

**ZCC MEMBERS IN ATTENDANCE**

**John Binswanger**, Binswanger & Co.  
**Sophie Bryan**, Legislative Assistant to Councilman Bill Green  
**Richard DeMarco**, Klehr, Harrison, Harvey, Branzburg & Ellers  
**Denise Earley**, Greater Philadelphia Chamber of Commerce (Alternate)  
**Varsovia Fernandez**, Greater Philadelphia Hispanic Chamber of Commerce  
**Wendella Fox**, U.S. Department of Education  
**Alan Greenberger**, Philadelphia City Planning Commission  
**Michael Hnatkowsky**, Electrical Workers IBEW Local 98  
**Ann Hoskins-Brown**, MANNA  
**Marion Johnson**, Legislative Aide to Councilwoman Tasco  
**Emanuel Kelly**, Kelly Maiello Architects & Planners  
**Peter Kelsen**, Blank Rome LLP  
**Jeanne Klinger**, Alternate for Frances Burns, Department of Licenses and Inspections  
**Natalia Olson Urtecho**, H2L2  
**Anne Papageorge**, University of Pennsylvania  
**Greg Pastore**, Bella Vista Town Watch  
**Guy Pigliacelli**, Carpenter's and Joiners UBCJA Local 1050  
**Eleanor Sharpe**, Univ. of Penn. Center for Community Partnerships  
**Nick Shenoy**, Asian American Chamber of Commerce  
**Al Taubenberger**, Greater Northeast Philadelphia Chamber of Commerce  
**Andrew Toy**, Enterprise Center  
**Stella Tsai**, Archer & Greiner, P.C.  
**Daniela Voith**, Voith & Mactavish Architects LLP  
**John Westrum**, Westrum Development Co.

**Guest Presenter**

**Don Elliott**, Clarion Associates

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**Agenda Item: Call to Order**

- Commissioner Kelsen called the meeting to order at 8:00 am.

**Agenda Item: Approval of December 9, 2009 Minutes**

- **Action Taken:** The Zoning Code Commission (ZCC) adopted the minutes of the December 9, 2009 session.

**Agenda Item: Executive Director's Report**

**Discussion Summary:**

- Eva Gladstein updated the Commission about meetings with stakeholders in the last month. Ms. Gladstein and members of the ZCC met with the BIA Governmental Affairs Committee, the Philadelphia Real Estate Council and members of the Crosstown Coalition. Ms. Gladstein and ZCC members also made a presentation at the Annual Meeting of the East and West Mount Airy Neighbors on January 12, 2010. Commissioner Binswanger updated the Executive Committee of the Greater Philadelphia Chamber of Commerce at its last meeting.
- ZCC staff and several Commissioners met with representatives of the Baltimore Planning Department, who are also reforming their code. Ms. Gladstein and others will be presenting a comparison of the Baltimore, Washington, DC and Philadelphia processes at the national conference of the American Planning Association in April.
- The AIA/PPCE-hosted "Common Ground" workshops will take place over the next two weeks for members of the development community and community groups. Commissioner Olson Urtecho will speak more about these in her report.

**Agenda Item: Work Plan Committee Report**

**Discussion Summary:**

- The Work Plan Committee has begun to examine key sections of Module 1, which Don Elliott will present today. The ZCC will continue to establish working groups as necessary to review the aspects of the code that will require more in-depth research and discussion. The first of these groups is focused on nonconforming uses, lots and structures. Commissioner DeMarco will provide a brief update of the nonconformities working group in his report.
- The ZCC will receive the draft of Module 1 in February. In the interim, the Work Plan Committee will meet to identify other key issues in order to help guide the discussion at the next ZCC meeting on February 10, 2010.
- City agencies, including the Law Department, Planning Commission, L&I, Streets Department, and Water Department are reviewing several aspects of Module 1 and their comments will be incorporated.

**Agenda Item: Civic Engagement Committee Report**

**Discussion Summary:**

- Commissioner Olson Urtecho reported that the Civic Engagement Committee met with Kiki Bolender of the AIA to review the upcoming Common Ground workshops. Kiki reviewed the overarching goal of the workshops and the criteria for participation in the meetings.
- The Civic Engagement Committee is beginning to consider the next round of civic engagement activities on the first module of the new code. The Committee will hold four public meetings and expects these activities to take place beginning in mid- February.
- There will also be a new survey posted on zoningmatters.org to gather public input.

