in all of the other residential districts? (p. 6-21).

Table 14-602-1 – Uses allowed in residential districts. If bed and breakfasts are so desirable why are they special exception uses in the lowest density residential districts (where presumably they would have the least impact) and permitted as of right in all districts from and above RSA-1? (p. 6-22).

Table 14-602-3 – Uses allowed in industrial districts. Offices are a permitted use in every industrial district under the present code except the port industrial district. This table would prohibit them in most of the industrial districts, creating a large number of non-conformances and requiring evaluation of the "accessory" nature of any proposed office in connection with future industrial development. (p. 6-27).

Table 14-602-3 – Uses allowed in industrial districts. Personal vehicle sales and rental are prohibited in several industrial districts including the successor to G2. The existing auto mall is a special category under the existing G2. Is it the intent to map the existing auto mall for some other classification? (p. 6-28). The same point probably applies to "vehicle equipment and supplies, sales and rental" which is certainly an aspect of the auto mall. Further, why should gasoline stations and car washes be excluded from the industrial districts? (p. 6-28).

§14-602(6)(a)(.1) – The statement "in addition to the regulations of this Zoning Code, uses in the SP – PO district are subject to Pennsylvania law" is entirely unnecessary. (p. 6-30).

§14-602(6)(a)(.3) – The use of the term "PPR" will require everyone to refer frequently to the definitions. Consideration should be given to calling it the Department of Parks and Recreation.

Table 14-602-4 - Uses allowed in special purpose districts. Wireless service facilities are prohibited in the special entertainment district and the special stadium district. Both of these are districts where considerable demand for wireless service is likely and there does not seem to be any good reason for prohibiting those facilities from these districts. (p. 6-31).

Table 14-602-4 – Uses allowed in special purpose districts. Several uses which are currently existing and are currently proposed for the stadium district are either prohibited or limited to accessory use. Examples of prohibited items include, food, beverages and groceries, amusement arcades and radio, television and recording services. Examples of uses which are limited to accessory include eating and drinking establishments and visitor accommodations. The McFadden's Restaurant adjacent to Citizen's Bank Park would be an example of an eating and drinking establishment existing in the stadium district and not accessory to the stadium, as would the hotel(s) and restaurants proposed for the redevelopment of the Spectrum site. All of the uses that are intended for this district should be permitted under the Code. (p. 6-31).

§14-603(2)(a) – Reference to "the owner" of the "dwelling unit" for bed and breakfast. If there are multiple owners must all of them operate and live on the property or only one of them. Note also that the entire bed and breakfast is a "dwelling unit" according to this section. (p. 6-33).

§14-603(2)(e) – Dealing with bed and breakfast. Reference to "parcel" - perhaps "lot" would be more appropriate. Also in this subsection, reference to parking spaces – if parking is not required, as appears to be the case, then it might appropriate to say "parking spaces, if any". (p. 6-33).

§14-603(3)(b) – First line "street" should be "streets". (p. 6-33).

§14-603(5)(a) – Note use of phrase "residential dwelling unit" – which is used interchangeably with unit, dwelling, house, dwelling unit, etc. Note also the requirement that family daycare uses must be operated by "the owner" of the "dwelling." In the case of multiple owners must all owners operate or may any owner operate? (p. 6-33).

§14-603(5)(b) – It is comforting to see that the ancient custom of different daycare standards in different parts of the city will be retained. (p. 6-33).

§14-603(6)(a) – Kitchen exhausts in all eating and drinking establishments must be vented through the roof. Are there not eating and drinking establishments which do not have kitchen exhausts and is the intended effect of this to require that all eating and drinking establishments have kitchen exhaust? (p. 6-35).

§14-603(7)(c), (d) and (e) – Where additional floor area has been granted because a building contains a fresh food market, what will happen if the fresh food market closes? Similarly, with respect to the additional 15 feet of height allowed for buildings containing fresh food markets. Further, in (e) how will additional parking be obtained if the fresh food market closes and is replaced by another use? (p. 6-36).

§14-603(11) – Tobacco products. The exception for stores more than 20,000 sq. ft. will exclude new pharmacies. Reducing the minimum for exemption to 10,000 or even 12,000 square feet would allow development of new pharmacies. (p. 6-39).

§14-604(4)(d)(3) – A comma is needed after the phrase "two or more lots" in the second line. (p. 6-44).

§14-604(6)(b)(.1)(4) – Subsections .1 and .4 are internally inconsistent as to whether ground mounted and free standing solar collectors are permitted in the side and rear yards or are required to be in areas behind the side yard and rear yard set back lines. (p. 6-46).

§14-604(9)(d)(.6) - The dwelling unit which has a home occupation may have no more than three non-resident persons present on the "property" at any one time. This prohibits a dinner party. Presumably the intent is to limit the number of non-resident persons on the property or in the dwelling unit or the house or the residence in connection with the home occupation. (pp. 6-48, 6-49).

§14-604(10)(c) - This section provides that accessory dwelling units must be located within the interior of the principle building or within detached accessory buildings, such as detached garages, that are in existence as of the effective date of this zoning code. It is unclear whether it is the principle building or the detached accessory building (or both) which must be in existence as of the effective date of this zoning code. Assuming this is a good idea, if the accessory dwelling unit is allowed inside the dwelling or inside a detached accessory building why not in an attached accessory building? (p. 6-50).

§14-604(10)(d) - This section authorizes the Planning Commission to prohibit accessory dwelling units in any area where they are otherwise permitted, on a determination that such use would be inconsistent with the actual and intended character of the subject area. It is hard to imagine any legal basis for the Planning Commission to overrule City Council, which is what is attempted here. This is further evidence that accessory dwelling units may not be such a good idea. (p. 6-50).

§14-604(10)(c) - References to "single detached houses" and "semi-detached houses" are to terms which don't appear in the definitions. Presumably the references intended to be to a one family dwelling contained in a detached building or a semi-detached building. (p. 6-50).

§14-604(10)(c) and (g) - Subsection (c) allows accessory dwelling units on lots occupied by single detached houses and semi-detached houses. Subsection (g) provides that no additional land area is required for the accessory dwelling unit beyond the minimum lot size required for a detached house in the subject zoning district. This raises the question of whether the semi-detached house as to which an accessory dwelling unit is allowed under subsection (c) is required in such case to have at least the minimum lot size equal to that required for a detached house in the subject zoning district. It might be well if that is intended to state in (g) that the detached house standard applies whether the accessory dwelling unit is to be added to a single detached house or a semi-detached house. (p. 6-50).

§14-604(10)(e) – Accessory Dwelling Units/Owner Occupancy. The second line refers to "final" occupancy, the word "final" is confusing. This line also requires occupancy by "the owner" of the "subject lot." As with the bed and breakfast provisions, is it intended that all owners must occupy or any owner? This provision further requires a Deed restriction stating that the property owner will reside on the property. Such a restriction is clearly unenforceable (except for those incarcerated or under house arrest there is no provision in our law for compelling a person to reside at a particular place). If an owner occupancy requirement is a good idea, it could be lawfully expressed as a condition to the right to use the accessory dwelling unit. The recent litigation involving Rahm Emanuel in Chicago is just one example of the enormous complexity of enforcing residency requirements. (p. 6-50).

TPW/jaj

MEMORANDUM

TO: File

FROM: Thomas P. Witt

DATE: January 19, 2011

RE: Zoning Code Commission
December 2010 Draft
Comments to Section 14-805 Off-Street Loading

The off street loading requirements for commercial districts except CMX-4 and CMX-5 are equal to the most stringent loading dock requirement for commercial districts in the existing code. As a result they significantly increase the loading requirements in most commercial districts, including the Commercial Entertainment/Special Entertainment (casino) District. This will cause existing properties to become non-conforming as to loading. There is no reason to believe that the existing loading requirements are inadequate. Accordingly, the better approach might have been to apply in commercial districts except CMX-4 and CMX-5, the lowest existing requirements for commercial districts (which match the proposed requirements for residential districts except RMX-3). The elimination of the requirements for off street loading and RMX-3, CMX-4, and CMX-5 should be applauded.

Consideration should be given to codifying the existing practice that gross floor area devoted to parking and loading does not count in the computation of off-street loading requirements.

In Section 14-805(1) clause (c) in the antepenultimate line, the word "area" is missing between "gross floor" and "meeting". (P.8-26 in the backline draft of December 2010).

A chart of existing and proposed off street loading requirements is attached.

