

May 27, 2009

Deputy Mayor Andrew Altman
Philadelphia City Planning Commission
One Parkway, 13th Floor
1515 Arch Street
Philadelphia, Pennsylvania 19102

Councilman Frank DiCicco
City Hall, Room 332
Philadelphia, PA 19107-3290

Re: Central Delaware Riverfront Overlay District

Dear Deputy Mayor Altman and Councilman DiCicco:

Neighbors Allied for the Best Riverfront (“NABR”), a grass-roots organization that supports community-based planning and sensible, sustainable development accomplished in ways that are inclusive of public involvement, thanks you for undertaking to improve the zoning and land use regulations of the Central Delaware River portion of Philadelphia. We are pleased to offer some thoughts and suggestions about the draft overlay district (version amended as of May 21, 2009).

1. We Should have Clear Rules for the Waterfront Setback, Recreational Trail and Public Access to the River:

Significant public access to the waterfront is a fundamental basis of the Civic Vision. Rules establishing this access should be clear.

a. Waterfront Setback:

- (1) Width of the Setback: This should be set at 100-feet, purely and simply. We do not support an alternative standard that depends on the percentage of the property involved. If a 10% minimum standard is allowed, most of the properties would have a waterfront setback of well under 100-feet. We should have a clear rule of 100-feet and enforce that rule. If, in an individual circumstance, any landowner believes this setback imposes a legal “hardship”, then that landowner would be free to appeal to the Zoning Board of Adjustment (ZBA) for a variance. That would cure any claim of unconstitutionality. We see no reason to treat this dimensional requirement any

differently than the Zoning Code treats all other dimensional requirements.

(2) Point of Measurement: The Secretary of War's 1940 Bulkhead Line is an arbitrary line that is sometimes west of the physical bank, sometimes east of the physical bank and sometimes coextensive with the physical bank. Therefore, that line should not be used to measure the 100-foot waterfront setback. The only logical point from which to measure the 100-foot waterfront setback is from the top of the physical bank of the river. We are concerned that the current formulation in the overlay would not work, especially in situations where the Secretary's 1940 Bulkhead line is east of the physical bank (i.e., where it is in the water, as is the case with much of the former Foxwoods property at Columbus Avenue & Reed Street).

b. Recreational Trail: We appreciate the distinction now being made between landowners constructing and maintaining their own trails and landowners who dedicate the space to the City for a publicly constructed and maintained trail. However, we are opposed to the idea that the trail "may be limited to hours of availability and types of activities," even though 24-hour availability is "preferable." We believe, rather, that clear rules should be set and enforced. We request that 24-hour access be required without any qualification.

c. Regulated Public Access:

(1) Maximum Distance: There should be a maximum distance between access points. Prior versions of the overlay required access points at least every 500-feet; and we would support that distance.

(2) No shared easements: It would be one thing if the overlay allowed adjacent landowners to share an easement that runs along the shared property line. However, the current drafting would allow for a shared easement even in the middle of a property and, indeed, would allow for sharing by "two or more adjacent property owners." That could be interpreted as allowing four or five adjacent property owners to share a single easement, leaving the entire waterfront with but a very few points of access to the river. Surely that is not what is intended. If the intent is to allow a shared easement only on a shared property line, then the overlay should so state. If so, we

would urge that such easements be double-wide, lest public access be unduly diminished.

- (3) Hours of Availability: As with the trail, we are opposed to the idea that the public access can be “limited.” 24-hour access should be required.

As a final note on these dimensional requirements, we are pleased that, as is the case with the rest of the Zoning Code, any property owner seeking to vary from those requirements must go to the Zoning Board of Adjustment (ZBA) and request a zoning variance. The variance process is a good one because it means adherence to a statutory notice requirement, including posting at the property, and a decision-making body (i.e., the ZBA) that puts witnesses under oath, has a degree of consideration for rules of evidence, affords a process where public participation is not limited to three minutes of comment and allows for cross-examination and legal argument. However, the most important aspect of the variance process is that it requires the showing of hardship, which is a well-defined concept that provides a mechanism for avoiding a situation where a one-size-fits-all requirement would otherwise result in an unconstitutional taking when applied to an unusually shaped parcel. With all these due process protections, the Zoning Board is the appropriate place for decisions to be made about when a landowner can be relieved of strict compliance with the Code.

