Building Blocked: Neighborhood Politics and Administrative Efficiency in Philadelphia's Zoning Relief Process

by

Ross A Karp

B.A. Philosophy
University of Chicago, 2010

SUBMITTED TO THE DEPARTMENT OF URBAN STUDIES AND PLANNING IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER IN CITY PLANNING
AT THE
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

JUNE 2015

©2015 Ross A Karp. All Rights Reserved.

The author hereby grants to MIT permission to reproduce and to distribute publicly paper and electronic copies of this thesis document in whole or in part in any medium now known or hereafter created.

Signature of Author _____
Department of Urban Studies and Planning
May 19, 2015

Certified by _____
Professor Terry Szold
Department of Urban Studies and Planning
Thesis Supervisor

Accepted by _____
Professor Dennis Frenchman
Chair, MCP Committee
Department of Urban Studies and Planning

BUILDING BLOCKED

Neighborhood politics and administrative efficiency in Philadelphia's zoning relief process

Ross Karp
Master in City Planning

BUILDING BLOCKED: Neighborhood Politics and Administrative Efficiency in Philadelphia's Zoning Relief Process

by Ross A Karp

Submitted to the Department of Urban Studies and Planning on May 19th, 2015 in Partial Fulfillment of the Requirements for the Degree of Master in City Planning

ABSTRACT

In response to a widespread dissatisfaction with an inefficient and highly political system of development permitting and land use decision making, Philadelphia instituted a large-scale reform of its zoning code and planning documents in 2007. These reforms attempted to reconcile a reduction in the need for zoning relief with the necessity to maintain some form of community input in development as effective as that which had been made possible by the stream of zoning variances in the past. Municipal planning was emphasized as a means to create more development-friendly zoning procedures. Community review of variance requests was formalized using a system of Registered Community Organizations (RCOs).

This thesis proposes that reformers did not sufficiently recognize the ways in which internal neighborhood divisions undermine the smooth operation of a zoning and planning regime. Formalizing community input in zoning relief lends credence to forces of ideological conflict which take legitimacy away from the plan and politicize the administration of zoning. Findings suggest that the compromises necessary in creating a new plan and zoning regime insured that developers will continue to push against planning restrictions, while communities continue to see the zoning relief process as their only avenue to debate cultural and ideological battles around development. This increases the scrutiny on individual projects without allowing more holistic discussions about future growth. RCOs may not be willing or able to run meetings that serve as impartial neighborhood forums, but are asked to do so to be taken seriously by the zoning and planning powers. The impact of RCO's input on developers and on the decisions made by the Zoning Board of Adjustment is uncertain at best. Finally, a number of suggestions are given to improve the system, including a new zoning mechanism designed for mutual gains between neighborhood groups, developers, and the city.

Thesis Advisor: Terry Szold
Title: Adjunct Professor of Land Use Planning

ACKNOWLEDGEMENTS & NOTE REGARDING INTERVIEWS

The writing of this thesis has been an all-consuming endeavor and it would not have been possible without the help of many people. A huge thanks to my family for the constant support and love during thesis writing, as well as throughout graduate school and beyond.

Thanks to Terry Szold and Eran Ben-Joseph for their guidance throughout the process of writing this paper. Thanks to Lizzie Woods and Karen Thompson at the Delaware River Waterfront Corporation for connecting me to many of the sources in this paper.

Thanks to my fellow MCPs for helping me maintain my sanity and sense of humor for the last five months. Thanks to Emily Watkins for the Philly home base, photos, and unflagging encouragement. Thanks to LaVerde's for all the coffee and to the Igloo for the fieldwork fuel.

And thank to the city of Philadelphia for being fascinating and eternally weird.

This paper was informed by a series of interviews conducted by the author in January of 2015 in Philadelphia, Pennsylvania. Without the assistance of these participants, this work would not have been possible. I am very grateful to all of them for giving me the chance to hear their thoughts and opinions and for helping me uncover the interesting nuggets in what might seem to be a very dry subject.

These interviews were:

- **Jared Brey**, Zoning and Development Reporter for PlanPhilly (January 5, 2015)
- **Ian Litwin**, Central District Planner for Philadelphia City Planning Commission (January 6, 2015)
- **Max Glass**, Owner of Glass Properties (January 8, 2015)
- **Natalie Shieh**, Principle Officer for Amtrak 30th Street Station Master Plan (January 9, 2015; follow-up phone interview March 3, 2015)

- **Lauren Vidas**, President of Hazzouri & Associates, LLC (January 14, 2015)
- **Hannah Angert**, Realtor at U S Spaces, Inc. (January 15, 2015)
- **Alex Feldman**, Vice President of U3 Advisors (January 16, 2015)
- **Steve Cobb**, Director of Legislation for Second District Councilman Kenyatta Johnson (January 16, 2015)
- **Peter Kelsen**, Partner at Blank Rome LLP (January 16, 2015)

Unless otherwise noted, quotes from and references to these sources were obtained in these interviews.

TABLE OF CONTENTS

1. A CHANGING CITY & A CHANGING APPROACH TO DEVELOPMENT 11

2. A BROKEN SYSTEM IN NEED OF REFORMS 21

2.1 Planning Through Variances 22
2.2 Standards Of Review & Lack Thereof 26
2.3 An Imperfect System Arises 29
2.4 Neighborhood Dissatisfaction 33
2.5 Development Community Frustrations 37
2.6 Local Judicial Challenges 42
2.7 Due Process & The Importance Of Administrative Clarity 44

3. OVERHAULING THE CITY'S ZONING & PLANNING 46

3.1 The Zoning Code Commission 48
3.2 Rationalizing The Administrative Process 51
3.3 Strengthening Municipal Planning 55
3.4 The New Code 63

3.4.1 Strengthened Hardship Language 64
3.4.2 Civic Design Review 66
3.4.3 Registered Community Organizations 67

3.5 "Our Voice Has To Be Heard" 71
3.6 RCOs Today 78

4. DOES THE NEW CODE ACHIEVE ITS GOALS? 83

4.1 Zoning Relief Continues To Be Central To The Development Process 85
4.2 Community Input Is Confined To Advisory Zoning Permit Reviews 94

4.3 Community Divisions Around Development Are Built Into The System 102
4.4 RCOs Have A Difficult Relationship With Their Procedural Responsibilities 111
4.5 The ZBA Continues To Lack A Consistent Approach To Zoning Relief 119

5. LESSONS LEARNED & RECOMMENDATIONS 131

6. OPPORTUNITIES FOR FURTHER RESEARCH 139

7. THE PROMISE & PITFALLS OF PLANNING IN A CHANGING CITY 143

BIBLIOGRAPHY 147

1 A CHANGING CITY & A CHANGING APPROACH TO DEVELOPMENT

It's a challenging thing, I think, for somebody who believes in progressive zoning and planning to be able to convey why what we think is right is a good thing, for someone's own interest. It's an important thing we need to do better on.

Alex Feldman, U3 Advisors

In 2007, Philadelphians voted overwhelmingly to support the commencement of a major initiative to rewrite the city's outdated and insufficient zoning code. An amalgamation of almost 50 years of stop-gap overlays and amendments, the code had become a major barrier to the smooth operation of the city's development permitting process. Without a functioning code or recent plan, the city was being built through variances and rezonings—a status quo that relied on political connections, community appeasement, and friendly Zoning Board of Adjustment chairmen and which invited skepticism about the fairness and consistency of the land use administrative system. An alliance of planners, builders, and lawyers

sought to make by-right development, previously rare, the new normal.

Complicating this drive towards technocracy was the resistance of community groups empowered by the ad hoc system of development review that had grown up to replace firm standards of review at the ZBA. Variance review based on political support created an expectation of community input, and a drive to repair the code that would have eliminated the constant stream of zoning relief cases that allowed savvy and resistant communities extensive opportunities to extract benefits from developers. Communities were wary of the very concept of development built with "off-the-shelf" permits (i.e. needing no variances or special exceptions) and objected to what many felt was a diminishment of democratic power.

In order to reconcile these two sides, the reformers had to somehow convince the city that development could be a good thing, if done right. Good development would, in some way, reflect not only the developer's visions and the dictates of the market, but would also embody the public's priorities and the community's control.

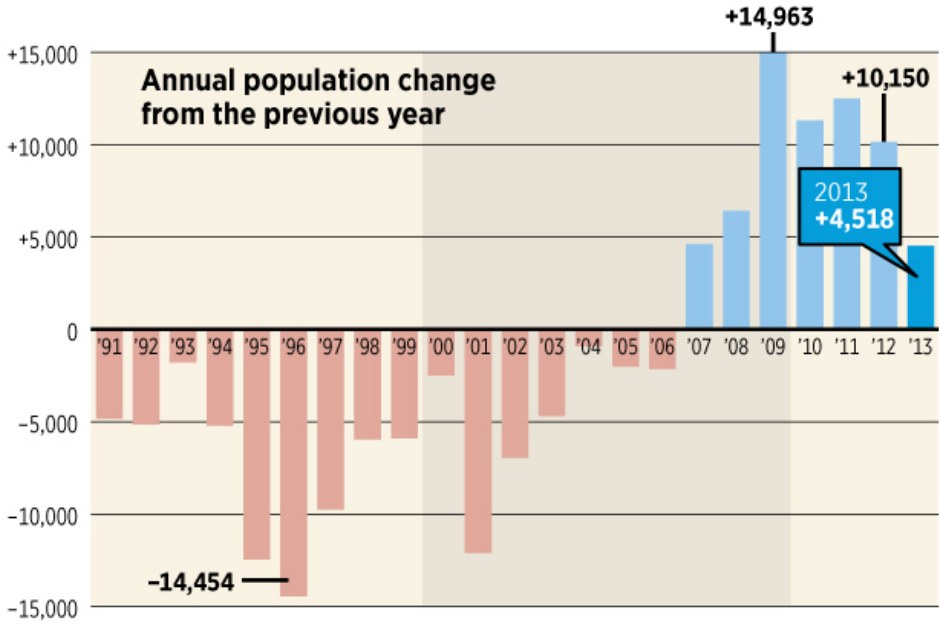
This paper will examine the approach that the framers of Philadelphia's new zoning code took towards creating a role for community input in development, without opening up the system to the reliance of zoning relief that had been central to community control in the past. I perform an in-depth examination of the role of public input in applications for zoning relief before, during, and after the reform of the zoning code in order to understand how the framers of the new code expected to shift the city's attitudes towards by-right development and away from a variance-based project review model. Using documentation of the zoning code reform process, reports on the city's zoning and planning infrastructure, and interviews with code users and reformers, I explore how this problem was conceptualized in a local context and how it influenced the form that zoning administration takes today, nearly three years after the new code was activated.

