

ZONING MATTERS!

AN INTRODUCTORY HANDBOOK FOR UNDERSTANDING THE
ZONING PROCESS IN YOUR NEIGHBORHOOD



This guide provides short answers to the following
frequently asked questions:

- ❖ What is zoning?
- ❖ How did neighborhoods get zoned?
- ❖ Who controls zoning?
- ❖ What is the Zoning Board of Adjustment?
- ❖ What is a variance?
- ❖ What is a Registered Community Organization?
- ❖ What does the law say about when the ZBA can grant a variance?
- ❖ What is an “unnecessary hardship?”

How can you participate in planning for your community?

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❖ What is zoning? How does it work in Philly?

The word “zoning” refers to the regulation of acceptable uses and sizes for properties and areas in a city. Without zoning, garbage dumps could be next to schools, or skyscrapers could be built next door to single-family homes. Zoning protects practical interests of cities and communities, like controlling population density in a given neighborhood and ensuring adequate parking.

In Philadelphia, zoning is regulated by the **Zoning Code**, which specifies the requirements for each and every piece of land in the city. Members of the **Philadelphia City Planning Commission** (“PCPC”) are the city’s zoning professionals. PCPC city planners recommend zoning maps and zoning law to the City Council. However, only the City Council has the power to turn those proposals into law. Every piece of land in the city fits into a zoning category. Each zoning category has particular uses (industrial, commercial, single-family residential, multi-family residential, etc.), and dimensions (height, width, outdoor space). There are many categories. Well-known examples include RSA-5, which allows for single-family homes, and RM-1, which allows multi-family homes.



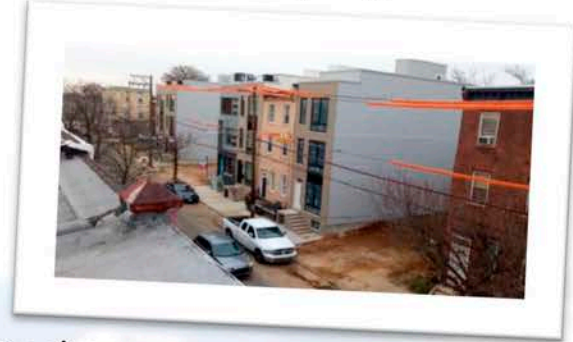
EXAMPLE: Suppose you want to build a multi-family apartment building. You would look for a piece of land that has RM-1 zoning, or another zoning category that allows that use. If you buy a lot with the correct zoning for your project, you can design a project that complies with regulations, present your plans to the city, and receive a permit to begin construction. This is called building “by right.”

If you want to: learn about the zoning of your home or neighborhood, visit: <http://atlas.phila.gov> (for zoning and other information about any parcel)

If you want to: read the Zoning Code for yourself, visit: http://www.amlegal.com/codes/client/philadelphia_pa/ (click “View Code,” and navigate to “TITLE 14. ZONING AND PLANNING”)

❖ How did properties get their zoning?

Cities like Philadelphia change, so zoning must also change from time to time. In 1960, city planners expected enormous population growth, estimating that the city would grow from 2.1 to 2.5 million people.¹ To make room for all those people, many neighborhoods were re-zoned to allow future construction of buildings with more residential units. However, the population didn't grow as expected. By 2001, the city's population had dropped to 1.5 million people. This meant that for decades, many single family houses in Philadelphia were in zones that allowed for bigger multi-family housing. Now, city planners seek to match zoning to existing buildings in the area and to zone vacant land based on what the community needs from future development.



This process is active and ongoing.² Five years into this process, over 4,774 acres have been rezoned. Communities participate heavily in this process. The goal is to give communities a voice in deciding what can and cannot be built in their neighborhoods.

The process works like this:

1. Planning Commission proposes zoning based on existing structures, community input, and consultation with City Council.
2. The Planning Commission meets with officials and presents its plans to the community.
3. The proposal is introduced by a Councilperson, and passed into law.

EXAMPLE: The Mantua neighborhood was primarily zoned for multi-family housing. Concerned about the effects of rapid, oversized development, community members and organizations came together to demand single-family zoning. The Planning Commission drafted a proposal that reflected community desires, Councilwoman Blackwell introduced the proposal, and City Council passed it into law.

If you want to: *change the zoning in your community:*

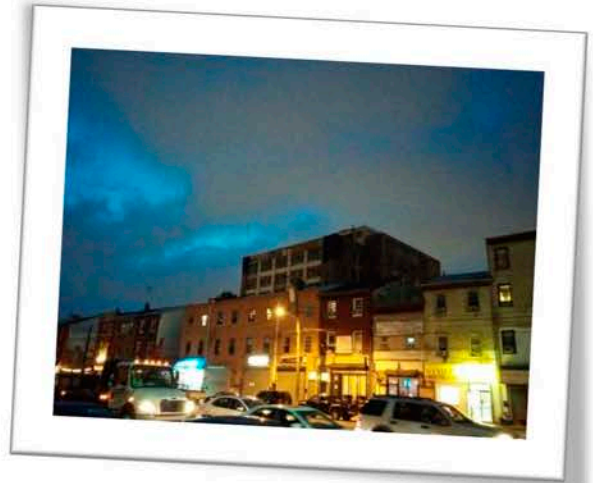
- contact your councilperson
- connect with a civic association in your neighborhood to find out about current efforts.
- Visit www.phila2035.org, and www.phila.gov/cityplanning to learn about future changes

¹ PCPC 5 Year Report on Zoning Code at Page 37.

