

# MID ATLANTIC REAL ESTATE JOURNAL

NEW JERSEY-PENNSYLVANIA-DELAWARE-MARYLAND-VIRGINIA

Friday, November 26, 2010

Volume 22, Issue 22

## REAL ESTATE LAW

### By Alexander F. Barth, Cohen Seglias Pallas Greenhall & Furman, PC **Philadelphia's New Zoning Code: Zoning Change for the Future**

**T**he Philadelphia Zoning Code Commission (PZCC) is in the process of finalizing a new zoning code, which aims to resolve the inconsistencies and inaccuracies that plague the current code and relieve the burdens it imposes on participants in the zoning process. The proposed code, however, leaves certain questions unanswered, including how the new code will address the issues of appellate rights and standing to appeal zoning determinations.



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The current code was enacted in 1933 and has been revised on an ad hoc basis ever since, as Philadelphia transitioned away from an industrial/manufacturing-based economy. This outdated code has been kept serviceable through numerous zoning overlays, piecemeal revisions, and the liberal use of variances. This patchwork quilt approach to zoning, while functional, albeit barely, is inefficient and has resulted in inconsistent determinations by the Philadelphia Zoning Board of Adjustment (ZBA). The costs associated with navigating the current code, together with the risks of inconsistent determinations, have been blamed for hindering economic investment and redevelopment in the city.

The new zoning code is de-

signed to embrace the City's neighborhoods and respond to the City's largely unused manufacturing infrastructure. The draft code has been released by the PZCC for public comment until November 12, 2010. Thereafter, the PZCC will consider revisions to the proposed code before submitting it to City Council for review and approval. If passed, the Philadelphia Planning Commission will then work with neighborhoods to re-map the entire city using the newly established zoning classifications.

If the re-mapping is properly implemented, most property should receive a modern and appropriate land use classification, allowing most projects to proceed by right and without ZBA involvement. However, if a project requires a variance, the proposed code does not address at least two critical issues: (1) it fails to define who has standing to oppose variance applications, and (2) it does not include a provision, similar to §1003(A)(d) of the Municipalities Planning Code (MPC), allowing a property owner to require an appellant to post a bond if it seeks to stay the project pending the appeal.

With regard to the first point, §14-203(d)(7) of the draft code grants all persons and organizations the right to testify before the ZBA, but does not enumerate who has standing to appeal a ZBA decision. This is likely a response to the Pennsylvania Supreme Court's

recent ruling in *Spahn v. Zoning Bd. of Adjustment*, 602 Pa. 83, 977 A.2d 1132 (2009) (overruling Philadelphia's prior rule granting "taxpayer standing" to appeal zoning determinations) and the Commonwealth Court's ruling in *Callowhill Center Associates v. Zoning Bd. of Adjustment*, 2 A.3d 802 (Pa. Comm. 2010) (allowing taxpayers who testified before the ZBA to intervene in zoning appeals). In short, the PZCC may have erred on the side of caution, making a practical decision to avoid identifying which parties may appeal ZBA decisions.

As to the second point, it appears that the PZCC made a community-oriented choice by not including a bonding requirement for those seeking to stay a project pending the appeal of a ZBA determination.

It will be important to property owners and developers to observe whether the PZCC, after reviewing the public comments submitted, elects to modify the proposed code and identify with parties have standing to appeal zoning determinations and/or include a provision for allowing the Court to impose a bonding requirement on those seeking to stay a project pending the appeal of a ZBA determination.

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