OFF STREET LOADING

1. Required Number of Spaces

Commercial Districts Except CMX-4 and CMX-5	ZCC December 2010 Table 14-805-1	Existing Code 14-1405(1) (office, hospital, institutional or hotel)	Existing Code 14-1405(3) (all permitted uses except residential or institutional)
20,000 - 40,000 sq. feet	1	0	1
40,001 - 100,000 sq. feet	2	0	2
100,001 - 160,000 sq. feet	3	1 [2 at 150,000]	3
160,001 - 240,000 sq. feet	4	2	4
240,001 - 320,000 sq. feet	5 plus 1/90,000	2	5 plus 1/90,000
320,001 - 400,000 sq. feet	5	3	5
400,001 - 660,000 sq. feet	6-8	3	6-8
660,001 - 970,000 sq. feet	8-10	4	8-10
970,001 - 1,300,000 sq. feet	10-14	5	10-14

2. Existing Code C-4 and C-5 (14-305(14)(c)) [ZCC December 2010 Off Street Loading is permitted but not required in RMX-3, CMX-4 and CMX-5]

Area	Office & Hotel	Residential	Other Commercial
40,000 - 49,999	0	0	1
50,001 - 99,999	0	1	1
100,000 - 150,000	1	1	2
150,001 - 160,000	2	2	2
160,001 - 240,000	2	2	3
240,001 - 320,000	2	2	4
320,001 - 400,000	2	2	A
400,001 - 500,000	3	2	A

Area	Office & Hotel	Residential	Other Commercial
500,000 - 660,000	3	3	A
660,001 - 970,000	4	3	A
970,001 - 1,300,000	5	3	A
Over 1,300,000	B	3	A

Note A - Other commercial over 320,000 sq. feet is 4 plus 1 additional space for every 90,000 square feet over 320,000 square feet.

Note B - Office hotel over 1.3 million square feet is 5 plus 1 additional space for each 400,000 square feet over 1.3 million.

TPW:amo

§ 14 – 100 General Provisions

§ 14 – 101

Neglects to add as purposes: population growth, job generation and strengthening of tax base.

§ 14 – 105(2)(b) – accepted plans

Does Commission have this authority under the Charter?

§ 14 – 105(3) – recommendations of that plan [Comprehensive Plan or amendment] shall be used by the Commission and Zoning Board in making any decision on a zoning permit application on a topic or area covered by the adopted plan.

Zoning Board is informed by the Zoning Code and the state and federal constitutions – no Charter requirement to be bound by planning documents – to the extent that City Council wishes to incorporate planning conclusions in the Zoning Code, City Council can exercise that legislative power – by using a planning documents, the Planning Commission ends up legislating by altering the planning documents.

§ 14 – 108(1) – most restrictive provisions of other public law, ordinances or regulations or permit shall governs

Impractical to expect Zoning Board (or even L & I) to know all of the provisions and valid interpretations of other laws, permits and regulations. In addition, this puts an enforcement responsibility on L & I and the Zoning Board and opens the Zoning Board to become a forum for complaints that other rules are not being followed. The Zoning Board should limit its actions to the Zoning Code, where it possesses some expertise.

§ 14 – 109 Relationship to Private Agreements

This does not inform L & I, the Zoning Board or any other agency. This is a matter of law and does not belong in a Zoning Code.

§ 14 – 112 – "held" typo?

§ 14 – 200 Definitions

§ 14 – 201 Rules of Interpretation

The draft includes and important rule of interpretation regarding ambiguities at § 14 – 304(9)(d). That, where doubt as to the intended meaning of language occurs, the terms and language are to be read to provide the property owner with the greatest choice of use, should be included in these section.

§ 14 – 201(7) Guidelines

Guidelines are described as strongly encouraged and, apparently, voluntary. Guidelines cannot be used as a basis to deny a project application. See discussions below.

§ 14 – 300 Administration and Procedures

§ 14 – 301 summary of roles and responsibility of appointed and elected bodies

These sections do not establish nor authorize any board, commission or body to take action. The empowerment authority rests elsewhere either in the Zoning Code or the City Charter. The result, therefore, of an attempt to summarize is to create confusion if the summary is not complete or states in other terms the powers and duties. This, again, is an opportunity to litigate that stirs more controversy than it does to make clear the roles of the various entities.

[Plus, the authors seem never to have met a comma they didn't want to use.]

§ 14 – 301(3)(b)(.12) power to impose conditions

See comments to 14 – 303(9) below.

§ 14 – 301(3)(c)(.2)(.b) recommendation based on guidelines in the Zoning Administrative Manual

Apparently, regulations contained in an administrative manual do not arise from specific legislation enacted by city Council. Query: do these regulations have to be approved by the Law Department. Further, if substantive, the regulations represent legislation by regulation and circumvent City Council's sole authority to enact zoning controls. In addition, if guidelines, does that mean that the applicant or the CDRC has the option of treating the regulations as voluntary.

§ 14 – 301(5)(b) power and duties of L & I includes certifying that use to be made of the property is in full compliance wit the provisions of the Zoning Code, whether or not City action directly requires L & I review, because no permit, certificate, license or document shall be issued until L & I certifies full compliance

This appears to extend to matters beyond the Zoning Code and may exceed the authority of a zoning code. In any event, the burden on L & I for certification is extraordinarily burdensome. This is not merely that no record of violation exists against a property, but an affirmative statement that an inspection would reveal no violation of any City regulations no matter how major or minor. This section is ripe for unintended consequences and an opportunity to litigate every City action on the basis that L & I failed to properly certify.

§ 14 – 301(5)(b)(.6) authorizes L & I to impose conditions

See discussion of § 14 -303(9) below. L & I should not be empowered to impose conditions. L & I is empowered to grant permits where an application meets the strict requirements of the Zoning Code. If an application is deficient, L & I must refuse to issue the permit. To authorize the imposition of the conditions puts L & I in the untenable position of being challenged solely on the basis that it should have issued a permit by imposing a condition. The conditions become the basis of litigation. Further, L & I staff is not currently trained in this area and will require thorough training when and if the empowerment is fully understood by the Department.

§ 14 – 301(6) continues the practice of having BLIR review Historical Commission decisions

Either HC should become an agency whose decisions are appealed to the court of common pleas or the HC decisions should be appealable to the Zoning Board especially if the preservation ordinance is to become a part of the Zoning Code. In any event, the BLIR is ill equipped to deal with HC matters.

§ 14 – 301(8) Art Commission

The Zoning Code should provide standards and criteria which, at a minimum, comply with due process.

§ 14 – 303(1)(a)(5) requirements for RCOs

Registration by submitting such other information as may be required in the Zoning Administrative Manual. This is again another instance of legislation by regulation. This is an opportunity for abusing the concept of regulations by allowing an agency to impose substantive regulations without review by City Council.

§ 14 – 302-1 Procedures Summary Table

Notice Required should refer to § 14 – 303(7) and not § 14 – 303(6). Further, the choice of "sign" instead of Zoning Notice is unfortunate given that "sign" has a different and defined meaning throughout the Zoning Code and particularly regulated. Even "placard notice" would be a better choice of words. This illustrates that the authors have not had to deal with the intricacies of notice and posting.

§ 14 – 303(4) Applications and Materials – L & I has authority to waive submission requirements as required under the Administrative Manual

L & I may waive requirements if the materials are not required to demonstrate compliance with applicant state or federal law – L & I does not enforce state and federal law and this implies that it should – why is this provision included?

L& I may also waive requirements if not necessary to demonstrate compliance with the Zoning Code of other City regulations – again implies L & I is required to enforce every City ordinance

If materials are not necessary, then they should not be required. This implies that the requirements in the Administrative Manual can be very broad and beyond what is necessary to review a zoning application.

§ 14 – 303(5)(b) Authority to require additional information that L & I, the ZBA or the Commission deems necessary

Unlimited authority creates opportunity for abuse. The Zoning Code should provide what materials are required for an application to be reviewed. If the agency is unconvinced by the submissions, the agency should deny the application, which action triggers the right of appeal by the applicant and others. Agencies should not have the unlimited authority to hold up applications on the basis of some notion that more information should be made available.

§ 14 – 303(6) Referrals – L & I, the ZBA and the Commission may refer an application to any other department or agency of the City, state or federal government if deemed necessary to evaluate impacts of an application.

This is poor policy and not warranted under the City Charter. This contains no time limits and does not insure that the other governmental departments will accept the referral or have criteria with which to evaluate the referral.

With regard to the ZBA, this puts the ZBA in the position of an advocate by placing the burden of investigation on the ZBA. This is likely a commingling of roles prohibited by Pennsylvania law.

§ 14 -303(7)(c)(.1) Guidelines for adequate sign notices

Recommended guidelines – definition of guidelines already states that guidelines are recommended and voluntary. See § 14 – 201(7). This is redundant and illustrates that the proposed Code needs to be reviewed more carefully.