The reformers of the zoning code therefore had to decide how the community could play a real role in the new, more rational process of zoning administration. Should the public be maintained as part of the process to approve a variance, or could the city be presented with an alternative model that satisfied both property owners and citizens? This is a familiar story in planning, and this paper seeks to understand how it played out in the specific context of Philadelphia, a rapidly changing city that tried to radically and abruptly remake its planning and zoning landscape.

Now is a particularly important time for the city of Philadelphia to examine the health of their zoning and planning infrastructure. The city has seen a significant shift in the state of its real estate market in the last decade and the effectiveness and equity of the system for planning, ne-

gotiating, and approving new projects has become a much more relevant subject than it was when the zoning code was first being reconsidered in 2007. Though the new code is less than three years old, it has been the guiding document for a serious building boom, especially in the residential neighborhoods that surround Center City and University City.

For many decades, Philadelphia was a poster child of urban contraction. Between 1950 and 2000, the city lost more than 25% of its population; jobs and industries fled the city to the suburbs, leaving acres of vacant lots and impoverished communities with little hope for future revitalization. While some neighborhoods were buoyed by institutions like the city's universities and hospitals, pessimism about the city's prospects reigned. This was reflected in a general neglect of the city's planning infrastructure.



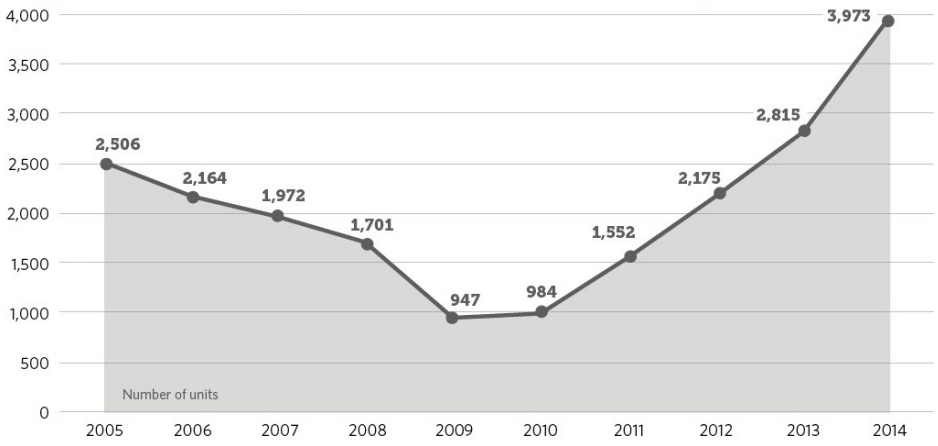
Annual change in Philadelphia's population. Graph from Philly.com

Now, the picture is more complicated. In 2007, the decline slowed, and in 2011 the city registered its first increase in population since 1950. The population has increased every year since. Some of the largest gains have come from new immigrants from Asia and Latin America, growth in the African American population, and a growing stream of transplants from cities like Washington, D.C. and New York attracted by Philadelphia's low living costs.[1] The increase is particularly marked amongst people 20 to 34 years old; no other city saw such a dramatic rise in the share of young adults in the population. Almost two thirds of the newcomers to the city are young adults, and these millennials tend to be whiter and more educated than the existing population.[2] On the other hand, job

1 Pew Charitable Trusts, *Philadelphia 2015: The State of the City*.
2 Ibid.

growth has continued to be extremely low (far below national trends), and the poverty rate, while falling, is the highest of the nation's ten largest cities. The income disparity between rich and poor is very high, and has been exacerbated by these demographic changes.

These dramatic changes to the city have manifested clearly in real estate trends. In 2009, the number of building permits issued finally began to rise. 2014 saw the issuance of more permits for new residential development than in any year since at least 1990.[3] Many of these new units are rentals, and the city has seen a rapid decline in the percentage of residents that own their homes (historically, the homeownership rate in Philadelphia was among the highest of the nation's large cities). The neighborhoods within and directly adjacent to Center City in particular have been the recipients of large numbers of young adults, and the growing population has spread development and change into adjacent neighborhoods.[4]



Building permits issued for new residential units in Philadelphia. Graph from Pew Charitable Trusts

For the new millennial residents, an infusion of new energy and a momentum towards change look like shifts in the right direction. Ready for a shift from the insular and negative mindset that characterized Philadelphians past ideas of its urban fortunes, these younger adults and others with similar hopes for the city's future have begun making their presence known. This comes not simply in a growth in developers, retailers, media sources, and employers catering to their preferences but also in their growing engagement with the political process. A tradition of local and interest-group focused governance has been challenged recently by an insurgent movement to create a more technocratic, rational, and streamlined approach to creating the urban spaces which befit a modern and progressive city. A remarkable growth in interest in planning and zoning

3 Ibid.
4 Eichel, *Millennials in Philadelphia*.

issues has resulted. "The city's changed tremendously over 8 years too, and for the better we think. And we hope that it will continue to change in a positive way," said Alex Feldman, a young executive at a local development and planning firm who recently became a political committeeman for his South Philadelphia Democratic ward. "There's always this fear that we could reverse all the things we've done, so I'm really excited to see young people say, 'We care about these issues around zoning and planning.'"[5]

However, the dramatic demographic and spatial shifts have not come without conflict. Long-time residents have eyed many of these changes to the dynamics of the city with suspicion or even alarm. Particularly in the neighborhoods near Center City where millennial immigration has rapidly changed the landscape, new development has stirred up anxiety amongst long-time residents and has created tensions within these communities. The appearance of residential and commercial development which caters explicitly to newcomers can represent a profound cultural shift in a neighborhood, and existing residents have approached these projects as representative of the changes going on around them. The friction between old and new is exacerbated by two different views of urban life and relationships with the history of the city: while many millennials support things like density, car-free transportation, and nightlife, existing residents are suspicious of these amenities as symbolic of a disrespect for their long tenure, neighborhood stability, and way of life.

For the young reformers like Feldman, these attitudes are understandable but frustrating. Development is not something to be feared but something that helps provide the concrete material for a better city. "If you live in a community a long time that's been disinvested thoroughly for a long time and it's getting invested in, there's a sense of like, I need to hold on to what I have because I've been holding on to it for so long. It was going one way and now it's going the other way, and for me to give up more is...it's definitely heartbreaking," he said. But he, like many others, is adamant that these changes can create a better city for everyone. "I can understand it but I also don't think we should be stopping a fight for better zoning because of dated practices that don't necessarily make sense for a 21st century city."

Some city policies have, perhaps unintentionally, exacerbated hesitations about new development projects. In particular, an attempt to fix the city's long-dysfunctional property tax system was particularly poorly executed and poorly timed, coming in 2013 just as development activity was heating up. Called the Actual Value Initiative, this policy caused significant tax increases in many of the neighborhoods most wary of gentrification and demographic change—causing homeowners to draw an explic-

5 Feldman, Alex. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

it connection between new development and higher taxes that is often overstated. In addition, the city's very generous ten-year property tax abatement is seen as a municipal give-away to a development community not particularly interested in the well-being of the city's less wealthy neighborhoods.

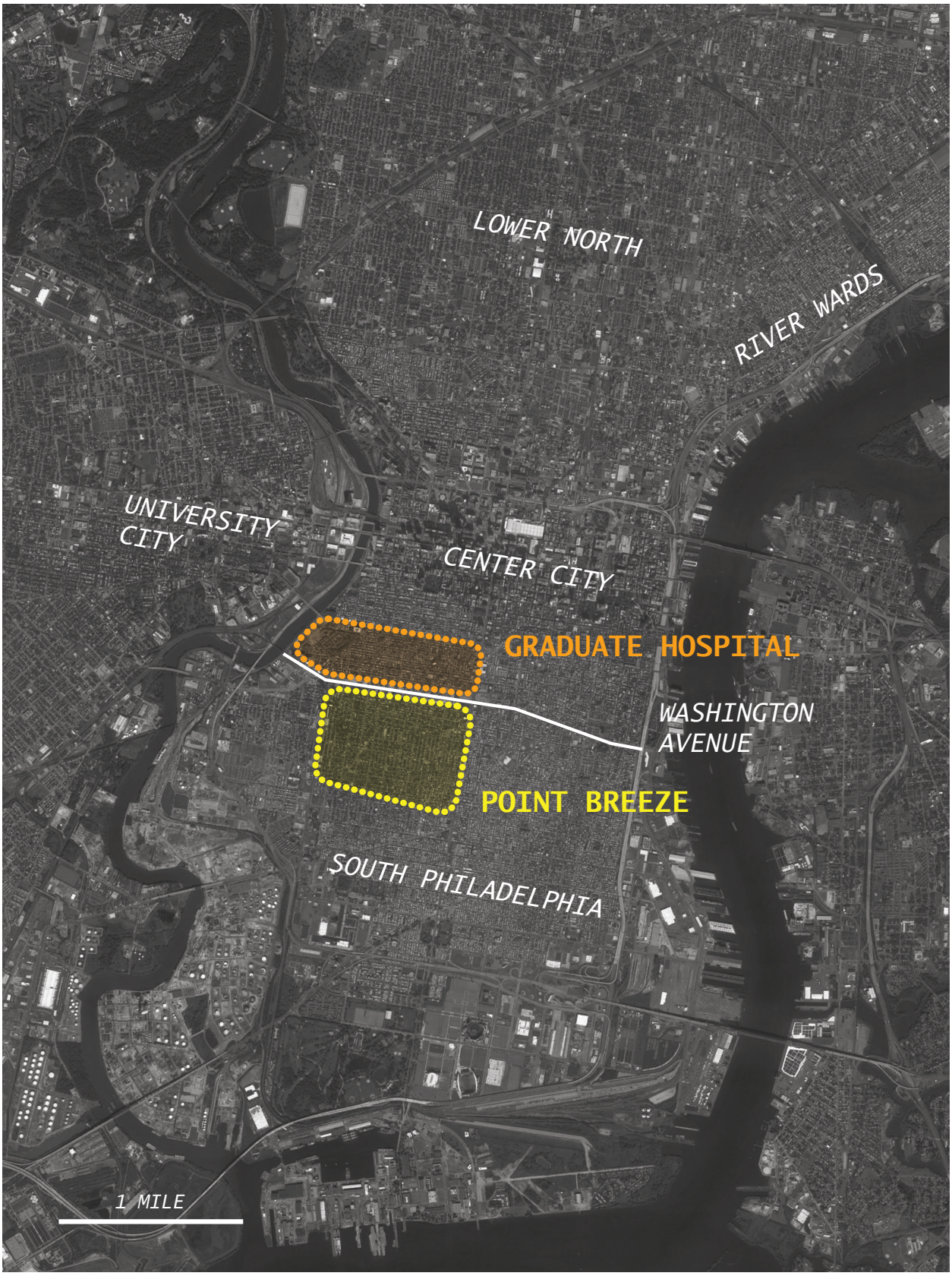
As a result, real estate projects have become a battleground: between young and old, black and white, new and long-term, renters and homeowners, walkers and parkers, brunchers and workers. It is into these simmering, and sometimes explosive, conflicts that the zoning and planning reformers waded, with a well-meaning desire to create a regime that could alleviate some of these tensions while at the same time making development simpler and easier. As these kinds of reforms often do, the new measures in the zoning code to smooth out the controversy of development spoke in the languages of both developer and neighborhood.