**Agenda Item: Report from Working Group on Nonconforming Uses, Lots and Structures**

**Discussion Summary:**

- Commissioner DeMarco described the composition of the working group, which includes ZCC members and alternates (Commissioners DeMarco, Barrilli and Pastore), outside experts (Richard Lombardo and Tom Chapman, former directors of PCPC) and key city staff (Mike Fink from L&I, Bill Kramer from PCPC and Brian Flanagan from the Deputy Mayor's Office).
- The working group has met and reviewed the sections of Module 1 that deal with nonconformities. The group has resolved several issues.
  - A new purpose statement for the section states that the goal is to accommodate and to protect the rights to maintain nonconforming properties, rather than eliminate them.
  - With the exception of rear walls, nonconformities can extend property walls vertically to the allowable height, while keeping the horizontal dimensions the same, without the need for a variance.
  - Regulations regarding re-building a partially destroyed non-conforming structure should be consistent no matter how the structure was destroyed.
- The working group also identified issues that require more discussion.
  - Are there circumstances where administrative (not ZBA) review of a replacement of a non-conforming use with another non-conforming use is appropriate? Commissioner DeMarco used the storefront as an example of an allowable circumstance.
  - Should we change minimum dimensional requirements building and lot sizes? Commissioner DeMarco provided some background on this issue, citing that an alarming percentage of nonconformities are in the R10 and R10A districts where a typical lot size is 600-700 square feet but the minimum required lot size is 1,440 square feet.
- Commissioner Kelsen stated that the working group's comments have gone to the consultants and will be incorporated in the February draft of Module 1.

**Agenda Item: Update from the Consultant Team**

**Discussion Summary:**

- Don Elliott of Clarion Associates thanked the working groups for their participation and feedback on issues relating to the first module of the new code.

- Mr. Elliott identified four key issues for discussion: minor amendments to plans of development, lapsing of permits and approvals, L&I approval of applications on properties subject to earlier ZBA approvals, and L&I authority to approve minor adjustments from standards.
- Minor Amendments to Plans of Development (POD) – After Council has approved a rezone with a plan of development, should some minor amendments to plans of development be approved by Planning Commission rather than going back to Council?
  - Mr. Elliott framed the question by stating that Philadelphia has a large number and variety of PODs scattered throughout the city. The POD's purpose is to make applicants commit to a greater level of detail, prior to rezoning, so that the City has assurance that the final development product is consistent with the plan.
  - Some POD districts are silent about amendment procedures, while others imply that City Council must approve amendments. The consultant team suggests a more uniform approach to POD, a single system where PCPC approves minor amendments.
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  - Commissioner Kelly expressed that in times of economic recession, such as now, it would be beneficial to have a faster process for approving minor amendments.
  - Commissioner Fernandez asked for clarification of the term "minor". She cautioned that the standards need to be stringent enough so there are no loopholes.
    - Mr. Elliott presented the proposed standards for PCPC approval of amendments: the amendment is consistent with the purpose of the district and existing POD; the amendment only includes permitted or conditional uses for that district; the amendment complies with all dimensional requirements; and the amendment is consistent with any overlay zones.
  - Commissioner Westrum asked what the timeframe would be for review.
    - Mr. Elliott indicated that the current code generally gives PCPC 45 days for review. He also pointed out that L&I and ZBA are the only decision-making authorities in the current code. This proposal would give PCPC more than an advisory role, consistent with other cities, and reserve review of cases of true hardship for the ZBA.
  - Commissioner Pastore asked how many PODs currently exist and whether this proposal will increase their numbers.
    - Commissioner Kelsen stated that there are currently four to five types of districts requiring PODs. Some remappings may be tied to a master plan (i.e. Stamper Square), which is distinct from a POD. In module 1, both circumstances can come to PCPC for minor amendments.
  - Commissioner Kelsen also noted that minor amendments are a public process with notice and public hearings.
  - Mr. Elliott expressed a concern over having too many PODs, but recognized we could not avoid them. He suggested that the POD system could discourage the creation of many overlays...
  - Commissioner Toy asked whether approval of minor amendments was a staff-level or Planning Commission decision.
    - Mr. Elliott stated that staff would make recommendations, but the Planning Commission makes the final decision.
  - Commissioner Fox emphasized that in order for PCPC to approve a minor amendment to a POD, the proposed amendment would have to meet all four standards, not just one or two.
- Lapsing of Permits and Approvals – How long should development permits and approvals be valid?
  - Mr. Elliott described the current system. A zoning permit lapses after one year unless the applicant submits a building permit application. A one year extension of the zoning permit is possible.
    - With regard to the one-year lapse period, Philadelphia is stricter than other cities. On the other hand, Philadelphia is more lenient than other cities because it only requires a building permit application as proof of intent to construct. Some cities also require more concrete proof that the applicant intends to build.
  - Module 1 proposes that zoning permits lapse after three years, with a one year extension, and applicants must begin construction or operation within that period.