§ 14 – 303(7)(c)(.2) Number and location of signs

On undefined "large" tracts, the requirements change as to number of signs. If more than one sign is necessary, then this needs to be set forth in more detail. Who will determine when a threshold has been met? Why does L & I now have the discretion to waive posting requirements where appellants are not owners? In any event, alternative notices should be set forth or established by the Zoning Board. L & I should not be burdened by this subjective decision-making, which again is a decision ripe for litigation.

§ 14 – 303(7)(c)(.4) Reposting after original public hearing

This is an unnecessary requirement that is based on a misperception of the purpose of posting and adds further obligations and regulations that give rise to litigation. If the initial posting was

proper, then notice is proper and all parties had opportunity to attend the public hearing that followed proper notice. Hearings that are postponed to a date certain at the public hearing by action of the Zoning Board require no further notice as the postponement was public. Postponement to a date later established requires notice to those who tendered an appearance form, and the ZBA is required to send written and personal notice to those persons and entities. This policy has been effective and comports with due process. Changes only muddy the waters surrounding notice.

§ 14 – 303(7)(f) Additional notice

Why is this necessary. Since additional notice is not required, no further authorization is necessary for an agency to, on its own, make other notifications.

§ 14 – 303(8) Public hearings

The Zoning Code should establish a maximum length of time in which the Zoning Board should commence evidentiary hearings on a Petition in order not to abridge a Petitioner's due process rights.

§ 14 – 303(8)(e) Burden of Proof

This provisions attempts to shift the burden of proof and is contrary to governing Pennsylvania law. See Bray.

§ 14 – 303(8)(f) ability of any organization or member of public to testify regardless of standing

This is wholesale change in the procedures before the Zoning Board. This deprives the Zoning Board of the power to regulate its own hearings. The Zoning Board should be able to determine who, beyond aggrieved parties, should be allowed to testify. Following this provision requires the Zoning Board to hear and, therefore, consider duplicative and irrelevant testimony. This invites bad theater.

§ 14 – 303(8)(n) Zoning Board decisions must be in writing

This provision misapprehends the purpose and use of decisions. The practical effect of this (in view of the Zoning Board's calendar and the absence of legal counsel) is to provide perfunctory "reasons" for a Zoning Board action, and these reasons will do little to enlighten a party as to the motivations of the Zoning Board in approving or denying a Petition. If the inclusion of reasons in this provision is intended to provide participants with insight into the reasoning of the Zoning Board in reaching a decision, then the reason needs to be well thought out and premised on the record. Therefore, the Zoning Board must prepare findings of fact and give its reasons based on those findings. There is a reason for the use of findings throughout the Commonwealth.

Providing meaningful "reasons" will represent a sea change for Philadelphia's Zoning Board and require additional staff – preferably legal -- to draft proposed decisions.

In addition, the Zoning Code should set forth a time period in which the Zoning Board is required to render a decision on a Petition.

In the event that City Counsel enacts this requirement, then the appeal process should be altered to account for this change. As is the case under the Municipalities Planning Code and since the Zoning Board's reasons are now part of the decision, the appeal process should change from a notice appeal system to an appeal process in which an appellant must set forth in detail the bases for his appeal. Appellants are then limited to these bases as assigned in the appeal papers. This represents sound policy and will shorten the time in which appeals are now prosecuted . City Council should urge the court of common pleas to recraft the applicable rules of court to account for these changes.

§ 14 -303(9)(a)(.1)(.a) and (.b) Conditions on Permits and Approvals – Zoning Board

This section misapprehends the purposes and legal authority for the imposition of conditions on a grant of approval. The sole reason that zoning boards may attach conditions to a grant of zoning relief is to ameliorate the adverse effects that directly result from the grant of a departure from the governing regulation. The regulation(s) from which relief is sought in a Petition was enacted to protect a public interest under the governing body's police powers. The condition must protect that interest and not some other interest which is not implicated in the zoning relief even if the other public interest is not suitably protected by other regulations. This section is an invitation to violate that principle and to invite unnecessary and improvident conditions. This is all contrary to the concept of granting zoning relief.

Subsection (.a) requires the Zoning Board to impose conditions so that the Petition becomes code compliant – which make little sense since the Petition is to obtain approval for a departure from the Zoning Code. The Zoning Board has similar power because it can refuse to approve the zoning relief. This also requires the Zoning Board to look beyond the Zoning Code to the master plan (does this include the comprehensive plan?), an action which should not be imposed upon the Zoning Board.

Subsection (.b) requires the Zoning Board to impose conditions to minimize adverse effects resulting from the permit approval which really means the development allowed by the grant of approval. As succinctly held by the appellate courts, enactment of zoning provisions by the legislative body presumes that the effects of code compliant development—whether or not adverse – are acceptable. Almost all development can be claimed to have adverse effects, but the scheme of zoning does not require that all of those effects be minimized or ameliorated. To the extent that conditions are properly imposed (as discussed above), the Zoning Board exercises its authority properly. This section requires the Zoning Board not only to discover the adverse effects but also to mitigate those effects, which is well beyond the Zoning Board empowerment. This, again, invites litigation as disappointed objectors will litigate the existence of adverse effects as well as whether the conditions were effective in minimizing those effects. This is bad policy.

§ 14 – 303(9)(a)(.2) Exactions

What is the basis for this provision. What existing authority is there? There is no authority for financial exactions and any suggestion should be eliminated from the Zoning Code. Exactions are likely unconstitutional Further, there is no duty or public interest for an applicant to avoid all impacts of proposed development. Finally, there is no "subsection (d)."

§ 14 – 303(9)(b) Conditions imposed by L & I

This is improper as a matter of law and represents bad policy. L & I should not be empowered to impose conditions on as-of-right permits. If an application does not meet the Zoning Code, L & I should refuse the application, and the applicant may appeal to the Zoning Board. If the application can be amended to comply with the Zoning Code, examiners regularly under current empowerment advise applicants what they can do to amend their applications to obtain a permit over-the-counter. What is the purpose for this section. It would seem only applicable if L & I were empowered to attach conditions to reach the goals of the comprehensive plan which L & I officials are likely not trained to do. In any event, this provision refers only to the Zoning Code (unless elsewhere in the Zoning Code, L & I is to impose conditions to reach the planning ideals).

§ 14 – 303(9)(c) All Review and Approval bodies

This again is much too broad, violates the limits of appropriate use of conditions and is likely unlawful. There is no authority to mitigate all adverse impacts, only those that result specifically from the relaxation of a particular zoning regulation. "[P]urposes of this Zoning Code" is much to ambiguous and invites litigation.

§ 14 – 303(11) Protection of Property Rights

This is totally unnecessary and attempts to change or influence the variance standards. By trying to define what the constitutional protections are for private property, the result inevitably falls far short. In governing precedent, the appellate courts have wrestled with definitions and explanations, and the Zoning Code should not attempt to expound on those principles. The sections that follow are inconsistent using the term "reasonable economic use" and "viable economic use" without much clarification as to what either means.

§ 14 – 303(11)(c) Variance or Code Interpretation Only

This provision attempts to eliminate a Petitioner's right to begin a validity challenge (the fundamental right to challenge an ordinance's constitutionality) at the Zoning Board. Currently, in accordance with a Solicitor's opinion, the Zoning Board makes a factual record and findings of fact in such a challenge after which the court of common pleas make conclusions of law and the ultimate decision in the first instance.

In this section, if the claim is that property rights – as defined and outlined in these subsections only – are violated, then the Petition is considered a request for an interpretation of the code provisions at the Planning Commission.

This is a fundamental change in the due process procedures accepted in the Commonwealth.

§ 14 – 303(12)(c) Code Interpretations

Why is a request for a written interpretation made to the Planning Commission. By City Charter, only the opinions of the Law Department are binding on other agencies. Zoning ordinances are legal limits on property rights and the interpretation thereof is properly the province of the Law Department. Why does the Planning Commission have added expertise in this area? By current practice, the Planning Commission staff may be called upon by L & I for its advice on interpretation. The Commission, however, has no expertise in this area.

Further, this interpretation of the Planning Commission does seem to be appealable. See § 14 – 303(13)(.2), and, therefore, the process does not comport with due process.

§ 14 – 303(12)(f) Decisions consistent with Commission's interpretation

Contrary to the City Charter, this provisions requires L & I to make decisions consistent with the interpretations of the Planning Commission. L & I should follow its own interpretations or the guidance of the Law Department. The second portion of the provision is unnecessary.