At stake in these efforts is the city's ability to maintain a remarkable momentum towards growth. Can the city really convince a skeptical public that development without direct community control can be good for everyone? If these reforms could set the city on a sustainable and mutually agreeable path towards real, lasting change for the better, if the reformers could create a process that had legitimacy for new as well as old, they would really achieve something remarkable. The importance of these efforts, clear even in the beginning, has become glaringly obvious as the growth has accelerated over the past few years.

But did an emphasis on municipal planning and the formalization of community input in certain zoning decisions help reduce the reliance on zoning relief while improving on the methods of community input in development that had flourished as a result of the previous frequency of variance requests? This is the question this paper seeks to address. I will first examine the system of development which existed for many years in the city, and explore how its failings set the tone for reform efforts. I will then detail the approach taken by the reformers to repairing these failings and how their final product was a result of their ideologies and their constraints. I will describe the reformed process and the reaction of community members to it. Then, I analyze if the system that resulted, which maintains community review over zoning relief applications while at the same time trying to eliminate the need for relief, has created a more efficient, predictable, and meaningful process for property owners or community members seeing development in their neighborhoods. Finally, I will offer suggestions based on my analysis that could be used to improve the process.

I use two adjacent neighborhoods, Graduate Hospital and Point Breeze, as representatives of larger trends within the city. Many of my examples come from these two neighborhoods, and many of my interviewees

Opposite: An illustration of the rough boundaries of Graduate Hospital and Point Breeze neighborhoods, within the context of Philadelphia.


LOWER NORTH
RIVER WARDS
UNIVERSITY CITY
CENTER CITY
GRADUATE HOSPITAL
WASHINGTON AVENUE
POINT BREEZE
SOUTH PHILADELPHIA
1 MILE

live or work in one of them. These neighborhoods share the common history of white flight and disinvestment that defines many of the city's neighborhoods; separated only by the industrial Washington Avenue, until recently they were very similar, spatially and demographically, to each other, and were often considered part of the same historically African-American landscape of western South Philadelphia. However, in the last 15 years, Graduate Hospital saw a rapid transformation as it became the home of a more affluent white population attracted to its proximity to upper-class Rittenhouse Square. New construction has filled in many vacant lots and new businesses have sprung up, while housing prices have risen. Meanwhile, across Washington Avenue, a fear of similar neighborhood change has arisen as gentrification continues to spread outward from Center City. At the heart of the current situation is development and each neighborhood's approach towards it: the tensions within these neighborhoods, as well as their continued dialectic with each other, serve as excellent lenses through which to examine how these issues play out on the ground.

I theorize that confining the community's role to an advisory review of variances has in reality undermined rather than strengthened the goals of greater efficiency and more meaningful neighborhood input in development permitting. Despite the fact that ad hoc community input in zoning relief had arisen unintentionally and was widely felt to be unsatisfying and inefficient, community review over variance applications was strengthened. As a result, frictions of the past were built into the process, rather than redirected to more productive channels. Reformers and other officials hoped that municipal planning and planners could replace the desire for seriatim local review of projects, but they underestimated the depth of community feelings about real estate and development. This, paired with overly optimistic visions of the reduction in the need for zoning relief after reform, meant that the focus on process reforms during the code rewrite failed to create a scheme for zoning administration which is better—for property owners or for neighbors--than what existed before.

2 A BROKEN SYSTEM IN NEED OF REFORMS

The Zoning Board at the time was very smart—they knew the code wasn't working and they needed to get these things done. And most of the time if the communities supported these things, you got a good development. Not the greatest way to get to there, but you got there.

Peter Kelsen, Blank Rome LLP

The dynamics of Philadelphia's development approval system prior to reform exacerbated local conflict over development. A lack of any kind of planning or zoning authority created and entrenched deep dysfunctions that made the very idea of rationally guided and mutually beneficial development seem impossibly foreign. The historic centrality of the variance process created animosities between developers, communities, politicians, and municipal authorities that made the development process a zero-sum game. While community engagement was encouraged, it had an uncertain influence on the ultimate outcome because of the excessive amount of discretion given to the Zoning Board of Adjustment over vari-

ance applications. Developers found the process frustrating, with no set timeline or procedure, in addition to the possibility of endless appeal of ZBA decisions. The respect for the procedural due process rights of users of the code was questionable at best.

In essence, almost all parties understood that an over-reliance on the variance process had created an unsustainable situation, and something had to change. The mindset of the zoning code reformers was embedded in this dysfunction, and despite their idealism they were constrained by the history of the process. This chapter will examine the system prior to reform, focusing on the dissatisfaction that it caused and the resulting pressures on reform.

2.1 PLANNING THROUGH VARIANCES

In Philadelphia, development was characterized by a lack of real planning and zoning authority. The city had not had a significant zoning code rewrite since 1962, and the last major comprehensive planning document was written in 1960. The Philadelphia City Planning Commission had little respect and few meaningful responsibilities. As a result, the code and the plan were wildly outdated and unfit to guide development in the modern city. Development was generally slow in the intervening decades, but what projects that did happen according to the code were often low quality. Most projects, however, happened despite the zoning code, rather than according to it.

Zoning is not necessarily immutable; it can be adjusted through a legislative change to the code or to the map, or it can be tweaked through the actions of a board. When projects were presented for planning approval, they were usually a number of "refusals," by the Department of Licensing and Inspections, which indicated non-conformities of the zoning code. The way around these refusals were appeals to the Zoning Board of Adjustment for zoning variances that would allow the proposed project to proceed. As a result of the consistency of refusals, the ZBA was extremely busy. Ian Litwin, the Central District Planner for the Philadelphia City Planning Commission (the executive office in charge of the city's planning agenda), recognized, like many did, the abnormal frequency of ZBA hearings: "Because the zoning was so bad before, everything was going to the Zoning Board."[1]

As the expectation of appearing before the ZBA to ask for variances became normalized as part of the development process, the ZBA gained an enormous amount of power over the development review process. The fate of most developments was determined by the opinions of the ZBA members, often after a single hearing. According to the City of Philadel-

1 Litwin, Ian. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

phia's website, the Zoning Board of Adjustment hears and decides appeals in zoning matters, considers special exceptions, and grants variances. In a 1973 article in the Columbia Journal of Law and Social Problems, Frank Politano described a zoning board as "an independent administrative tribunal with quasi-judicial and quasi-legislative powers" whose function is to "adjust general rules of zoning and safety when unique characteristics of land and buildings render application of such general rules inappropriate."[2]

In Philadelphia, the ZBA consists of six (later amended to five) members appointed by the Mayor, who remain members until dismissed by him. It is housed in the Department of Licensing and Inspections, which enforces the city's codes, including the zoning code, and issues building permits. While some members of the ZBA are attorneys, there is no requirement that all board members be familiar with the legal basis of land use and zoning before their appointment—though most are active in some way in city politics or government.

Everyone involved in planning and development recognized the poor state of zoning and planning in Philadelphia. The situation under the old code was described in a report to City Council written one year after the adoption of 2012 code: "Philadelphia's zoning code process has stood apart from those of other cities because of the city's extraordinarily high number and variety of ZBA cases resulting from the code's confusing and outdated rules, including those concerning the criteria for approving variances and special exceptions."[3] An article in PlanPhilly from 2007 regarding the ZBA illustrated the uniqueness of the city's situation: "The board hears 75 to 80 cases each week, including those continued from previous weeks. In New York City, a similar committee meets 35 times each year – three times most months - and hears 23 or 24 cases each time." [4]

Peter Kelsen, a respected land use attorney at Blank Rome Associates, has been representing property owners and developers for many years, and had firsthand experience with this problematic situation: "Virtually everything, except if you were in a very unique district, made you go to the Zoning Board. It was archaic. I would say that I was at the Zoning Board at least twice a week, forever. And for things that made not a lot of sense."[5]

Projects approved through a variance process can request a wide variety

2 Politano, "Community Participation and Reform of the Zoning Process in New York City."

3 Greenberger et al., One-Year Zoning Code Review: A Report to City Council.

4 Gates, "ZBA Boss Defends Caseload Numbers."

5 Kelsen, Peter. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

of reliefs from zoning. Both use and dimensional variances were allowed in Philadelphia, which meant that variances could afford significant departure from the zoning code or map. Variances have an interesting and somewhat uncomfortable position within the technocratic ideals of zoning as a system of land use control, and, for as long as it has existed, the variance has been under scrutiny. In the textbook *Planning and Control of Land Development*, Daniel Mandelker defines a variance as "an administratively authorized departure from the zoning ordinance, granted in cases of unique and individual hardship, in which a strict application of the terms of the ordinance would be unconstitutional."[6] In other words, a variance is legal permission to deviate from a zoning designation which was imposed, technically, through the democratic process.

The ability to retain some flexibility in the application of zoning is essential to its legal defensibility, especially in a city like Philadelphia where much of the city was built before the existence of zoning and where much of the built environment is non-conforming and somewhat irregular. Too much flexibility, however, undermines the very purpose of planning by subverting the agreed-upon goals for urban development and growth. Because of the lack of democratic accountability and legislative authority invested in this board, purely discretionary decisions to adjust the requirements of zoning would be inappropriate. For this reason, the flexibility afforded by the variance tool is theoretically bounded by concrete standards of review to evaluate if a variance is truly warranted. Politano notes that standards of review are essential to govern the exercise of the significant powers delegated to a purely administrative board. Variance approvals are therefore almost always subject to a number of strict criteria.