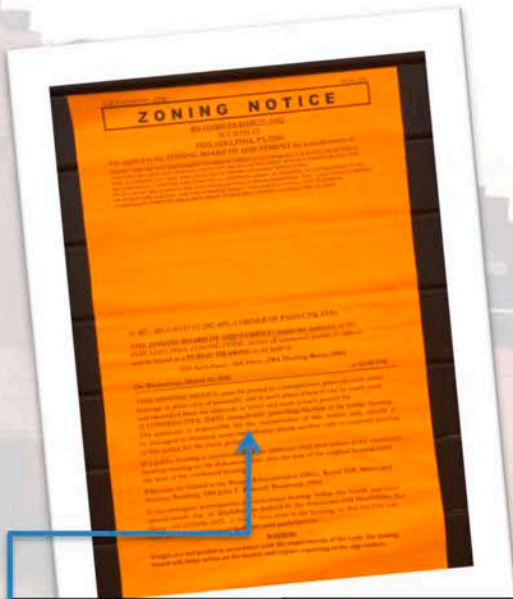
² See www.phila2035.org

❖ What is a variance?

When someone wants to build or modify a building in a way that is not allowed by its current zoning, the City will deny them the permit to do that. But that's not necessarily the end of the story. They may now request a *variance*. A variance is an exception to the zoning law, and is available only if the applicant demonstrates an “unnecessary hardship.”³



Only City Council can change the zoning law, but the **Zoning Board of Adjustment (“ZBA”)** has the power to grant or deny a variance. Before the ZBA can approve a variance, the applicant must present the plans to the community, answer questions, and ask for support. Then, when the ZBA holds a hearing to approve or deny the variance, **any member of the public may attend that hearing to testify in support or opposition.**



Have you seen these in your neighborhood? When a person is seeking a variance, they are required to post a notice like this one, which contains information about the zoning issue, and when the ZBA will hold a hearing.

Zoning is law. In effect, variance applicants are asking that the law not apply to them. It is the applicant's job alone to prove that this is absolutely necessary. Zoning exists to protect the community, so it is important that the community has a voice before variances are granted. Still, it is important to remember that only **the ZBA has final authority to decide whether or not a variance request will be granted.** Interestingly, the ZBA generally approves about 90% of variance applications.⁴

If you want to: *Learn about pending variances and upcoming ZBA hearings:* Visit

- www.phila.gov/li/zoning-appeals
- www.phila.gov/li/pages/AppealsCalendar.aspx

³Philadelphia Code § 14-303(7)(a)

⁴PCPC 5 Year Report on Zoning Code at Page 5

❖ What is a Registered Community Organization (RCO)?

The Zoning Code requires applicants for variances to give notice to the community. Individual houses must receive notice if they are within a certain distance of the property at issue. Notice must also be provided to community groups that are designated as **Registered Community Organizations (RCOs)**. Any community organization can apply to become an RCO. Groups that have RCO status may be Community Development Corporations, Service Providers, Political Wards, Civic Associations, or groups created for the purpose of participating in zoning decisions. RCOs receive notices of all variance applications in their area. One of these groups will be designated “lead RCO” for each variance application, and will hold a community meeting about that application. At this meeting:

1. The applicant will present their plans that the city rejected.
2. The applicant will explain why their plan was rejected, and why she believes a variance is required.
3. Community members will be able to ask questions about the project.
4. Community members will vote on whether or not they want to support or oppose the applicant’s proposal.
5. The leaders of the lead RCO will put the results of this vote into a letter of support or opposition, and submit it to the ZBA.

This is an important opportunity for you, as a member of the community, to learn about the proposal, and how it might affect your neighborhood. Sometimes, the proposal might mean a welcome change. Sometimes, the applicant may want a variance to build something that the community finds inappropriate.

However the vote turns out, it is only one piece of evidence for the ZBA to consider. The ZBA has broad discretion when deciding on a variance application and is not required to follow the community’s recommendation. Even if the vote goes the way you hope, remember you can still attend the ZBA hearing to testify in opposition or support.

Do you want to *find out which RCOs represent your community?*

Visit: openmaps.phila.gov, and check the box for “Registered Community Organizations” Locate your neighborhood on the map, and click to see a list of all RCOs covering that area.

Do you want to *learn more about RCOs?*

- Visit: www.phila.gov/CityPlanning/projectreviews/Pages/RegisteredCommunityOrganizations.aspx
- Read: Section 14-303(11A) of the Zoning Code (link on page 3).

❖ What does the law say about when the ZBA may grant a variance?