§ 14 – 303(13)(a)(.1) authorizes appeal of L & I decision by any person "affected" by the decision

This is a radical change in the appeal process. Currently, appeals are brought by aggrieved parties or City agencies or City Council affected by the decision. This allows appeals by City agencies which are not affected and by any taxpayer. In addition, Rule of Interpretation at § 14 – 201(9) defines "person" to include individuals, firms, corporations, associations, and any other similar entities. This expands the customary pool of appellants.

§ 14 – 303(13)(.2) – recommendations by Commission of any agency or department not final decision which may be subject of an appeal

This is contrary to the City Charter, wherein any aggrieved person may appeal any actions by City officials that effect rights, the appeal being to the Board of License and Inspection Review.

§ 14 – 303(13)(.3) -- allows appeals from L & I decision by written notice stating how L & I decision is inconsistent with the requirements of the Zoning Code.

"L & I decision" should be defined. In addition, where a zoning application is refused, the applicant may be seeking zoning relief and not alleging that the L & I decision was contrary to the Zoning Code.

§ 14 – 303(13)(.4) requires L & I to transmit "all documents related to L & I decision" and a statement of reasons for the L & I decision.

All that is necessary to be transmitted to the Zoning Board is the application and any plans submitted with the application and the refusal. "All documents" is much to broad and may require copies of the complete file for the site. If other documents are relevant, the applicant upon whom the burden of proof lies should submit the documents as part of the case. In addition, the reasons should be noted on the Refusal. L & I should not be burdened with a requirement to provide an additional narrative.

§ 14 – 303(13)(.6) Zoning Board may render a decision on the submitted papers

The is contrary to the City Charter and a denial of due process. A Petitioner should always have the right to argue and persuade the Zoning Board.

§ 14 – 303(13)(.8) Zoning Board shall make a decision within a reasonable time after receiving the appeal

The zoning code should contain a provision providing for a maximum amount of time in which a decision must be made by the Zoning Board.

§ 14 – 303(13)(.10) applicant must be current of all taxes

While City Council has enacted legislation which is now effective to accomplish this, this does makes L & I and the Zoning Board the enforcer for the Revenue Department. This is not only likely a burden to new development and any effort to bring the property current with regard to real property taxes, but may be unconstitutional, in certain circumstances, because it denies a party with a property interest the right to use and develop the property.

§ 14 – 303(14)(d) Issuing agency may extend permit for one year if the required findings or criteria remain valid.

First this is contrary to City Council's existing permit extension act which provides that L & I shall extend a permit upon request. Second, unless the ordinance has been changed, the criteria for the removal have remained unchanged. The required findings, of course, remain unchanged. This is likely intended to mean that the circumstances of the property that led to the issuance of a permit have not changed or would continue to support the findings and, therefore, meet the criteria. Since this would require an investigation or new hearings or new application review, the better policy is the current policy of extensions upon request.

§ 14 – 304(1)(b)(.3) Four legs good, two legs bad.

This is totally unnecessary and does not warrant a place in the Zoning Code.

§ 14 – 304(1)(b)(.4) Acceptance of plans not prepared by a public or quasi-public agency

This has no basis in the Charter. In addition, this is likely to have the practical effect of crating new standards and guidelines for only a portion of the City. This section is ripe for unintended consequences.

§ 14 – 304(1)(c) effect of approval is to bind the Zoning Board to consider adopted plans in its decision making

The Zoning Code should be City Council's expression of the comprehensive plan in statute form. The Zoning Board should have no affirmative duty to inquire into the adopted plans. This provision has the effect of allowing the Planning Commission, through the adopted plan procedure, to enact zoning legislation in contravention of City Council's powers.

§ 14 – 304(2)(b) Zoning map and Text Amendments

Appears to attempt to control City Council's process to enact zoning legislation by requiring review by the Planning Commission. City Council, however, may always enact legislation by its own rules or suspension thereof notwithstanding anything in the Zoning Code. Section 14 – 304(2)(b)(3) recognizes that the Planning Commission operates as part of the executive arm of City government and reports through the Mayor's office on legislation.

§ 14 – 304(2)(d)(.4) Criteria for Planning Commission Review of Legislation

Since this requires that legislation result in only positive effects or that negative effects are unavoidable or that those effects are mitigated, this is contrary to the notion of zoning regulations. This unduly restricts City Council (or attempts to) by refusing to recognize the principle that City Council's decisions that allow (otherwise regulate) uses – which necessarily

will effect other or neighboring uses – will have impacts which City Council has determined to be acceptable in the City. Such decisions can't anticipate all or prevent all adverse impacts and this provision invites litigation.

§ 14 – 304(2)(e)(.3) Neighborhood Conservation Overlay District

Part (a) is difficult to understand. In any event, apparently gives a civic association a great deal of authority since it alone can request zoning amendments. Part (c) seems to attempt to restrict City Council's power to enact zoning amendments.

§ 14 – 304(4)(c) Special Exceptions

Contrary to governing appellate court authority, this attempts to shift the burden of proof.

§ 14- 304(4)(d) Special Exceptions Criteria

As often stated, special exceptions are neither special nor exceptions. They are permitted uses. As such, an application should only have to meet certain and specific criteria, after which compliance with general health and welfare is presumed. By act of City Council, the special exception use is consistent wit the comprehensive plan and in harmony with the code. This provision (subsections (.1) and (.2) attempts to change this by negating any presumption as to the effect of City Council legislating a special exception and adding the criteria "consistent with th e Comprehensive Plan" and harmony with sprit of the Zoning Code to applicant's burdens.

§ 14 – 304(5) Civic Design Review

§ 14- 304(5)(c) Advisory Review – Zoning Board may consider CDR recommendations.

The recommendations should meet the ordinary test for admission into the record. Some person or agency needs to be the subject of questioning and cross-examination or the recommendation will be hearsay. An applicant should be able to explore the basis for the recommendation before the ZBA. The better view is to prohibit the recommendations from the record.

§ 14 – 304(5)(d)(.4)(.a) Submission materials in accordance with Commission regulations

This is again an opportunity to legislate by regulation. If the regulations are, as they should be, confined to the purposes of the protecting specific public interest and not open-ended general statements, this may be fine. However, if the regulations begin to require traffic studies and economic and social impact statements, then the introduction of those issues go beyond City Council's initial legislation. The better practice is to lay out in the ordinance what the submission requirements are as well as the criteria the agency's subcommittee may utilize.

§ 14 -304(5)(d)(.4)(.c) Time limits

This amounts to sixty days when added to L & I time to decide that materials are complete.

§ 14 – 304(5)(e)(.6) Any additional criteria stated in the Administrative Manual

Too open-ended and allows for the Planning Commission to add criteria without providing for the legislative act of City Council and an appeals process.

§ 14 – 304(6) Minor subdivisions and Land Development

This section apparently borrows for a definition in the Municipalities Planning Code that is troublesome and has resulted in multiple methods of interpretation in jurisdictions where the MPC controls.

§ 14 – 304(6)(a)(.1) Minor subdivisions

This is major change from the current practice that now allows the relocation of lot lines to create two lots from one (and one lot from two) as a matter of zoning and a zoning permit. This also introduces the concept, from the MPC, that the division of land for a "lease" triggers the need for approval. This would apply to reconfiguring apartments. This also applies to "development" which may apply to condominiums, many of which are re-divided and combined, but do not, in Philadelphia, require subdivision approval. This would seem to apply to dividing up retail spaces for multiple tenants or the reverse.

Also, major subdivisions (more than two lots) include these leasing and condominium situations.

What is the reason for these changes?

§ 14 – 304(6)(a)(.2)(.a), (.b) and (.c) Land Development Review

This is a major change from the current practice and applies to reconfiguring previously separated lots, rental units and condominiums. Under subsection (.c) a change in the kind of ownership triggers minor subdivision review. Therefore, changing an apartment complex to a condominium regime requires review as would, where allowed, the conversion of an office building to a residential condominium. These have been as-of-right in many circumstances, and to require review is an impediment to development in the City.

§ 14 – 304(6)(c) Criteria for Approval

At subparagraph (.1) the plan s must comply with applicable provisions in the regulations. The note says that these will be what was previously in §§2105(3) and (4). There is no reason why these requirements do not remain in the code sections. These kinds of requirement are in the SALDO of municipalities under the MPC. By putting the requirements in the regulations, the Planning Commission again gets the power to legislate by regulation. In addition, subparagraph (.2) requires compliance with the Comprehensive Plan, which leaves room for great and unbridles discretion. Even under the MPC, the SALDO represents technical requirements, which, when plans are compliant, result in the right to a permit or approval and allowing for no arbitrary discretion on the part of the decision-maker.