On the other hand, as Politano identified, the desire for flexibility in the application of zoning can be difficult to resist. The need to give these boards standards that allow them the ability to "reconcile inequities resulting from their rigid application to diverse and unique plots of land" had led many legislatures to grant their boards a significant amount of discretion. This, in turn, had led many boards to push the flexibility afforded them even farther than intended: "Boards controlled by such general standards have often used them so flexibly as effectively to be governed by no standards at all."[7]

This was certainly the situation in Philadelphia. The Philadelphia municipal code left the ZBA with substantial ability to interpret, or ignore, fairly unspecific standards for granting variances. Before the city's zoning code was rewritten, the municipal code stated:

---

6 Mandelker et al., *Planning and Control of Land Development*.

7 Politano, "Community Participation and Reform of the Zoning Process in New York City."

The Zoning Board of Adjustment shall consider the following criteria in granting a variance …:

a. That because of the particular physical surrounding, shape, or topographical conditions of the specific structure or land involved, a literal enforcement of the provisions of this Title would result in unnecessary hardship;
b. That the conditions which the appeal for a variance is based are unique to the property for which the variance is sought;
c. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property;
d. That the special conditions or circumstances forming the basis for the variance did not result from the actions of the applicant;
e. That the grant of the variance will not substantially increase congestion in the public streets;
f. That the grant of the variance will not increase the danger of fire, or otherwise endanger the public safety;
g. That the grant of the variance will not overcrowd the land or create an undue concentration of population;
h. That the grant of the variance will not impair an adequate supply of light and air to adjacent property;
i. That the grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park or other public facilities;
j. That the grant of the variance will not adversely affect the public health, safety or general welfare;
k. That the grant of the variance will be in harmony with the spirit and purpose of this Title; and
l. That the grant of the variance will not adversely affect in a substantial manner any area redevelopment plan approved by City Council or the Comprehensive Plan for the City approved by the City Planning Commission.[8]

The most important aspect of this text is the introductory phrase: "The Zoning Board of Adjustment shall *consider* the following criteria…" This phrase leaves the prerogative for deciding on the relative importance of these factors to the members of the ZBA. The flexibility in interpreting the importance of these standards would have important implications of the workings of the city's ZBA, as will be discussed.

Though they were not binding, there are general provisions about what the variance should be based on in this text: applicants should show the existence of "unnecessary hardship" to their property based on the application of the code, and this hardship should be "unique to property." However, there is no guidance provided on what exactly these terms mean and how they can be shown. Next, there is a requirement that the

8 Anastasio Law Firm, "When Does the ZBA Grant a Variance?"

variance have minimal negative impact on its surroundings, though the level at which impact becomes "substantial" or "undue" is unspecified. As a result of the similarity of variance statutes around the nation, a body of case law has grown around the area of variances which guides the interpretation of the specific statutes in these codes, and the interpretation of term terms such as "hardship, "unique," and "substantial" has been subject to a great deal of legal and professional interpretation since zoning codes were first created. As Mandelker states, many of the requirements for variances "are the result of judicial interpretation, not explicit statutory language."[9]

2.2 STANDARDS OF REVIEW & LACK THEREOF

Lack of general clarity often means that zoning boards feel they can dispense with these standards. But these standards are central to the administration of zoning. Therefore in order to understand them better it is helpful to take a brief detour into case law. Perhaps the most helpful case in establishing the basics of variance law in regards to use variances is *Puritan-Greenfield Improvement Ass'n v. Leo*, decided in the Michigan Court of Appeals in 1967. John Leo requested a variance for a parcel zoned for residential use to be used as a dental clinic and for a number of deviances from requirements regarding parking. Mr. Leo argued that the presence of a gas station adjacent to his property had made its use as a residential lot untenable. The Detroit board of zoning appeals agreed with his reasoning and granted the requested variances; Puritan-Greenfield Improvement Association appealed the decision to the circuit court, which found that Mr. Leo had not done enough to demonstrate a true hardship and reversed the appeals board's decision. Mr. Leo then appealed the case to the Court of Appeals.

In issuing its judgment on the matter, the Court of Appeals made an attempt to sort through the existing precedents regarding the standards for evaluating variances. They trace the tradition back to the first zoning enabling legislation, which, like most modern codes, put in place a standard of "unnecessary hardship" for granting variances. They find that most courts and lawyers interpret this standard so that:

> A property owner seeking a variance on the ground of 'unnecessary hardship' must show credible proof that the property will not yield a reasonable return if used only for a purpose allowed by the ordinance or must establish that the zoning gives rise to hardship amounting to virtual confiscation or the disadvantage must be so great as to deprive the owner of all reasonable use of the property.[10]

---

9 Mandelker et al., *Planning and Control of Land Development.*

10 Puritan-Greenfield Improvement Ass'n v. Leo. 1967, 153 N.W.2d. Michigan Court of Appeals.

They state that this interpretation of the variance is based in the generally accepted idea that the variance exists to be a legal relief valve for zoning ordinances which prevents constitutional challenges based on the deprivation of property rights. When the application of zoning could lead to a takings challenge, a variance allows the municipality to waive the potentially confiscatory policy in the particular instance. However, this implies that asking for a variance should require applicants to prove that the zoning as applied to their property is tantamount to a regulatory taking. No "reasonable return" is generally accepted to be a high standard, and, as such, variances should theoretically be rare.

There is also agreement among previous interpreters of variance law, the court continues, that an applicant must also show that the "hardship must be unique or peculiar to the property for which the variance is sought." In other words, the applicant must not simply be complaining of the mischaracterization of the area or of the inappropriateness of the zoning designation. If the problem is poor zoning, not a bad parcel, this should be remedied by the proper legislative authority: "It is not for the board in these circumstances to bestow liberties upon one single member of this group of property holders. The legislature must be the body to make decisions of this sort even in cases where the most severe hardship can be shown."[11]

Ultimately, the Court of Appeals overturned the variance approval as it found that the board of appeals has approved the variance without asking Mr. Leo to make any attempt to prove objectively the hardship to his property. Without even asking for a presentation of evidence based on property values, the board had dispensed with the legally required evaluation of "reasonable return" and had thus acted outside of their delegated authority. Without objective standards, zoning administration could undermine the rule of law. The court continues: "It can readily be seen that unless the power of the board of zoning appeals to grant a use variance is defined by objective standards, the appeal board could (and we do not in any sense mean to suggest this would be deliberate) rezone an entire neighborhood—a lot or two lots at a time."[12]

Despite the emphasis that *Puritan-Greenfield Improvement Ass'n v. Leo* places on the objective evaluation of variance requests, these strict standards have historically been skirted by many municipalities, including Philadelphia. The tension between strict standards and flexible discretion in the administration of zoning turns out to be more difficult to resolve than the courts would hope. However, there are a number of practical barriers to applying the strict legal standards for review. One of the most significant, Politano notes, is that "it is virtually impossible to define 'reasonable return,' or even to set general standards for determina-

11 Ibid.
12 Ibid.

tion of such income."[13] This is a well-discussed problem encountered by legal challengers of the validity of any particular zoning determination. As difficult as it is to determine in the "takings" arena what counts as a "reasonable return," is it just as difficult for variance review.[14]

Because of the ambiguity of many of these theoretically objective standards, zoning boards often rely on a subjective weighting of the merits of the cases in front of them against their understanding of the value that the community places on the upholding of the zoning code. Politano asserts that:

> "While zoning boards were originally conceived as a device to avoid the constitutional difficulties of deprivation of property without due process, most commentators now view them as necessary to alleviate situations where harm to a particular individual outweighs the community interest in strict adherence to the relevant ordinance."[15]

When the rigidity of zoning and planning ceases to be underpinned by a sense of democratic legitimacy, it can become very easy to convince a zoning board that the variance is deserved.

This was the problem that arose in Philadelphia. Because the zoning code and comprehensive plan were wildly outdated, the sheer volume of cases being seen by the Zoning Board of Adjustment became its own argument for a flexible interpretation of review standards. There was a tacit understanding between participants in the process that the board would assume the existence of unique hardship and would not strictly require that applicant prove it in a hearing. Litwin described the board's unique perspective on the legal standing for this view: "We had this zoning code that was so dysfunctional that anything was deemed a hardship, because this zoning code was so hard to work with."

A *Philadelphia Magazine* article from 2007 describes an (astonishing) scene at a ZBA hearing that illustrates the chairman's attitudes towards the formal legal standards of review:

> "It's my understanding that a variance is for hardships," the woman says timidly into the microphone across from Auspitz. It's a statement, by the way, that's basically true.
>
> "Don't go there," [former ZBA Chairman David] Auspitz says, lest she actually try to understand a zoning term at a zoning

13 Politano, "Community Participation and Reform of the Zoning Process in New York City."

14 In response, some courts have tried to significantly loosen the requirements for variances. See *Simplex Technologies v. Town of Newington* for an example in New Hampshire.

15 Ibid.

> hearing. "You've been given some bad information. Just stick to rats."[16]

2.3 AN IMPERFECT SYSTEM ARISES

With no hardship standard to use as an objective measure of the need for a variance, and no real expectation amongst parties that the zoning code was a legitimate guide for the city's development, the ZBA instead emphasized more subjective measures of a proposal's fitness for a community and impact on the "general welfare." In order to have some way to make a judgment on this subject, the board began to seek out the opinion of the local member of City Council, reasoning that this person could speak to the effect of the development on the character of the neighborhood and on its worthiness to be built.

This reflects the long-established tradition in the city of giving City Councilors near-absolute control over development in their district. Many people interviewed for this project emphasized the importance of a concept in Philadelphia municipal governance called "councilmanic prerogative." Jared Brey, a reporter for PlanPhilly who writes regularly about zoning and land use, described councilmanic prerogative: "When a district council member decides they want to support a piece of legislation and they have the ability push it through, it's very, very, very, very rare that the rest of the district council people will go against it."[17] In other words, council people tend to defer to each other regarding projects in their districts. As a result, for a legislative rezoning, the support of the local council person was paramount. This became to be true as well for projects before the ZBA.