The Zoning Code requires that a variance applicant must prove several specific things to receive approval from the ZBA. *For more detailed explanation of these elements, see the Community Zoning Handbook. A variance may only be granted if:*

- Denying it would create an “unnecessary hardship” for the Applicant;
- It is the minimum variance required to avoid the hardship;
- It fits the purpose and spirit of the Zoning Code;
- It will not increase congestion in the public streets, or create a risk for public health or safety;
- It will not overburden transportation, water, sewer, or other public facilities;
- It will not interfere with an adopted plan for the area; and
- It will not create any environmental hazards.

Paraphrased from §14-303(8)(e)(.1)

When deciding whether to support or oppose a variance, these factors are helpful to consider. Things like car parking, plans for trash removal, exterior materials and design, or lack of a genuine hardship may all be relevant.

There are different types of variances: “use,” and “dimensional.”

For a use variance: In order to change zoning from single-family to multi-family, or from industrial to commercial, the developer must prove that “unique physical circumstances or conditions” make it impossible to follow the zoning law, and that the variance would not change the “essential character of the neighborhood or district,” or interfere with the use of neighboring properties.⁵ Financial motivations for a use variance, such as a desire to build more units to earn more income, should not be considered by the ZBA.

For a dimensional variance: The requirements are somewhat relaxed if the applicant needs only a dimensional variance. Though the ZBA may not consider financial hardships for a use variance, it may consider whether denying a dimensional variance will create a financial hardship for applicant.⁶

⁵ Philadelphia Code §14-303(8)(e)(.2)

⁶ Philadelphia Code §14-303(8)(e)(.3)

- **What is an “unnecessary hardship?”**

To receive a use variance, a property owner must demonstrate (among other things) that following the zoning law would create an “unnecessary hardship.” The ZBA has a lot of leeway to decide what creates an unnecessary hardship, but its decisions may be overruled in court if their decision is not based on “substantial evidence.”⁷



So what evidence is good enough? The standard can be complicated, but state courts have provided some clarification.

- The hardship must result from the specific characteristics of the property. The applicant must show that an “unnecessary hardship” results from “physical features of the property” that prevent it from being used as zoned, or that it would be prohibitively expensive to use the property as zoned.⁸
- Evidence that the property will be less valuable is not a hardship. Developers may desire to replace a small single-family home with a larger multi-unit building in order to generate higher rental income. This is not a justification for a variance.⁹
- Self-inflicted harm is not an “unnecessary hardship.” An unnecessary hardship is not established where the applicant paid too much for a property, allowed a property’s condition to deteriorate.¹⁰ Also, an unnecessary hardship is less likely if the applicant knew or should have known that the property was not zoned for the intended use at the time of purchase.¹¹

Remember that having an “unnecessary hardship” alone will not justify a variance. (See page 5)

⁷ 2 Pa.C.S. § 754(b); “Substantial Evidence” is “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Valley View Civic Association v. Zoning Bd. Of Adjustment, 501 Pa. 550, 555 (1983).

⁸ Allegheny W. Civic Council v. Zoning Bd. Of Adjustment, 547 Pa. 163, 167-68 (1997).

⁹ Isaacs v. Wilkes-Barre City Zoning Hearing Board, 148 Pa. Commw. 578, 584 (1992).

¹⁰ Arter v. Philadelphia Zoning Bd. Of Adjustment, 916 A.2d 1222, 1228 (Pa. Commw. Ct. 2007).

¹¹ Phila. V. Earl Scheib Realty Corp., 8 Pa. Commonwealth Court 11,17 (1973).

Summary and Final Tips

- Zoning exists to protect public health and safety, so it is important for the Community to be involved in making decisions to change or grant exceptions to the zoning.
- Every parcel has a particular zoning designation, but that designation is subject to change or exception.
 - City Council can change zoning
 - The ZBA can grant variance requests
- Zoning decisions impact many aspects of life in a community. An increase in population can affect the value of properties, rents, and property taxes. However, when deciding on a variance, the ZBA generally considers only issues raised by a specific property, not bigger economic changes within a community. Accordingly, when opposing or supporting a variance application, community testimony should address the specific issues the ZBA considers.
- Pay attention to zoning notices in your neighborhood and note the date and location of ZBA hearings.
- By participating in a local Registered Community Organization (RCO), you have an opportunity to ask questions of variance applicants, and vote on whether the community should support or oppose a variance.
- Anyone is able to testify before the ZBA about any variance.
- The law guides when a variance can be granted, and the applicant must prove each part.

LEGAL DISCLAIMER

The information contained in this Handbook is intended for general educational and informational purposes. It should not be relied upon as legal advice. The authors, the Stern Community Lawyering Clinic, the Thomas R. Kline School of Law, and Drexel University are not liable for any consequences to individuals, organizations, or any other party that chooses to rely on this information.

Zoning matters are fact-specific. An attorney should be consulted for specific application of law to the facts of any particular zoning matter, or to determine the relative rights of parties seeking, supporting, or opposing a zoning variance.

Information in this Handbook is current at the time of publication, but is likely to change. Websites and resources referenced were last visited April 23, 2018



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