§ 14 – 304(7)(a) Major Subdivisions and Subdivision Plans

This is a major change from the current practice because it includes the division and development of property for the purpose of lease. The development of a strip shopping center of a multi-family building on a single lot will require land development and major subdivision review and approval.

§ 14 – 304(7)(c)(.1) Preliminary Plat

The Preliminary Plat and supplemental data must meet the requirements as contained in the Administrative Manual. Like the MPC's SALDO's, these requirements should be set out in a code enacted by the governing body. Here, regulations do not get that kind of scrutiny and represent, yet again, legislation by regulation.

§ 14 – 304(7)(c)(.2) Meetings

These provisions do not contain any provision for public hearings or due process hearings. If not otherwise covered, these decisions should allow for appeal to court.

§ 14 – 304(7)(c)(4) Preliminary Plat Approval

This section in not consistent with subsection (f). Land development approval should entail a decision by the Planning Commission that the plan of development meets the technical requirements of the Zoning Code and not allow for wholesale discretion by the Planning Commission. If the Planning Commission grants Preliminary Plat approval (like Preliminary Land Use Approval under the MPC), rights should be vested and the final approval granted on the sole ground that the final plan in compliant with the Preliminary Plat. An expression of approval is meaningless and should not be the result of either the applicant's expenditure or resources or the Planning Commission expenditure of time.

§ 14 - 304(7)(d)(.1) Criteria for Preliminary Approval

This section gets the concept of land development approval half right. The only basis for approval should be compliance with a predetermined set of criteria that are technical in nature. These should be part of the code and not abandoned to the Administrative Manual as regulations. Again, this allows for legislation by regulation and not consistent with an open, accessible, understandable zoning code.

§ 14 – 304(7)(d)(.2) Compliance with comprehensive plan

This again places the comprehensive plan – not adopted by City Council – above the Zoning Code. The Zoning Code and its land development sections should be City Council's expression of comprehensive planning and not the document to which all development must strictly adhere.

§ 14 – 304(7)(e)(.1) Final Plat

This section provides that the Preliminary Plat has a lifetime of 15 months. This is much too short a time limit. Under the MPC, Preliminary Land Development approval remains valid for five years even if the underlying ordinances are changed.

§ 14 – 304(7)(e)(.6) Final Plat is valid for three years.

This section provides for much too short a lifetime for an approved Final Plat. Under the MPC, Final Land Development Approval, which is filed against the property, continues to be valid without limit. If the ordinances are changed, the approval will only be valid in spite of those changes for the five years noted above. If the public improvements have been made, however, the rights to development are vested notwithstanding any changes to the ordinances.

To the extent that the ZCC intended the proposed land development sections to mirror the MPC, they do not. Instead, these proposed sections greatly enhance the power of the Planning Commission and devalue any rights earned through the land development process.

§ 14 - 304(8) Variances

§ 14 - 304(8) Applicability

This section is only necessary because of the decision to include within the Zoning Code both the Subdivision and Land Development ordinances and the Preservation Ordinance.

§ 14 – 304(8)(c) Minimum Variance

Oddly, although followed by a complete set of criteria in the next section of the proposed code, this section anticipates those criteria by adding the least minimum variance standard. Although this standard is well defined in the case law, the authors attempt to further explain the application of the standard. This is unnecessary and, as is often the case in this proposed code where the authors attempt to define broad legal principles, the explanation is incomplete, wrong and superfluous. The standard, already included in this draft as § 14 308(d)(.1)(.b)(.v), should be included in the criteria if City Council so decides.

In addition, since this applies to use and dimensional variances, this contradicts the principles of Hertzberg *because a reasonable adjustment may not be the same as the least minimum variance.*

§ 14 - 304(8)(d)(.1)(.a) Use Variance criteria

This is unnecessary as one purpose of the legally accepted criteria is to avoid an unconstitutional taking.

§ 14 – 304(8)(d)(.1)(.b) Criteria

This attempts to incorporate the variance standards set forth in the Municipalities Planning Code, which are well accepted and for which there is a breadth of jurisprudence. One oversight and one addition reduce the effectiveness of these standards. First, the MPC provides that the five criteria are to be applied <u>where relevant</u>. This needs to be added to this section. Second, this section adds, at subsection .iv the need for the ZBA to base its decision on the determination that viable economic use could not be permitted by the grant of a dimensional variance. Even if this is not already covered in the least minim variance standard, it is likely impossible that the ZBA or an applicant could put into the record this kind of proof. For instance, if you don't run a bank, how do you know whether a property can be economically viable as a bank when you want to use the property for automobile body work.

§ 14 – 304(8)(d)(.1)(.c) Conditions

This is repetitive of previous sections on conditions and likely will lead to confusion and litigation. In addition, the concept of duration in contrary to the concept of hardship. Unnecessary hardship attaches to a property and does not go away with time. Either there is a hardship or not.

§ 14 – 304(8)(d)(.1)(.d) Reports from City agencies.

This provision attempts to alter the customary and legally acceptable method in which the Zoning Board delivers its decisions. To the extent it tries to capsulate the standards by which decisions are upheld, the effort is incomplete.

This provision also attempts to alter the due process standards for the admission of evidence before the Zoning Board. As stated above, the Zoning Board should not be making inquiries as it is not an investigative body but a judicial body. Further, the Zoning Code cannot reverse the weight that hearsay evidence may or may not have depending upon context.

§ 14 - 304(8)(d)(.2) Variance standards for dimensional variances

This provision totally misses the lessons of Hertzberg. *Financial considerations are only one of many circumstances that may support a finding of hardship and is certainly not a necessary component. In addition, the attempt to limit dimensional variances to an artificial 25% in unsupported in the case law and undermines the power and discretion of the Zoning Board. In view of* Hertzberg *and even accepting the minimum variance standard which requires the variance to be the minimum that will afford the applicant relief, upon what basis do the authors believe this provision will be effective?*

§ 14 – 304(8)(e) Expansion of use approved by variance

Subsection (e) and (f) together represent major changes and attempt to introduce and extend the protections to which nonconforming uses are entitled to uses granted by variance. This is not warranted by governing case law.

Section (e) creates confusion. The first sentence is unnecessary and, by attempting to state the governing law, it raises questions. The second sentence seems to state the following: where (1)a use required an initial variance, (2)the use is now the subject of a new zoning appeal, and (3) the new variance will result in an expansion of the use, the new variance could only expand the use, as in the cases of nonconforming use, by 25%. This is contrary to law and unnecessarily attempts to limit the power of the Zoning Board.

§ 14 – 304(8)(f) Replacement of Uses approved by Variance

This section attempts to impose the ordinances governing nonconforming uses upon the criteria for granting variances. Ordinarily, when the Zoning Board grants a variance, the applicant gets only the right to conduct that use at the property. When the use is abandoned, only permitted uses may be conducted at the property. By this subsection, the regulations governing nonconforming uses (which have special constitutional protections) are applied to uses permitted by variance. By allowing certain uses to be substituted without a hearing and beyond the scope of the original grant of variance, this section intrudes unnecessarily upon the discretion of the Zoning Board. Accordingly, the Zoning Board may inquire into the impacts of not only the uses requested by variance but also any use which may, under this section, be substituted in the future for the requested use.

§ 14 - 304(9)(a) Zoning Permits Applicability

Many additional obligations and tasks are given to L & I in earlier provisions including that L & I will determine that the subject of the application complies with all federal state and locals laws

and that the applicant has paid all taxes. Accordingly, the issuance of the Zoning Permit will attest to those conditions. Do the authors mean for the Zoning Permit to be presumptive proof to the City that these non-zoning criteria have been met?

§ 14 – 304(9)(a)(.1)(.2) (issuance of permits where there are nonconforming circumstances and prior grants of approval)

This is an improvement over the current practice where all applications relating to properties that have been granted zoning relief must be reviewed again by the Zoning Board. How is this reconciled with the need for L & I to conform decisions to the comprehensive plan since properties subject to zoning relief necessarily are not "consistent" with the comprehensive plans. This would seem a change without substance.

This change should also be balanced against a Zoning Board's grant of zoning relief that was premised on all of the physical circumstances of the prior application. Perhaps, a use variance would not have been granted if the building at the property had been located closer to the property (greater height, greater massing, etc.) than illustrated in the plans even though a closer location may still not have encroached onto the setbacks.

Lastly, "consistent" is not well chosen for zoning decisions. The determination should be whether the subject of the application is compliant with the various prior Zoning Board decisions. (The second sentence is unnecessary. If L & I can only grant the permit in accordance with the first sentence, it is unnecessary and, therefore, confusing, to state that if the application isn't "consistent" with the criteria in the first sentence, then L & I needs to refuse the application.)