- Commissioner Voith informed the ZCC that the Work Plan Committee thought it would be helpful to have graphic representation of the current rules starting from date of ZBA approval as well as from the date of L&I permit issuance. Commissioner Westrum seconded Commissioner Voith's request for graphic representation of the lapsing of approvals. Mr. Elliott responded that other cities use a timeline from the date of issuance, not the date of building permit application. If the ZCC decides to extend the standard from 1 year to 3 years, it should also rely on the date of permit issuance.
- Commissioner Fox recommended that any graphic representation should be very specific about the types of approvals and permits and the corresponding decision-making authority.
- Commissioner Papageorge asked whether other cities include lapsing periods for all permits and approvals through the end of construction in their codes.
  - Mr. Elliott indicated this practice was typical in cities with suburban greenfield development where the timing of construction is more predictable. But applying this practice to redeveloping cities is more difficult, and the adoption of internal targets is more typical.
- Commissioner DeMarco advised that the material presented in the zoning code needs to be consistent with the information presented in the administrative code.
- Mr. Elliott summarized the conversation on lapsing of approvals: the ZCC has a general level of comfort with the proposal, but need to see it mapped out to make a sound decision.
  - Commissioner Voith added that the current system has a three year de facto period, but not everyone is aware of that. A graph would make that point evident.
  - Commissioner Pastore stated that understanding the variance timeframe was more important than the as-of-right timeframe.
- Mr. Elliott made a final comment that developing and selling land was a legal right, but the city needs a system that cannot be abused.
- L&I Approval of Applications on Properties Subject to Earlier ZBA Approvals – Should L&I be authorized to approve permits for properties that are subject to a previous ZBA approval, as long as the permit application is consistent with the prior ZBA decision?
  - The current practice in Philadelphia is to send all permit applications for properties that have ever been to the ZBA back to the ZBA.
  - Commissioner DeMarco felt that if the application is within the same use category as the existing use, the application should not have to go to ZBA.
    - Mr. Elliott stated that Module 2 would contain a use category table. It is very common for cities to administratively approve changes within the same use category.
  - Commissioner Hoskins-Brown asked how abandoned uses are handled.
    - Commissioner Kelsen responded that currently there is a three year rule for determining when a discontinued use is abandoned.
    - Ms. Gladstein added that the non-conforming working group is looking at the issues surrounding discontinuance and abandonment.
- L&I Authority to Approve Minor Adjustments from Standards – Should L&I be authorized to approve permits with minor adjustments from standards without requiring a ZBA hearing?
  - Mr. Elliott made clear that these minor adjustments would be purely dimensional and apply to (1) lots that were smaller, narrower, less deep or more constrained by topography than at least one adjacent lot, or (2) lots that needed an adjustment to accommodate “green” equipment or design. In either case, the applicant would also have to demonstrate that he/she could not comply with standards through reasonable adjustments to the project design.
  - Commissioner Kelly supported the proposal.
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  - Commissioner Pastore suggested that the applicability rules need to be narrower, such as requiring a lot to be more constrained than two or more adjacent lots.
  - Commissioner Fox felt that the heading of the subsection should read “Minor Dimensional Adjustments”, to emphasize the fact that adjustments were only dimensional.
  - Mr. Elliott reviewed the criteria for approving a minor adjustment: approving setbacks within 1 foot of the code requirement; height no more than 2 feet taller than code maximum; on-site open