Support from council people was often based on the subjective evaluation of the project, the feelings of vocal neighbors, and political factors. Lauren Vidas, currently the president of the South of South Neighborhood Association and formerly an aide to Mayor Michael Nutter, described this process:

> In each neighborhood you had your neighborhood group, and when a developer was seeking a variance before the ZBA on their project, a lot of times they'll go to the Councilmember and say, I'd like your support for this project, and a lot of times the Councilmember would say, what does the community organization think?[18]

As a result, a de facto zoning process developed in which developers would be expected to provide the councilperson some proof of the sup-

---

16 Philadelphia Magazine, "Power: King David."

17 Brey, Jared. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

18 Vidas, Lauren. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

port of the neighborhood for their project. Often the developer would be asked to meet with the community and make sure that there were no community concerns or oppositions to their project.

In this way, the community became a regular player in the review of variance requests. Developers that were experienced with the process knew that community input was key for the approval of their projects and so, as Ian Litwin put it, "developers who weren't stupid would meet with the neighborhood first." Without this step, a zoning application was likely to be "continued," or postponed for a later date, by the ZBA in order to give the applicant time to correct this mistake. According to Kelsen, this was an imperfect system, but it was necessary to keep any kind of functionality in the city's development realm: "The Zoning Board at the time was very smart—they knew the code wasn't working and they needed to get these things done. And most of the time if the communities supported these things, you got a good development. Not the greatest way to get to there, but you got there."

However, it is important to keep in mind that public input was never *formally* incorporated into the variance review process and always had a fairly loose connection to the actual outcome of the ZBA hearing. Rather, the community often served as a regulatory barrier between the developer and the ZBA; once he had cleared the public input hurdle and gained some evidence of local support, the ZBA would usually look favorably on his appeal. Between 2008 and 2012, when the old code was finally discarded, the yearly rate of variance approvals was never below 91%, and in 2011-2012 it was 94%.[19] Some people questioned the purpose of having a ZBA if approval was nearly guaranteed. This group included Natalie Shieh, the project manager for the commission created in 2007 to study the existing state of the city's zoning documents and create an improved code. She pointed at the easy-going culture of the ZBA, driven by certain past chairmen and emphasized by the legal establishment which began to promise wins to clients, as the root of many problems.[20]

However, according to Shieh, despite what the numbers may say about the overwhelming tendency of variances to be approved, participants—especially community members that were fighting against certain proposals—felt that the decisions in the ZBA hearing room were arbitrary and based on reasoning impossible to discern—or nonexistent. In the ZBA room, flexible standards towards variance requests ruled the day. Indeed, for almost every observer of the zoning process besides the members of the ZBA, this system seemed to seriously lack in professionalism, accountability, and predictability. Many were struck by the arbitrariness

19 Greenberger et al., *One-Year Zoning Code Review: A Report to City Council.*

20 Shieh, Natalie. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6. Shieh requested that no direct quotes be used in this paper.

of the decisions being made in the ZBA chamber.

Much of this arbitrariness seems to have resulted from the board members' tendency to take their weak objective mandate as an invitation for subjective judgment. The system clearly placed an enormous amount of power and prerogative on the members of the Zoning Board of Adjustment. For all of the welcomed input from the community, the decisions made at the ZBA were in large part the reactions of a group of political appointees to the particulars of each proposal. The 2007 *Philadelphia Magazine* article describes the consolidation of the city's planning apparatus into the chair of the ZBA: "Auspitz has, by default, become Philadelphia's top jack of all trades: part city planner, part chief architect, even part mayor. He isn't leaving a few fingerprints on the city—he is defining it, in every way imaginable." Instead of a robust or predictable system of land regulation in Philadelphia, the city "leaves so much control in the hands of 'good people' with thin CVs and a lot of power, development in Philly is more like Mayberry than Manhattan."[21]

Philadelphia's Zoning Board of Adjustment in 2014. Image by Maria Puchnikova, Philadelphia City Paper

As an appointed board with no particular professional expertise in zoning, planning or land use, Philadelphia's ZBA was often criticized for not fairly evaluating the often technical variance requests before it. This is a familiar charge for zoning boards around the country and throughout their history as an institution. Frank Politano also described this complaint being lobbed at New York's zoning board: "Political considerations often play a decisive role in the selection of board members, and as a result most of them are not trained in municipal planning, zoning law, or any discipline relevant to their duties." He believes they may therefore make decisions based on factors with little legal basis—"likely to be

21 Philadelphia Magazine, "Power: King David."

impressed with the 'practical' business effects of relief rather than with technical legal limitations, the zoning resolution, its social consequences, or its planning implications."[22]

He also notes that they rarely see themselves as impartial and often feel that their role is being "brokers for the individual citizen." This is precisely the mindset of Chairman Auspitz; the *Philadelphia Magazine* article goes on to describe the relish that the former chairman took in being the "broker" between parties.[23] The variance hearing was not a discussion about the validity of the application but as an opportunity for the chair to work out what was essentially a community benefit agreement between the developer and the neighbors—in whose interests he saw himself working.

The author associates Auspitz's approach with the "deal-making" which "defines Philly politics, often for the worse."[24] For many years and continuing today, observers of Philadelphia's municipal government have lobbed the charge of "pay to play" politics at the city's leaders, and the ZBA was never an exception. Similar charges of political dealing, favoritism, bias, and underhanded decision-making have often followed zoning boards; the assumption that variances were being given as favors for political support has dogged the institution of the Zoning Board since its creation. The monetary gains associated for many developers based on a favorable shift in zoning on their site can be a powerful carrot for a politician seeking support.

The lack of consistent and easily applicable standards for variance review has historically reinforced this temptation. Richard Babcock, in his classic book on the political uses of zoning *The Zoning Game*, discussed this tendency of politicians to dispense variances with discretion that can border on the illegal. He puts it thusly: "Although the zoning variance remains in most of our zoning ordinances, its crude use to grant and deny favors was subjected to substantial criticism, not only from the courts but from the professional writers as well. The indictment has been that, far from being a safety valve, the variance is a handy gimmick to permit 'leakage' from the certainty provided by the concept of districting."[25]

The desire to go beyond the "certainty" of zoning was quite evident in the Philadelphia ZBA. Natalie Shieh emphasized this aspect of the ZBA's administration as particularly problematic. In her opinion, in their desire to be brokers of their preferred benefits agreements, chairs like Auspitz had made much of the discussion in the hearing room about issues that

22 Politano, "Community Participation and Reform of the Zoning Process in New York City."
23 Philadelphia Magazine, "Power: King David."
24 Ibid.
25 Babcock, *The Zoning Game*.

had no place being discussed in a variance hearing. Often, these were characterized by only a bare relationship to zoning issues: the article recounts Auspitz becoming emotional when telling a story about his childhood to explain his seemingly incongruous obsession with inclusion of air conditioning in new developments.[26]

Shieh also described the political nature of much of the decision-making at the ZBA. The chair and members tended to consider community sentiment first and foremost, she said, but this was often less an objective analysis of evidence or testimony and more of an impressionistic reading of who was supporting and who was opposing a proposal. The political winds were likely to influence the decisions strongly, and in a city starved for growth and development these were often blowing towards variance approval. Essentially, zoning law and planning directives almost always took a backseat to gut feelings at the ZBA, with chair people like Auspitz and their political and local connections setting the priorities and agenda of the board.

2.4 NEIGHBORHOOD DISSATISFACTION

Community members that engaged in the process were mixed in their opinions of its ability to empower them and their opinions. While some civic leaders recognized that the dysfunction of the zoning system could be used as a lever to gain concessions from developers, it was clear that their concerns about development were not given real credence by the ZBA. This was especially true when a community stood in opposition to a particular development. Neighbors and civic leaders were often very frustrated by their seeming irrelevance to the decisions made by the ZBA and by the opaqueness of ZBA reasoning. Indeed, much of the complaint about the ZBA from community members was related to a constant disappointment with the outcomes of the process, rather than the process itself.

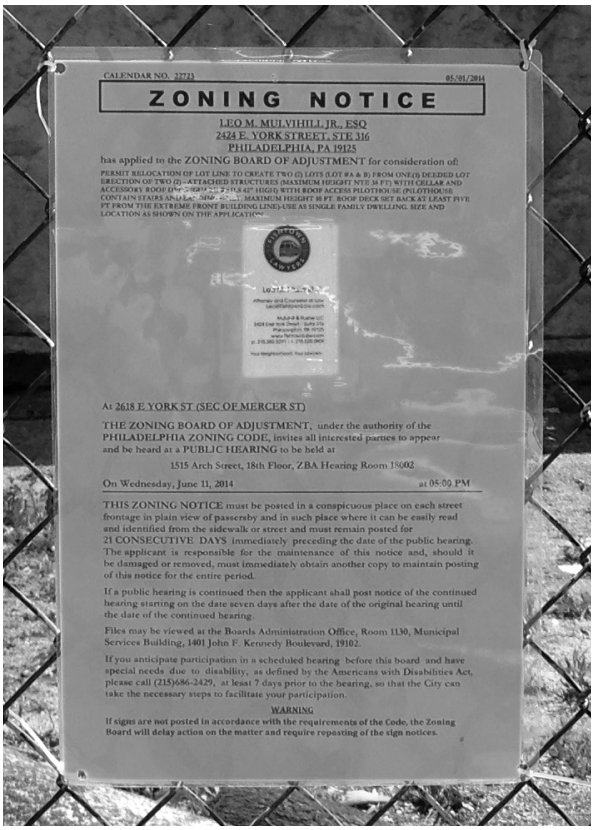
In a series of meeting organized by the Zoning Code Commission in 2010, members of the development community and civic organizations from around the city met with the Philadelphia chapters of the American Institute of Architects and the Penn Project for Civic Engagement to discuss "what forms public participation should take under the development review process in the new zoning code."[27] The report which resulted from this series of meetings, entitled "Common Ground for Building Our City: Developers, the Public and the Zoning Code," contains detailed records of the dozens of roundtable discussions during the process and is a treasure trove of information about how community leaders, civic associations, developers, planners, architects, and many others felt about the development process shortly before it was revamped.

26 Philadelphia Magazine, "Power: King David."
27 Sokoloff, Bolender, and Breitstein, *Common Ground.*

In one group of civic leaders, there was a general agreement about the positive aspects of the process:

> The project review process includes rules that, when complied with, pave the way for development improvement through community input...rules around variances force developers to have a conversation with the community...Zoning Board is obligated to listen to community input; better projects result when they pay attention to community interests.[28]

In addition, unlike a by-right development or a rezoning procedure, the variance process included legal requirements that insured that neighbors of projects would be made aware that something was changing in their community: property owners were required to post bright orange notices on their property with information about the date and time of the ZBA hearing. This meant that new projects could almost never go unnoticed.