§ 14 – 304(9)(c)(.3) Preliminary and Final Zoning Permits

This section in preceded by a distinction between zoning and use permits. Since these section refer to Zoning Permits, they do not apply to use permits. Is that intended? Ordinarily, filing an application affords the property owner with the protection that the application will be reviewed under the then current ordinances. If the two-stage procedure only applies to Zoning Permits, the applicant will lose the protection and his use may be prohibited by spot zoning during the review process. This will hamper development because it creates uncertainty which was to have been the antithesis of the new zoning code.

Use of the word "confirming" is a poor choice. The better choice would be that the issuance of Preliminary Zoning Permit is L & I's determination that the application meets the criteria and has the same effect as the issuance of any permit.

Subsections (.c) and (.d) are more commentary and instructions to L & I than zoning ordinances (this occurs with some frequency in the draft zoning code). Subsection (.c) should not state what the Preliminary Permit is not, but it should state what it is. This section should state that, a Final Permit will be issued if the application meets the requirements for a Final Permit.

Subsection (.d) is unnecessary and likely to cause confusion. L & I should be empowered (and hopefully the draft code does so) to issue the permit when the application meets the requirements. If the requirement is compliant with the Preliminary Permit, then the Final Permit will be issued. The Zoning Code does not need to tell L & I that it cannot issued a Final Permit if the requirements are not met.

§ 14 - 304(9)(d) and (e) Criteria for Approval

The reference to the rule of interpretation that uncertainty about the meaning of terms means that the language must be interpreted in favor of the property owner is a welcome addition. However, the Zoning Code should add the preferred explanation that language should be interpreted in favor of the greater choice of uses to which the property owner may put the property.

In any event, this should be in the Rule of Interpretation, § 14 – 201, and not at this section of the Zoning Code.

The remainder of these sections do not appear to add anything to the Zoning Code or subsection (c). As to subsection (d), L & I is already empowered to issue permits under § 14-301(5).

§ 14 – 306 Enforcement

The Water Department is not empowered by the Zoning Code and should not depend on the Zoning Code for any right of inspection. If fact, the Water Department does not since it imposes an operations and maintenance agreement on an project which requires its stormwater facilities review and approval.

COMMENTS - ISSUES and OTHER DETAILS 1/21/11

CONSOLIDATED ZONING CODE REFERRAL DRAFT DATED **DECEMBER 2010**

BY JERRY ROLLER, AIA, LEED AP
Principal, JKR PARTNERS, LLC.

ISSUE #1 – DEVELOPMENT STANDARDS

The Development Standards contained in Sections 14-703 through 14-709 are the sort of design criteria which are usually contained in a Land Development Ordinance. They are generally subjective and require interpretation, including some leeway in adapting them to specific situations. This works well in those communities where there is a Land Development process which is ultimately decided by a Planning Commission and then a Board of Supervisors, both of which have discretion.

This is NOT appropriate for a Zoning Ordinance which is overseen by the Department of Licenses and Inspections. That Department has NO discretion. Any minor variation from the exact stated standards will require a Variance, and thus a trip to the Zoning Board of Adjustment. This will continue the current problem where minor issues clog the Zoning Board's calendar.

These sections should be deleted from the Zoning Ordinance and relocated, in the Administrative Manual, in section described as "Best Practices for Development". This could serve as a guide for the Community and Design Reviews which are part of this Code. It would allow minor deviations and variations from these standards which meet the spirit of the Code to be approved without a Zoning Variance.

ISSUE # 2 – SKY PLANE

The Sky Plane Controls, which have replaced the previous height limits, recession plane, and other attempts to micro-manage construction, do represent an improvement, since they are relative rather than absolute, providing greater design flexibility in building downtown Philadelphia.

That said, these Sky Plan Controls will not yield any public benefit either in terms of better buildings or greater light and air on our streets. A review of the current conditions along Chestnut or Walnut Streets, indicates a wide mix of building heights, some of which meet the Sky Plane controls and some of which do not. A series of photos taken along these streets illustrates that, without looking up, there is no perceptible difference in light and air on the street level regardless of the height of the adjacent buildings. (Those photos are attached below.)

Similarly, new requirements for spacing between buildings on JFK Boulevard and Market Street are not necessarily desirable. The proposed gaps provide wind tunnels and leave the sort of gap-tooth street façade that was the hallmark of the 1960's, not current design

Given that there is no real result from imposing the Sky Plane standard and building space, Section 14-502 (4) (a) and Section 14-502 (4) (c) should be eliminated and the overall bulk and area controls of the underlying Zoning be allowed to guide development. In the alternative, these could be included in the Administrative Manual as "best Practices for development" as a guide for the Civic Design review process, since that would certainly apply to any project subject to these controls. .

ISSUE #3 – DIMENSIONAL STANDARDS FOR RESIDENTIAL DEVELOPMENT

In Section 14-701 (2), Zones RSA-5 and RM-1, (both of which deal with urban rowhouse areas currently zoned R9, R9A, R10, and R10A)currently retain the 1,440 square feet minimum lot size. This is excessively large and was inserted in the old code **specifically** to send most projects to the Zoning Board of Adjustment. If the intention is to write a code which allows development by-right, the minimum lot size must be changed to an area that is reasonable and practical today. (While the exception of Note 4 deals with some limited instances, it does not solve the problem.) If the Code sets the minimum lot area per dwelling unit at 350 square feet, where is the justification for a 1,440 square foot minimum for a single family house?

Based on our experience over the past 10 years, for sale house lots in the rowhouse districts have been approved at between 725 and 965 square feet. I would suggest that the minimum be kept on the lower end.

The minimum area should be reduced to 725 square feet, which is more than double that required for a dwelling unit. That would correspond to the 18' by 40' or 16' by 45' lots which are really the minimum for today's economic standard for new townhouse developments.

In Section 14-701 (2), the height limit has been raised from 35 to 38 feet, which is movement in the right direction. However, that is not sufficient to allow for a reasonable stoop and four floors at 9 foot ceilings, which is today's standard townhouse.

Our experience over the last 10 years has produced houses with heights ranging from 39'-6" to 42' – 10". In order to avoid trips to the Zoning Board of Adjustment over a foot or two, The higher limits should be used.

The height limit should be set at 42'. While that is still not high enough to allow anything taller than four stories, it would allow for development of high quality housing for today's market.

ISSUE #4 – PARKING

There are a number of restrictions on Residential Parking which are overzealous. We understand the reluctance to perpetuate streets with garage front houses. On the other hand, parking is absolutely essential to high-end housing. The following changes would permit reasonable garage parking, primarily on rear alley streets which, today, serve as driveways. They would also allow parking garages on blocks which already have substantial garage fronts.

A limitation stating that garages are not permitted on blocks where less that 50% of the block has garages would be correct both of these problems. Section 14-502 (7) (e)(Prohibiting any garages below Chestnut Street) could be deleted. Similarly, Sections 14-802 (2) (a) (.5) and 14-802 (3) (.2) (Requiring a Special Exception for garages in any property less than 20 feet wide.) should be deleted, since this new provision would control.

Finally, Section 14-703 (8) (b) (.1) (.b) (Requiring a 10 foot setback between any street and parking) should be modified to apply only to a street where setbacks are required. Where the rear of a property is served by an alley or driveway, parking in the rear of a building should be allowed to start at the property line. Adding a 10 foot setback from the street only adds area between the parking and the street which is unusable.

ISSUE # 5 – COMMERCIAL USES IN CMX-2 (former C-2)

Section 14-602(4)(a)(.3) (Requiring commercial uses on the ground floor of CMX-2) should be deleted. There are large areas currently zoned C-2 where there is really no commercial basis. With the creation of CMX-2.5 for genuine commercial corridors, CMX-2 should not require commercial uses. Residential uses should be permitted throughout the property.

ISSUE # 6 – EATING AND DRINKING ESTABLISHMENTS

`Table 14-502-2 generally now makes sense, restricting noxious uses in the downtown core. The one glaring error here is the inclusion of Eating and Drinking Establishments in the list of restricted uses. In general, these type of facilities are the hallmark of a vibrant downtown. Requiring a certificate is not really an improvement on the current variance requirements, since it will still mean a length trip to the Zoning Board. And disallowing them entirely in Old City is ludicrous, since it remains one of the main dining Meccas of Philadelphia. Individual neighborhoods should not be permitted to control commerce. Furthermore, not permitting take-out restaurants at all is counterproductive. The existing ban on take-out restaurants has done nothing but send

new businesses to the Zoning Board. It has not produced better behavior on the part of patrons or better design for their stores. Take-out should be permitted in Center City. It is an essential part of a vibrant commercial district. This will also serve to reduce the load on the Zoning Board of Adjustment.