- space is within 5% of code requirement; and parking is within 1 space of requirement (not applicable if requirement was 3 spaces or less).
- Commissioner Westrum asked whether an applicant could ask for all four adjustments. He suggested limiting applicants to two or less.
    - Mr. Elliott indicated that some cities do place limits, but felt that the City should monitor requests for minor adjustments over time and implement such limits only if deemed necessary.
    - Commissioner Tsai was in favor of monitoring over time.
  - Jeanne Klinger shared her opinion that L&I staff who issue permits should not be the same body that issues exceptions to the rules.
    - Commissioner Papageorge asked who in L&I would be responsible for deciding on minor adjustments. She questioned whether the staff could be objective enough to administer these standards.
    - Andrew Ross asked whether the L&I Board of Building Standards could conduct the reviews for minor adjustments.
      - Commissioner Kelsen stated that the Board of Building Standards is an appellant board, analogous to the ZBA, and recommended that minor adjustments avoid an appeal process.
    - Commissioner Kelly felt that minor adjustments should be a routine task, but L&I needs to administer internal training to handle them. He suggested that L&I staff forward requests for minor adjustments to a supervisory unit for review.
    - Commissioner Westrum also suggested having one person in a supervisory capacity conduct reviews of minor adjustments.
    - Mr. Elliott stated that other cities usually handle this question as a matter of internal administrative policy rather than in the code. In the US, there is an inherent mistrust that staff is not capable of making judgments. This is not the case in other countries.
    - Commissioner Pastore felt that it was not up to the ZCC to decide how L&I should administer its duties. The zoning code only needs to refer to L&I as the entity responsible for executing minor adjustments.
    - Commissioner Fernandez expressed that everyone has to be able to accept change, and to have trust and confidence in the City's agents.
    - Commissioner Toy explained that the concern comes from some history of inappropriate decision-making in Philadelphia.
    - Mr. Elliott understood Philadelphia's historical context, but it does not mean that no one is capable of making sound judgments.
    - Commissioner Voith emphasized that these criteria are de minimis, so judgment is very limited.

**Agenda Item: Chairman's Report**

**Discussion Summary:**

- Chairman Greenberger reported that Susan Jaffe has resigned from the ZBA and thanked her for her contributions to the ZCC. Lynette Brown-Sow will become Chair of the ZBA, and thus will become an ex-officio member of the ZCC. Martin Bednarek has been appointed to fill the vacancy; however he is not available for the next six weeks, so Gary Jastrzab will fill his seat in the interim.
- Chairman Greenberger announced the release of *Imagine Philadelphia*, a two-year visioning effort undertaken by PCPC. *Imagine Philadelphia* lays the foundation for the Comprehensive Plan, *Philadelphia 2035*. The year 2035 was selected to coincide with DVRPC's 25-year long-range regional plan. Danielle DiLeo Kim has joined PCPC to help with the comprehensive planning efforts. A staff project team will deliver a long-range citywide plan document in approximately a year and begin the process of preparing 19 strategic district plans. These plans will enable rezoning to begin in 2011.
- In February, the ZCC will release the first module of the new code on Administration and Procedures. By that time, the ZCC will have the results of the AIA/PPCE *Common Ground* workshops which will provide important input on the issue of meetings between applicants and neighborhood groups. The ZCC will also hold additional civic engagement meetings and conduct an online survey to gather public input.

- The ZCC will release a Change Memo that will identify requested revisions to Module One. Chairman Greenberger emphasized that the zoning code rewrite would not be a linear process. The ZCC will add revisions to the Change Memo based on issues that arise in subsequent modules and during civic engagement activities.
- Module Two on Districts and Uses will arrive in April, and Module Three on Development Standards will arrive in July.
- The ZCC intends to have a complete draft of the code by fall 2010 for presentation to PCPC and then to City Council.
- Chairman Greenberger thanked everyone for their hard work in reaching this important milestone.

**Agenda Item: Other Items**

**Discussion Summary:**

- Craig Shelter, a member of the public, commented that the POD districts may appear to have similar processes, but they are all unique. Some PODs, like IDD, are long term, while others, like SSDs and CEDs have very specific purposes. The new code needs to account for these distinctions.
  - Mr. Elliott agreed, but advocated for a single, uniform procedure for approving them.
- Raed Nassar, a member of the public, cited an example of a ZBA-approved variance that took the owner six years to build. He issued a complaint with L&I, who informed him that the owner had a right to extend his variance each year.
- Don Edelman, a member of the public, requested more information on numeric standards. How does Philadelphia compare with other cities?
  - Commissioner Kelsen responded that the Work Plan Committee and other working groups would review these standards carefully.
- A member of the public asked whether the ZCC would review the standards for ZBA fast track applicability.
- A member of the public asked whether or not the draft of the first module will be available to the public. Eva Gladstein responded that it will be available via zoningmatters.org, but not until after the next meeting.

**Agenda Item: Adjourn**

- Chairman Greenberger adjourned the meeting at 9:45 am.