CALENDAR NO. 22723 05/01/2014

ZONING NOTICE

LEO M. MULVIHILL JR., ESQ
2424 E. YORK STREET, STE 316
PHILADELPHIA, PA 19125

has applied to the ZONING BOARD OF ADJUSTMENT for consideration of:

PERMIT RELOCATION OF LOT LINE TO CREATE TWO (2) LOTS (LOT #A & B) FROM ONE(I) DEEDED LOT ERECTION OF TWO (2) ATTACHED STRUCTURES (MAXIMUM HEIGHT NTE 38 FT) WITH CELLAR AND ACCESSORY ROOF [illegible] 42" HIGH) WITH ROOF ACCESS PILOTHOUSE (PILOTHOUSE CONTAIN STAIRS AND [illegible] MAXIMUM HEIGHT 10 FT. ROOF DECK SET BACK AT LEAST FIVE FT FROM THE EXTREME FRONT BUILDING LINE) USE AS SINGLE FAMILY DWELLING SIZE AND LOCATION AS SHOWN ON THE APPLICATION

At 2618 E YORK ST (SEC OF MERCER ST)

THE ZONING BOARD OF ADJUSTMENT, under the authority of the PHILADELPHIA ZONING CODE, invites all interested parties to appear and be heard at a PUBLIC HEARING to be held at

1515 Arch Street, 18th Floor, ZBA Hearing Room 18002

On Wednesday, June 11, 2014 at 05:00 PM

THIS ZONING NOTICE must be posted in a conspicuous place on each street frontage in plain view of passersby and in such place where it can be easily read and identified from the sidewalk or street and must remain posted for 21 CONSECUTIVE DAYS immediately preceding the date of the public hearing. The applicant is responsible for the maintenance of this notice and, should it be damaged or removed, must immediately obtain another copy to maintain posting of this notice for the entire period.

If a public hearing is continued then the applicant shall post notice of the continued hearing starting on the date seven days after the date of the original hearing until the date of the continued hearing.

Files may be viewed at the Boards Administration Office, Room 1130, Municipal Services Building, 1401 John F. Kennedy Boulevard, 19102.

If you anticipate participation in a scheduled hearing before this board and have special needs due to disability, as defined by the Americans with Disabilities Act, please call (215)686-2429, at least 7 days prior to the hearing, so that the City can take the necessary steps to facilitate your participation.

WARNING

If signs are not posted in accordance with the requirements of the Code, the Zoning Board will delay action on the matter and require reposting of the sign notices.

A required hearing notice. Image from www.fishtownlaw.com

The prevalence of this process meant that communities were much more able to keep track of developments, and much more able to fight them. As a result, communities began to normalize this process, and began to expect a certain amount of engagement from developers. Natalie Shieh emphasized that the prevalence of the variance system created a firm expectation amongst community groups that they would always be invited

28 Ibid.

into the process. Groups with the means and ability, and which operated in neighborhoods that saw a certain level of development, often formed dedicated committees to deal with developers' requests to meet before going to the ZBA.

Savvy groups could use these meetings to push the developer to provide for community benefits or alter plans that they saw as unfit. Often the groups that took charge of this process were longstanding civic improvement or community development corporations with a deep commitment to the area and a laser-focus on local advocacy. These more sophisticated groups were able to advocate for their interests and could stand up to developers because they knew how to operate within the system to create enormous delays for developers that did not capitulate. They used the threats of lawsuits if they were not appeased or at least approached during the development process, and would act on these threats often. As Peter Kelsen recounted:

> Most community groups, for example in Center City, Logan Square—very astute, very well informed. And the developers that are applicants that practiced in those areas, and the attorneys that represented them, knew that you were not going to be able to go forward for a variance project...without having formalized meetings. Why? Because they would get notice of it, and then you had a bad day, because it was not going to be a cohesive process, and certainly not a collegial process.

However, considerable disparity existed amongst neighborhoods and amongst groups in terms of the ability to work within the de facto system to convince developers to listen to concerns and demands. For one, low income neighborhoods or neighborhoods with a great deal of disinvestment often did not have the human capital necessary to maintain formal neighborhood groups that could hold productive meetings with developers, even if developers were willing to do so. Many areas of the city had no group that took an explicit interest in development, and were therefore left less able to organize if development happened to appear. As such, a divide existed in the kind of development which got built in different communities based on the ability of the local groups. Peter Kelsen described it:

> The groups that are perhaps less sophisticated—or less well organized maybe is a better way to put it—really had no structured ability to focus on these things, or know about things. And there was a lot of bad zoning and bad development work that had negative impact on the community in certain areas because of the lack of information.

Another important factor was the approach that groups took to engaging with developers. While some, like experienced civic associations, often took on coordinating roles and met regularly about projects, others orga-

nized explicitly to oppose a particular development. Often groups would arise that consisted of near neighbors to a project that would oppose the developer no matter his or her attempts to appease their concerns. What's more, in some neighborhoods groups arose to explicitly oppose all development in the area. These groups had no interest in engaging with developers or with other groups that might suggest compromise.

Significant competition and, sometimes, distrust existed between groups in the same neighborhoods, as more than one could often claim to be the most reflective of community concerns. Groups existed on a spectrum of willing engagement with developers, creating an atmosphere which bred division even amongst neighbors about the amount of credence and leniency should be allowed to variance applicants. The Common Ground report summarizes some of this dynamic: "Surprisingly often, civic group leaders—particularly from groups proud of their hard-won expertise on zoning and planning issues—also complained about splinter or Johnny-come-lately groups asserting themselves late in the game as 'the voice of the neighborhood.'"[29] The complicated dynamics of community organizations within neighborhoods could easily problematize the notion of community input as a singular notion. With no mechanisms to resolve local conflict between neighbors or to move the process along despite local opposition, projects often became embroiled in long battles.

As a result of this inter-neighborhood disagreement, the role of the Council person in this process was often a significant point of contention. Unless someone even more powerful (a mayor or state-level politician) spoke up, the word of the council person was usually the final one regarding the approval of a project. Obviously, then, the favor of the local council person was absolutely key. Because of the power they exercised over the success or failure of projects, they often had to decide which group of constituents they felt it was in their best interest to support. While a community group or group of neighbors might feel supported or slighted based on the final outcome of any one project, there was a perennial complaint that some groups seemed to have louder advocates in the ZBA than others. As noted by a participant in the Common Ground meetings, "Council people sometimes have pet civic groups that don't represent a majority, but which they describe to the zoning board as representing the will of a neighborhood."[30]

The biggest complaints among citizens, however, arose because of the operation of the ZBA. Though the public was consulted, it seemed to many that the system was set up to minimize the community's ability to influence the decisions made at the ZBA. Developers that made it to the ZBA could claim at least some attempt to meet with and appease the community, even if some neighbors continued to vehemently oppose

29 Sokoloff, Bolender, and Breitstein, *Common Ground.*
30 Ibid.

the development. Variance requests were overwhelmingly approved by the ZBA and many projects were built, often over the objection of communities. As a result, many community members felt that they were not truly being heard. Shieh explained that participants in the process often felt that, no matter the quality of their reasoning in front of the ZBA or the firmness of their conviction that a project would negatively impact a community, the ZBA would still approve the variance request. Developers seemed always on the winning side, despite the time and attention the community paid to making sure their voice was heard against projects it opposed.

Participants felt that the ZBA was not an effective or optimal forum for their concerns to be heard and acknowledged. There was a disconnect between local objections and the hearing room, as the board was not structured in such a way that encouraged meaningful participation by citizens. This was summarized in the Common Ground report: "Some civic leaders commented that 'the scale is not balanced' when the ZBA is the regulatory forum, as many neighborhoods lack time, expertise and political influence, and they noted that meetings are held at inconvenient times for working people."[31]

In addition, the seeming lack of attention paid to sincere community objections led some citizens to claim that the ZBA was skirting the law. Because there was usually no discussion of the legally required standards of review, it seemed logical to communities that their concerns should have the greatest weight at the ZBA. Instead, the ZBA usually followed its own logic, which was likely to favor development over community objections. The Common Ground report notes that community leaders "commented that the ZBA's decisions sometimes seemed arbitrary and capricious."[32] It is clear that the ZBA often exacerbated this claim by failing to explain their reasoning for granting any particular variance. This point was touched on by almost every civic leader roundtable in the Common Ground process. One group commented: "Zoning board rulings seem arbitrary and inconsistent, a problem accentuated by lack of any rule requiring a written explanation of rationale for a ruling."[33]

2.5 DEVELOPMENT COMMUNITY FRUSTRATIONS

Developers, as well, had many complaints about zoning administration in Philadelphia. While many developers adjusted to the de facto requirements of development in the city, and often were given favorable results in the ZBA, they were largely unhappy with the process's length and animosity. Natalie Shieh described the existing status quo in the city as creating a very difficult environment for builders and developers because a

31 Ibid.
32 Ibid.
33 Ibid.

system had developed as a work-around for the broken and complicated zoning code that placed all the emphasis on the Zoning Board hearing.

The most commonly cited complaint was that of the lack of consistency in the process. Developers seeking to build would encounter very different levels and kinds of local zoning administration within different neighborhoods. As a result, they were constantly forced to recreate public input processes based on the kind of community that they encountered. According to Lauren Vidas, "for developers, I think, it was frustrating because it depended on what neighborhood you were in what the requirements were for the process. So it was a patchwork of processes across the city." The lack of commonly accepted practices, timelines, or formats for community engagement made development even more time- and labor-intensive than usual for urban settings. What's more, not every community had a group that could help facilitate this process, putting the developer in a difficult position, according to Peter Kelsen: "Many times, a developer couldn't find an organization that would be able to weigh in and it was a desert...there was never any certainty—you never knew who to go to, how to formalize the process."

This complexity was compounded by the informality of the process, which meant that the majority of the responsibility for initiating and managing it lay on the developers. Similarly to community groups, different developers took different approaches to these processes, with some, especially those with more experience working with capable community organizations, more likely to give effective notice to neighbors and groups. Peter Kelsen, echoing Vidas, calls the processes "very fragmented" and described the landscape as unproductively complicated for developers and for community groups: "It was very catch as catch can—some groups were very well organized, other groups were not, some developers were much, much better about informing, many were not...it became a situation where, and I use this term purposely, the playing field was really not level."