Similarly, the limitation on Take-out restaurants in CMX-2.5 is also inappropriate. These type of establishments are often important to neighborhood commercial districts. There are other opportunities to limit package stores, but there are many areas for which a McDonalds is a real benefit.

Section 14-502 (6) (a,) and Table 14-602-2 should be revised to allow both Eating and Drinking Establishments in all areas and permit Take-Out Restaurants.

OTHER SPECIFIC SECTION COMMENTS:

Chapter 14-500 Overlay Zoning Districts

While the current version is substantially improved over the previous draft, it still retains most of the minutia which has been built up over the past 50 years in the current Zoning Code. This really creates a confusing Code. It retains many of the arbitrary downzoning devices, such as the Old City and Chinatown 65 foot height limit, which were established primarily to send any substantial development to the Zoning Board of Adjustment. Since the proposed Code now contains requirements for public meetings and design review, the need for the added control that these restrictions provide is no longer there. I continue to recommend that ALL of these controls be eliminated from the new Code. In addition, I have highlighted below an itemized list of problems:

14-402 (1)	If the stated purpose of the Code is to "encourage revitalization of the Center City area", these controls do, in fact, the exact opposite. They discourage construction by providing unrealistic limits and ineffectual standards.
14-502 (4) (c)	These new requirements for spacing between buildings on JFK Boulevard and Market Street are not necessarily desirable. The proposed gaps provide wind tunnels and leave the sort of gap-tooth street façade that was the hallmark of the 1960's, not current design. I recommend that building spacing be a function of the development. Since any of these projects will be subject to extensive Community and Design Review, it seems pointless to try to prescribe planning details here.
14-503 (2)(b)(.3)	While building width controls have been largely eliminated (with very good reason), they still show up here in East Falls. I don't know why they are any more appropriate or effective there. There are lots of other opportunities in the Code to control

development. Building width limits should be completely eliminated.

14-503 (3)(b)(.2)
14-503 (3)(b)(.3) The limitations on Floor Area for Commercial Purposes runs completely counter to the stated purpose of reinforcing the commercial activity on the Germantown Avenue corridor. This also applies to the limitations on building width. If this area is to be a vibrant commercial corridor, it must suit the needs of modern commerce, which is very hard to accommodate in 4,000 square feet or 30 feet of frontage. While those limits may be quaint, they do not meet with the needs of retailers today. On the contrary, setting limits which preclude modern retail is the best way to stifle the growth of the desired smaller stores. The Code should take a cue from successful shopping streets and malls, where a combination of larger retail anchors and smaller shops provide the richest mix of shopping opportunities. The proposed limits may be well intended to protect small business, but they will have an opposite, stifling effect. These sections should be deleted.

14-505 (3) The limitation on anything but single family housing seems to run counter to the real development of this area. Nevertheless, such a restriction could easily be accomplished by Mapping the area in question as one of the RSA districts. Creating an overlay is the wrong way to define use and provides an unnecessary addition to an already bulky Code.

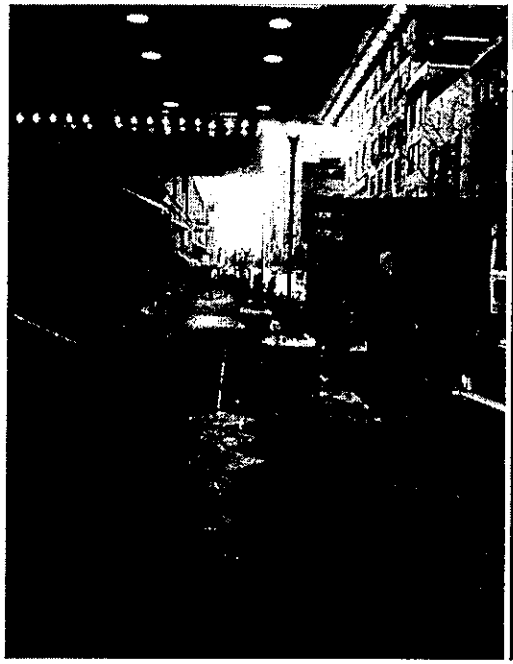
14-506(4)(a)(.3) Limiting retail structures to 40,000 square feet in an area already replete with 100,000+ square foot buildings makes no sense. Equivalent to locking the barn door, it will not accomplish anything except generate business for the Zoning Board. Large scale retail should be allowed to expand within the area where it is well established. Appropriate Zoning classifications could control this area of development much better than another overlay district.

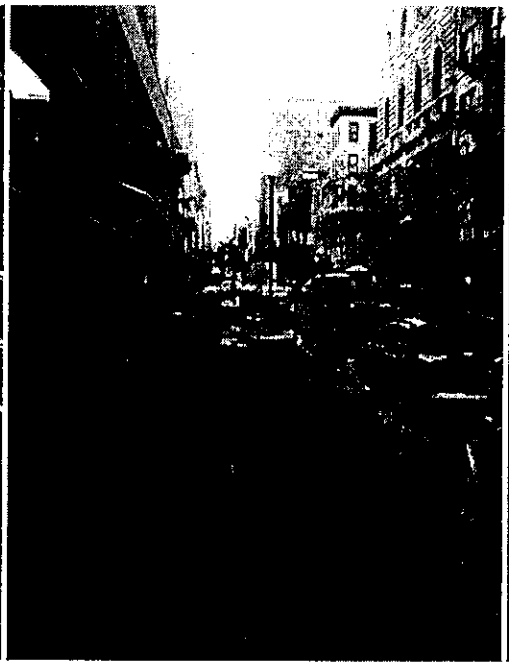
Chapter 14-600 Use regulations

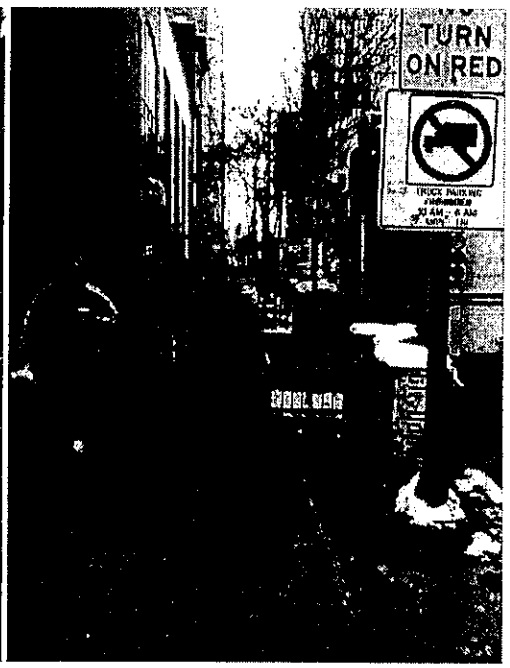
This Chapter is generally sound, with readily understandable descriptions of uses and districts. However, given that the Zoning Map will remain as it is (with the new designations in the old areas), there are some minor adjustments recommended.

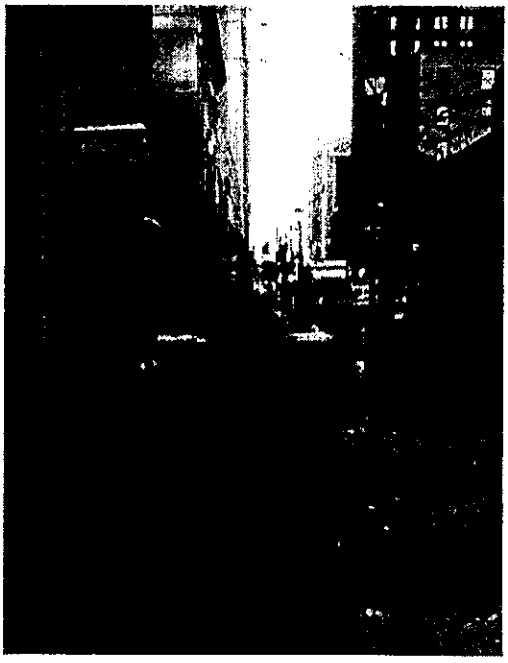
14-602(3)(a)(.7) This limitation should be amended to include **attached** or detached buildings, since that is often the case in dense urban areas.