We agree that for too long the ZBA process was frustrating to all stakeholders because prior City administrations did not dissuade developers from continually seeking variances to which they were not entitled; and because prior ZBA's doled out variances in the absence of hardships being demonstrated. The current Administration is much improved and we are well on our way to a ZBA that issues variances very rarely. New zoning laws, such as the overlay, can further this aspect of good government by establishing clear zoning rules and enforcing them.¹

¹ This is not to criticize the Planning Commission. We were, however, uncomfortable with allowing the Planning Commission to grant exceptions to the waterfront access requirements because of “exigent circumstances”, an undefined term. This would have been a risky and unwarranted approach. Even if we all have confidence in the current Commission, future Commissions would have been able to abuse this process. We would have also risked perpetuating the perception of transactional zoning.

2. The List of Prohibited Uses Should Be Consistent with the Civic Vision:

We appreciate that the current draft of the overlay makes land use judgments by prohibiting certain uses. It's nice to finally move from the Vision to actual decisions about land use.

We believe it would be appropriate to include gambling facilities in this list. On this point, the public consensus is clear and it should be reflected in any zoning legislation. Even if the code currently does not allow for a casino to be built on any other parcel, it would be appropriate for the legislation to state clearly that the City does not want any other gambling facilities on our waterfront. Certainly the PGCB has already stated that Columbus & Reed, as well as the Riverwalk and Pinnacle sites are all acceptable for purposes of a casino; and the zoning overlay should say otherwise with respect to those and all other sites on the waterfront. We also believe that Off-Track Betting should not be a part of waterfront development.

Further, we note that in prior versions of the overlay, all Regulated Uses were prohibited but now only a list of prohibited uses are provided. The current version therefore does not prohibit Gun Shops and Payday Lenders. We believe those two uses are inconsistent with good waterfront development, and should be added to the list of prohibited uses.

In sum, we believe the following should be added to the list of prohibited uses: (u) Licensed gaming facilities, casinos, off-track betting facilities, video poker machines and all other types of gambling activities; (v) Gun shops; and, (w) Payday Lenders.

3. Archaeology and Historic Preservation:

Most if not all properties on the waterfront have an amazing amount of history, including buried archaeological artifacts. We should extend our knowledge and preserve the maximum amount of historical information, including the protection of any significant sites. Philadelphia treasures its history, which is a primary driver of the economic success of our tourist industry. Accordingly, NABR would like to see a provision in the overlay requiring the performance of a Phase I Archeological Survey and all due appropriate follow-up, as well as a review of buildings, objects and sites in terms of historic preservation. We recognize that, for certain types of projects (e.g., when seeking an Army Corps permit or certain PaDEP permits), some of the environmental laws might require these types of investigations; however, this zoning overlay should provide an independent requirement so these assets can be explored for every project.

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4. The waterfront property owners should not have a privileged role in the legislative process

The waterfront property owners are entitled to play a role in this process but not to any degree greater than a member of the general public. The property owners can and should review drafts of the overlay, attend the public hearings and provide as many written or oral comments as they wish. However, the owners are the ones to be regulated and they should not have a right to negotiate the legislation.

To the extent the property owners are trying to beat back regulation by alleging that the overlay would effectuate an unconstitutional taking or an infringement of due process, the City should not be cow-towed into buying those arguments without a full and public airing of the competing claims. Our view is that the constitution affords the City's very strong and broad authority to impose strict regulations on the development of the waterfront; and that the property owners' rhetoric about a taking is overblown. In the interest of transparency, if the City possesses a legal memorandum from the waterfront owners supporting their legal contentions, then that memorandum should be aired in the public domain so that the public can review it.

Thank you for your consideration of these points and ideas. We appreciate the opportunity to participate in this process as the overlay district undergoes amendments and becomes law.

Very truly yours,



Caryn Hunt
Shawn Rairigh
Jeremy Beaudry
For Neighbors Allied for the Best Riverfront

cc: Central Delaware Advisory Group
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