Despite the pressure on developers and landowners to coordinate the process, failing to run the process to communities' satisfaction could be fatal. As a result of their experience of seeing developers constantly receive permits despite strenuous objection, communities and neighbors were often extremely defensive about their prerogative to have communications directly with developers seeking to build. As Peter Kelsen described when interviewed, even projects that chose not to seek variances could be derailed if a community found out that it had not been notified before permits were issued:

> There were lots of projects that were by right projects that even slipped through the very sophisticated Center City type—very organized—community groups. In fact, there was a major project that was litigated for a number of years...a permit was issued—I'm

> not going to give you the whole song and dance. Ugly case. I was not involved. But the community got wind of it, and filed an appeal, and the project was completely derailed. And it was like, but for the fact that there was no outreach. It was a bad scene.

Another major sticking point for developers was the openness of the process to new challenges throughout the entire timeline of development. Even if a developer tried to do everything right by engaging an area's community groups, a developer often found that the ZBA hearing room was open to anyone who wished to testify. Often this meant near neighbors (or not-so-near neighbors) who were unhappy with the outcome of the more "official" meetings would voice loud dissatisfaction. The internal divisions of communities often made consensus unreasonable, and the use of the open ZBA hearing to discuss the value of a project meant that all sides could speak their peace despite their level of engagement in the proceeding process. This, as well, could derail the process by instilling doubt at the ZBA about the validity of the community support. Peter Kelsen described this situation:

> A community organization that was organized, that represented the constituency or demographic—you met with them, and you thought you had an understanding, and then all of the sudden a rump group would form...and fight the project because they had a different agenda. So the old rules didn't require that rump group to participate within the confines of the formalized process. It was chaos. Frequently people would go to the Zoning Board, ask to have their case heard, and all of the sudden people would show up. You had no idea. You had to get it continued, had to have further meetings. [It] delayed projects—actually derailed a lot of projects. It was not good.

A participant at Common Ground echoed this sentiment: "A few neighbors can de-rail a project, even if a developer has done much groundwork and gathered stakeholder and civic group support."[34]

As a result, developers were acutely aware that they could never be sure that the group that they were working with had general support in the community, or if some other group could potentially mobilize fierce opposition after the fact. Many participants in the Common Ground series of meetings noted that it was very difficult to identify the "community voice": one person asked, "Is it civic groups? Individuals? Councilpersons?"[35]

Even a positive ZBA decision did not mean that a developer was in the clear. Decisions made by the Zoning Board of Adjustment can be appealed to the Court of Common Pleas of Philadelphia County (coterminous with the City of Philadelphia); decisions from this court can then

34 Ibid.
35 Ibid.

be appealed to the Commonwealth Court, which is the intermediate appellate court which tries cases involving public sector agencies. While the standing required for plaintiffs in these appeals was less liberal than for testifying at the ZBA, neighbors often tried to appeal projects out of existence, as discussed above.[36]

The ability of communities to seriously delay or even derail projects meant that they could hold immense power over a developer eager to proceed with building. Often this meant trying to address a whole spectrum of issues raised by the community, many unrelated to the variances being requested or outside the scope of zoning. Community groups often saw ZBA hearings and meetings with developers as places to complain about design, noise, potential new residents, and about the other fundamental problems in their communities not being assuaged by the development under discussion. In their desire to move forward and not face appeal, some developers would promise to address some of these concerns, but they were not always happy with this solution. As one group at Common Ground noted, "the public process gets close to 'extortion'. Acquiescing to a 'community group wish list' should not be part of the process."[37]

The community's requests often reached far beyond a reasonable expectation to be protected from nuisances created by new development. Indeed, the requests from community groups could frequently border on the unreasonable or even illegal. Developers claimed that community leaders were requesting public parks, school endowments, or even personal donations. Communities expected to essentially be paid for the inconvenience of new development, and because of the ad hoc nature of the zoning process, developers were often forced to play along or see their projects fail to gain traction. A Philly Magazine article about this very practice put it well:

> Welcome to Philadelphia, where seeking a back-scratch isn't just for politicians. These sorts of quid-pro-quo deals are something too many neighborhoods expect. "Sometimes," says former city managing director Phil Goldsmith, "you've got community groups asking for money or something in return for approving a project that should already be permitted under the zoning code. People won't like me for saying this, but it's pay-to-play politics—on a civic level."[38]

For most developers, the de facto necessity to engage the community

36 The issue of standing in the ZBA and for appeals is an ongoing subject of judicial opinion in the state; see *Scott v. City of Philadelphia*, *Spahn v. Zoning Board of Adjustment*, *South of South Neighborhood Association v. Zoning Board of Adjustment*, etc.

37 Ibid.

38 Volk, "Turf Wars."

in lengthy, complicated, expensive, and often combative dialogues in order to get anything built was incredibly frustrating. Max Glass is the developer of a small mixed-use building in South Philadelphia's Graduate Hospital neighborhood; he described the perspective of many developers in this way: "Developers want to build. They don't want to spend time talking about it: they want to do it. It's how you make money. It's how you have fun. It's more fun to be on a site that's actually getting built than to be talking about design."[39] Alex Feldman, vice president of U3 Ventures, a development firm that focuses on Philadelphia, echoed this sentiment: "As someone coming from a developer's standpoint, generally a developer wants to build as quickly as possible." Delay is a serious obstacle for developers, as it increases the costs of construction and drives down the margin on the development; these regulatory hurdles were not only causing strain for developers forced to become experts in community relations, they were also creating monetary losses.

Small mixed-use building in Graduate Hospital developed by Max Glass. Photo by Jauhien Sasnou for Philadelphia Magazine

Because Council members were the key to support at the ZBA, they could ultimately set their own terms for real estate and land use. The constant need to approach the community and the Council on a case-by-case basis meant that developers also had to ensure the goodwill of district councilpeople, and development became a highly politicized sector. To many, this looked like another aspect of the long-standing allegations of shady and corrupt dealings in the city's municipal government. "Pay-to-play

39 Glass, Max. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

politics have turned the planning, zoning and development process into an unpredictable maze that is nearly impossible to navigate without hiring a team of lawyers and a political patron, and you have to pay both,"[40] said mayoral candidate John Knox in 2007 in response to a prompt by Philly.com.

Developers with the political clout and connections necessary to bypass this process entirely often did so, by seeking a legislative zoning amendment through City Council. This process was obviously intensely political and required a significant amount of community engagement; however, the possibility of obtaining an amendment that would make a project by right, and therefore much less open to legal challenges, ZBA whims, and appeal, was attractive. This route was particularly appealing for developers with very large projects with a high number of variances and which required significant financial commitment from funders who could not sustain the protracted delay common to the variance process.

Some large developers saw this as the only way to complete projects in Philadelphia. Ian Litwin described this thinking:

> Larger developers, like the [Carl] Dranoffs of the world—he's a pretty big developer in Philadelphia—he won't go to the Zoning Board for anything. For financing they need certainty, so the Zoning Board introduces a level of uncertainty which for larger projects is harder. If it's something like a row home or ten row homes or something like that, developers aren't going to push for a rezone: they'll just go to the Zoning Board. But if it's something bigger…

2.6 LOCAL JUDICIAL CHALLENGES

The frequency of appeals from Zoning Board of Adjustment decisions has led to a fairly robust set of precedent decisions that help lawyers and landowners understand how, in theory, the ZBA is directed to operate regarding its own guiding standards. Many cases over the years pit the appeals court's interpretation of variance standard law, as detailed above, against the reality of the city's ZBA.

In 2010, the judges of the state's Commonwealth Court used one of these cases to firmly declare that the ZBA could not continue to operate with such loose standards and excessive discretion. This case was only one in this long line; however, it spoke directly and clearly about the questionable legality of the very basis of ZBA operations in Philadelphia.

Michael Poole, Joanne Perrone, John Scott and Barbara Tarnoff v. Zoning Board of Adjustment was tried in 2010 by the Commonwealth Court of Pennsylvania. The case was an appeal of the Court of Common Pleas affirmation

40 Philly.com, "Today's Question."

of the ZBA's granting of a number of variances to Moyer Logistics, LLC, who owned a property zoned for industrial use surrounded by a residential zone. Moyer requested both a use permit, in order to build residences on the property, as well as a number of dimensional variances. The ZBA granted Moyer all the requested variances, concluding that "the Subject Property in its current form and use is inconsistent with the character of the neighborhood and generally detrimental to welfare...The current proposal is not beyond the size, scope or character of the surrounding neighborhood."[41] The objectors appealed these decisions on the grounds that Moyer had not provided any actual evidence that his requests for variances should be granted based on the standards set forth in the Philadelphia Zoning Code.

In answering this appeal, the judges first established the existence of concrete requirements for variance request review for the ZBA. Stating that "the reasons for a variance must be substantial, serious and compelling," the Commonwealth Court judges distilled down the variance requirements put forth in the enabling legislation into "three requirements, that of 1) unique hardship to the property; 2) no adverse effect on the public health, safety or general welfare; and 3) the variance will represent the minimum variance that will afford relief at the least modification possible."[42]

The key takeaway from this case, in addition to the helpful and clear delineation of the standards of evaluation, is that establishing that a variance meets these standards is not something that the ZBA can leave to intuition or hearsay. While the court agreed that there was enough evidence presented and considered to establish that the grant of the use variance was based on "substantial, serious and compelling"[43] reasons, the dimensional variances granted were granted on suspect proof:

> While the Board's decision recognized the legal framework for granting variances, it did not make any factual findings or explain how those facts led it to determine that unnecessary hardship exists, that there is no public detriment, and that Moyer sought the minimum variance required in order to obtain relief with respect to these three variance requests.[44]

The operations of the ZBA did not meet even the low standards set by the statutory language of the Philadelphia' zoning code. The court established that it is not simply enough to present the facts of the proposed development and evidence that it would be in keeping with the character of the neighborhood: applicants must also give evidence regarding

41 Poole v. Zoning Board of Adjustment of Philadelphia, 2010, 10 A.3d. Pa. Cmwlth.
42 Ibid.
43 Ibid.
44 Ibid.

the unique hardship presented by each variance. The ZBA should not be granting variances whole-cloth based on the acceptability of the proposed project to the neighborhood. The ZBA is not legally authorized to grant variances based solely on its feeling for the case as a whole: instead, it is required to hold up variance requests to some kind of objective standard, using evidence presented by the property owner.