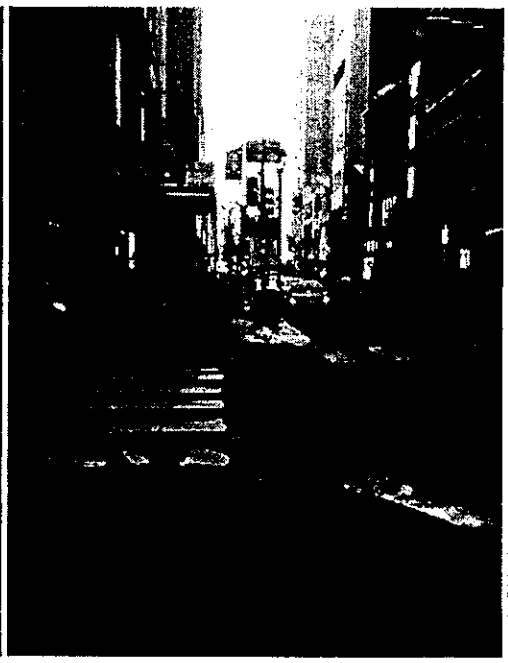
Table 14-602-2	The limitations on Business Services uses in CMX-2 and CMX-2.5 is misplaced. There could be a prohibition of outdoor storage and truck yards in these areas, but the basic uses as described in Business Services are very much compatible with corner stores and local shopping districts. They should be permitted. The limitation on Take-out restaurants in CMX-2.5 is also inappropriate. These type of establishments are often important to neighborhood commercial districts. There are other opportunities to limit package stores, but there are many areas for which a McDonalds is a real benefit. The limitation on On-Premises Dry Cleaners in CMX-2.5 is unnecessary as well. With today's equipment and processing, many neighborhood drycleaners are adding these facilities. It is entirely appropriate for neighborhood commercial areas.
14-802 (2) (a) (.5) And 14-802 (3) (.2)	Off street parking for residential dwellings that complies with all of the other provisions of this section should not be limited based on the property width. The requirement of a special exception for properties less than 20 feet is, in itself, inappropriate and will generate more Zoning Board cases. This section should be deleted.
14-802 (9) (c) (.1)	The required parking table for CA-1 is backwards. As leasable area goes up, the required parking per 1000 square feet should go down. Larger overall developments have less people per square foot and share parking much better. The chart should start at 4 per 1000 and go down from there to 3 per thousand.

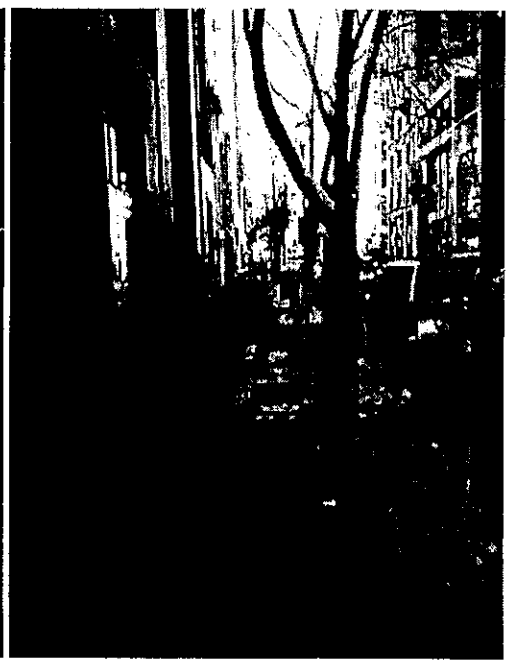


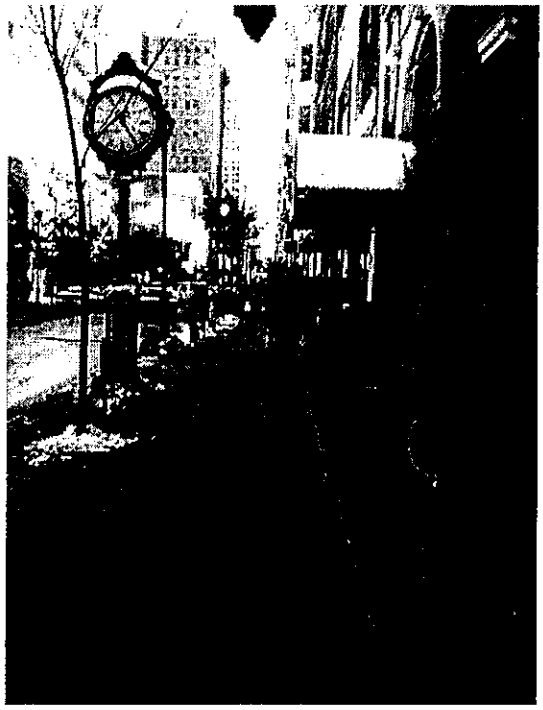


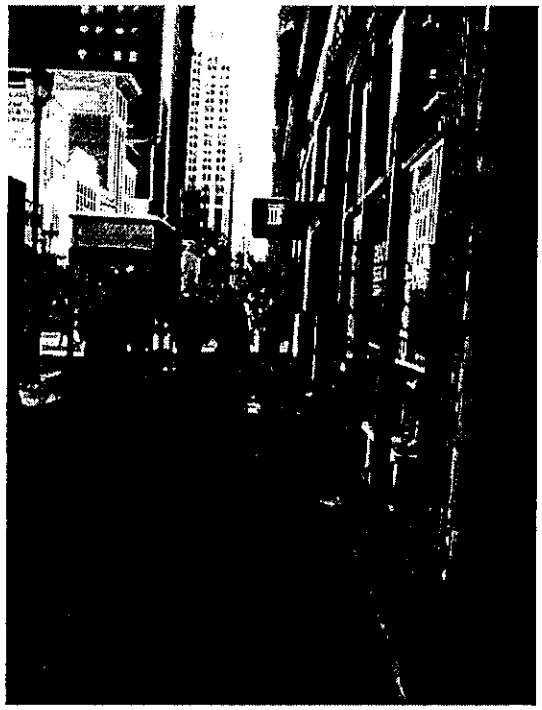

TURN
ON RED

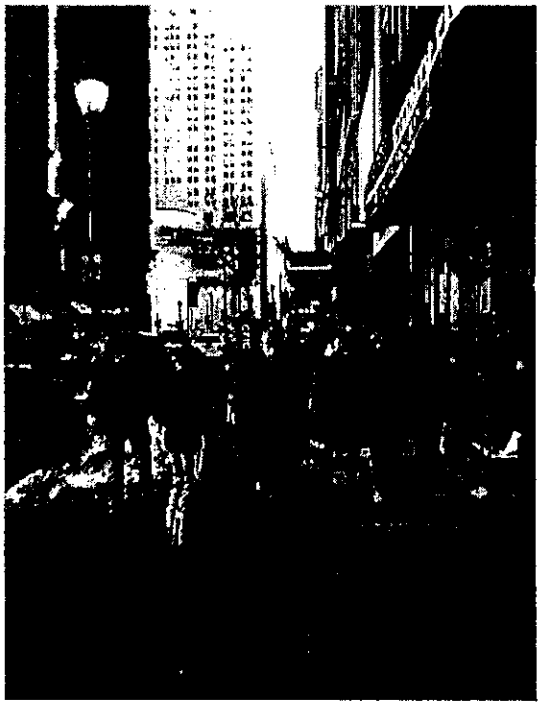


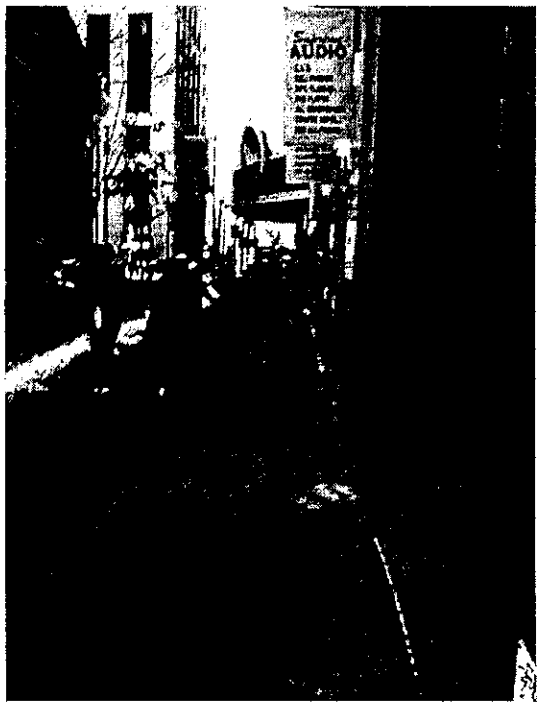











AUDIO