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Philadelphia, PA 19103-7599

November 12, 2010

**Via Hand Delivery**

Ms. Eva Gladstein, Executive Director  
Zoning Code Commission  
1515 Arch Street, 9<sup>th</sup> 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  
Executive Director

GCS/djh

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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,<sup>1</sup> 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.<sup>2</sup> 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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<sup>1</sup> A user-friendly code requires an index, which make the text accessible to the public.

<sup>2</sup> 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 carry out 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”)<sup>3</sup>. 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 14-600 tend to micromanage projects, creating a site-design ordinance rather than a zoning ordinance. Zoning generally governs “what” you may

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<sup>3</sup> 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.

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## **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.<sup>4</sup> 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<sup>5</sup>:

- 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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<sup>4</sup> There are many contingencies that could extend the schedule well beyond 186 days.

<sup>5</sup> 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.

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### **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-1) 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.<sup>6</sup>

#### **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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<sup>6</sup> 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)(.l)(.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)(.1) 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.<sup>7</sup> 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.

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<sup>7</sup> 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, 18<sup>th</sup>, Cuthbert and 19<sup>th</sup> 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.<sup>8</sup>

#### **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

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<sup>8</sup> 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 the 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.

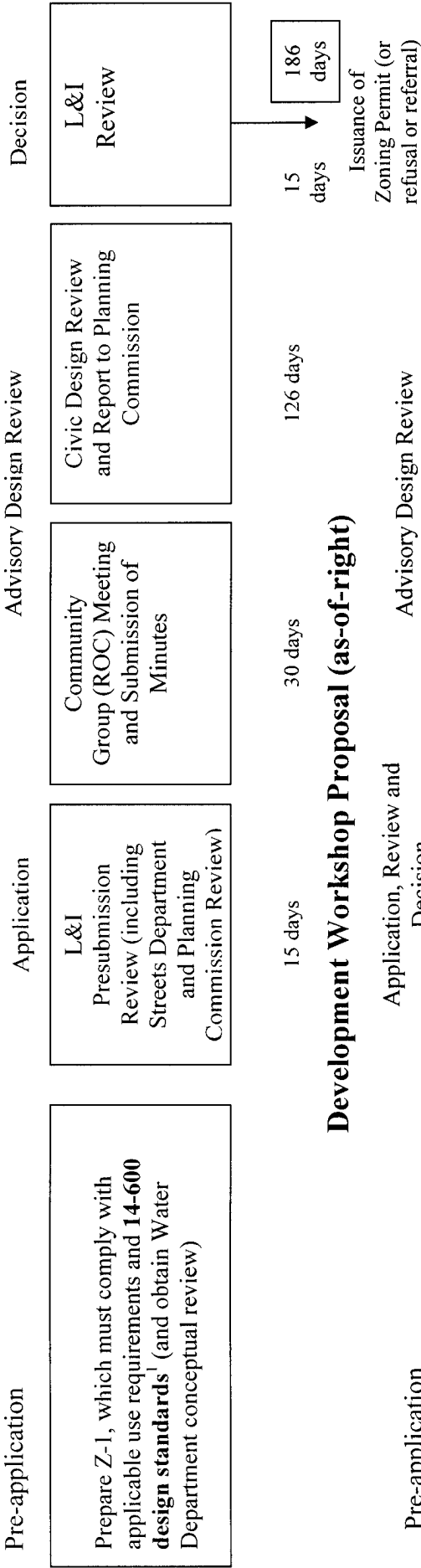
Recommendation: a comprehensive Index should be included at the end of the current draft as in the current Code.

November 12, 2010

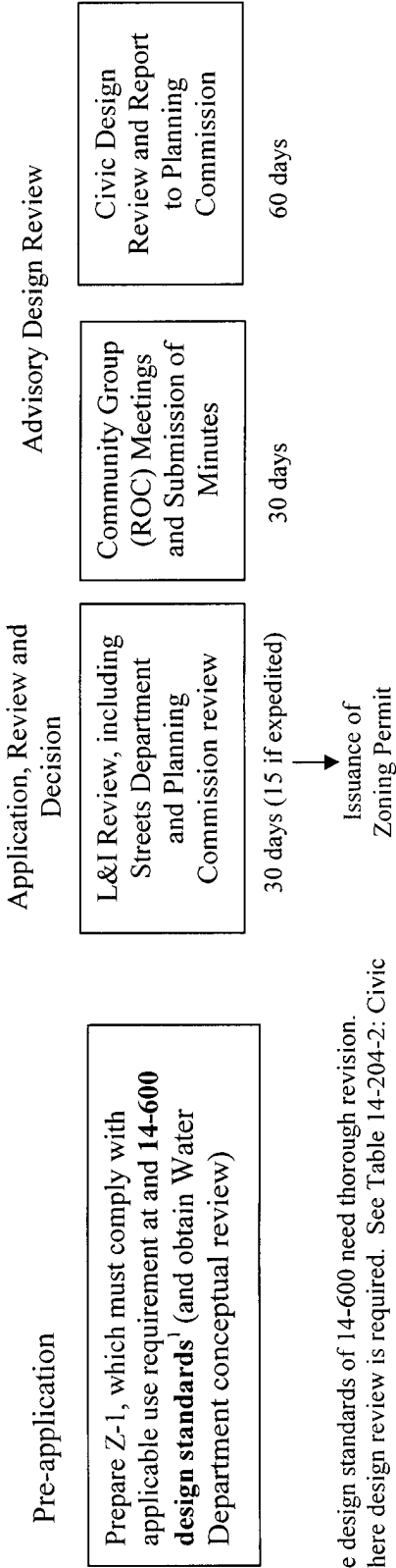
Current Process (as-of-right)



ZCC Proposed Draft (as-of-right)<sup>2</sup>



Development Workshop Proposal (as-of-right)



<sup>1</sup> The design standards of 14-600 need thorough revision.  
<sup>2</sup> Where design review is required. See Table 14-204-2: Civic Design Triggers.