2.7 DUE PROCESS & THE IMPORTANCE OF ADMINISTRATIVE CLARITY

Whether in front of the ZBA or presented to City Council, the success of a development proposal in a Philadelphia without strong and legitimate planning and zoning documents was based largely on subjective factors. Individual or groups of neighbors, community groups, council people, and Zoning Board of Adjustment members were all allowed significant ability to redirect or derail the process. A lack of clear roles and responsibilities for participants, and a lack of objective standards for evaluation, made development very difficult.

There are real legal and, potentially, constitutional problems with a variance administration which relies too heavily on subjective standards. By understanding zoning administration as, at heart, a process which has constitutional implications and protections, we can begin to understand how something as seemingly minor as a poorly conceived administration for variance applications can become a serious threat to the legal validity of a land use regime.

In *The Zoning Game*, Babcock describes the poor state of zoning administration as being a legitimate threat to the constitutional rights of property owners because of its tendency to deprive property owners of their right to procedural due process. In situations in which administrative clarity and consistency is not emphasized, the threat to due process is particularly acute: "The indictment of zoning which all critics subscribe is that its administration is arbitrary and capricious. Procedural due process is continually flaunted in our medieval hearings, our casual record keeping and our occult decision-making."[45]

In fact, Babcock goes as far as to say that consistency in administration and attention to the due process of applicants is the most important aspect of zoning. While zoning and land use permitting employ a variety of tools and strategies to satisfy the desires of planners to regulate private land, at its heart zoning is a *process*, and the constitutional validity of this process must be protected. While zoning codes may evolve, even to the point of looking very different from the original codes created in the early 20th century, the validity of the process must remain:

> Administrative fairness will serve as an acceptable and under-

45 Babcock, *The Zoning Game.*

> standable principle in land-use policy as it does in utility regulation or the scrutiny of trade practices long after the exclusive single-family district, original cost versus fair value, and the quantity discount are displayed in the museums alongside the artifacts of Ur.[46]

Therefore, variance and permit administration should not be a secondary concern in planning and zoning. Dimensional and use standards must rest upon a firm foundation of administrative fairness and consistency: "Before we can indulge in the luxury of debate on design in our cities, we have to face up to the issue of fair play in municipal administration."[47]

For many decades, Philadelphia's zoning code administration was dysfunctional enough to make even Babcock blush. This lack of administrative rigor was, in fact, a large part of the motivation for the planning overhaul undertaken between 2007 and 2012.

46 Ibid.
47 Ibid.

3 OVERHAULING THE CITY'S ZONING & PLANNING

From a building industry standpoint and even from a planning standpoint, the more by-right development, theoretically, the better, because it brings development costs down and also, assuming we zone things right, by-right development would be according to our plan.

Ian Litwin, Philadelphia City Planning Commission

As we have seen, developers found the uncertainty of the system to be a real roadblock for development projects. For many years, the impact was fairly contained because Philadelphia saw very little interest from developers, especially outside of Center City's business districts. The difficulties of the zoning process certainly could not be blamed wholly for the lack of new projects, though national development firms were certainly more wary to enter a political and resistant market. However, after the turn of the new millennium, the leadership of the city began identifying the difficulty of building as at least a psychological contribution to the lack of growth in the city. It was clear that the city's regulatory

system was completely unable to handle a long-hoped-for resurgence in desirability and marketability. Clearly, something had to happen to rationalize and legalize the mechanisms for development. But the lack of clarity from the zoning code and absence of vision about the city's future growth, there was no clear solution without radical change. This was to come in the form of a complete overhaul of the city's planning and zoning documents.

The central goal for the framers of the new code was to fundamentally shift the city's approach to development to pave the way for a new acceptance of development that conformed to the code. While changes to districts and other zoning mechanisms were of course central to modernization of the code, for the vision of a new legitimacy of the zoning code to be a reality it would also be necessary to reform the administrative processes of development review. Particularly central to this was the notion that comprehensive and local planning could be a replacement for seriatim review of projects by local groups. The code reformers hoped that an integrated process of refreshing the city's planning documents and creating widespread planning literacy would eventually replace the desire to weigh in on every local proposal. They believed that the repair of the code and the zoning maps, through an extensive public process, would cause the falling away of the need for zoning relief.

However, the history of powerful local interests using the dysfunction of the zoning code to their advantage was too strong for even such a concerted effort to change the processes of review to overcome. The overwhelming centrality of the variance in the common understanding of the levers of community control over land use meant that it was almost impossible, politically, to remove citizen review as the key criterion of variance evaluation. Rather than transferring power away from near neighbors, the local control over variances was made more official with the creation of the Registered Community Organization.

3.1 THE ZONING CODE COMMISSION

By 2007, the status quo was no longer bearable. A February 2007 editorial in the *Philadelphia Inquirer* begged City Council to put an amendment to the city charter in front of voters to create a new commission specifically tasked with the creation of a new zoning code. The author states that the city needed to put an end to the constant deal-making and politics of the development in order to move the city away from corrupt governance and wasted time for communities and developers:

> The messy status quo sets up frantic games of Let's Make a Deal among developers, Council members and neighborhood associations. Developers seek "spot zoning" fixes from Council to enable projects, or try to cut deals with civic groups to make their opposition go away. Thus zoning becomes a key driver of the city's

> corrupting "pay-to-play" culture. Meanwhile, in bargaining endlessly with developers, civic groups spend energy and money that could be far more usefully devoted to other efforts.[1]

In May of 2007, Philadelphia residents voted on the ballot question, which had been supported by a unanimous vote in City Council. According to the text of the amendment to the charter, the Zoning Code Commission would be directed by the voters of the city to "recommend amendments to the Philadelphia Zoning Code to make the Code consistent and easy to understand, and to enhance and improve Philadelphia's city planning process while encouraging development and protecting the character of Philadelphia's neighborhoods."[2] The ballot question was approved with nearly 80% support.

One of the most prominent supporters of the initiative to repair the development process was the new mayor of the city, Michael Nutter. In a mayoral debate, he had stated: "I ask everyone to support the zoning reform ballot question...Reforming the zoning code… is the start of the renaissance of Philadelphia."[3] The creation and continued support of this body was one of the central tenants of Nutter's campaign, as was support for a more progressive and modern zoning code.[4] In a document titled "The Nutter Plan for Zoning and Planning Reform," he laments the lack of coordinated planning efforts in the city and states his support for a zoning reform process that has broad buy-in from residents and leaders:

> A well written code has the capacity to profoundly shape city neighborhoods and the lives of city residents. The effort will take time and leadership and it must be allowed to evolve with actual input from the public and the many community groups that are currently involved with neighborhood improvement.[5]

The first meeting of the ZCC was in August of 2007. The 31 members of the commission included:

- Three City officials with responsibility for zoning matters,
- Three members of City Council,
- Five representatives of various Chambers of Commerce,
- Ten persons with experience in land use matters,
- Five appointed by the Mayor and five by the Council President, and
- Ten community leaders, one appointed by each district councilmember.

They were directed to meet no less than 10 times a year in meetings open to the public. They were authorized to seek outside help through consul-

1 Philadelphia Inquirer, "Zoning-Code Reform: A Great City Needs a Better Plan."

2 Sokoloff, Bolender, and Breitstein, *Common Ground.*

3 Blanchard, "No. 6: A Crucial Ballot Question."

4 In fact, all of that year's mayoral candidates were public supporters of a zoning code rewrite.

5 Nutter, *The Nutter Plan for Zoning and Planning Reform.*

tants, and city agencies were instructed to cooperate with the work of the ZCC. In addition, they made "robust public engagement" a central part of their process, with dozens of community meetings, facilitated discussions, surveys, and other events to incorporate the input of all stakeholders in the zoning rewrite process.[6]

The ZCC at work. Image from PlanPhilly

Much of the ZCC's work was focused on creating a zoning code which would reassert the legitimacy of by-right development in a city which historically had seen very little development completed in this way (in Philadelphia parlance, with "over-the-counter" permits). The directive to create a code which reduced the number of variances requested and lessened the necessity of the ZBA was built directly into the Home Rule Charter amendment which created the ZCC:

> The Commission shall analyze the Zoning Code to determine each section's intent, its impact on residential, commercial and industrial development, the costs associated with the Zoning Board of Adjustment including its current caseload and whether the Code may be consolidated or simplified to make it more consistent and easy to understand and to reduce the number of appeals to the Zoning Board of Adjustment while still maintaining community input and neighborhood controls.[7]

However, this excerpt shows that this goal was tempered by another important priority. The push to reduce appeals could not mean that communities were no longer allowed to have input and control over the process in some respect. This meant that something had to replace the ad hoc power that communities currently exercised over development in their neighborhood, while keeping the process simple and predictable

6 Sokoloff, Bolender, and Breitstein, *Common Ground.*

7 *Philadelphia Home Rule Charter*: Zoning Code Commission.

for developers.

This was not an easy problem to solve. There existed a fundamental tension between the desire for more predictability and ease in development and the desire to retain local control over neighborhood-scale projects. The idea of increasing by-right development was met with push-back by communities accustomed to being brought into the development discussion. As the introduction to the Common Ground report puts it, "The ZCC heard strong reactions from diverse stakeholders, who recognized that the new code—by making more projects 'as-of-right' and leaving fewer projects in need of a variance—would dramatically alter the status quo."[8]

Without balancing these two aspects of reform, the new Code, which had to be approved by City Council, was likely to be dead on arrival.

3.2 RATIONALIZING THE ADMINISTRATIVE PROCESS

In the ZCC, concerns of developers and planners often led the process, and these were squarely focused on ways of loosening the stranglehold that neighborhoods had on development. In order to do this, they needed to focus on fixing the broken process by which development was approved. Both Peter Kelsen, who chaired the ZCC's work plan committee, and Natalie Shieh, who served as the project manager for the commission, emphasized the importance of process concerns to the work of the ZCC. According to Shieh, the commission focused strongly on the importance of predictability, clarity of the roles of participants in the process, and transparency in the zoning process, as those were the aspects that were most disruptive to the smooth operation of development permitting.

Natalie Shieh said that for developers, the most important characteristic of a community engagement process is that it has a set timeframe. Most developers were willing to engage the community to a certain degree, and most expected to have to deal at least to a certain degree with neighborhood concerns and political processes. However, they wanted there to be an actual limit to the amount of time that their projects could reasonably be held up by necessary community meetings. Because the development community was satisfied that the ZCC recognized the importance of structuring the community input process to lessen development uncertainty, Shieh said, developers were much less vocal about the eventual details of the system than community groups were.

They were right to trust the ZCC with their interests. The commission took the novel approach of clarifying the administrative procedures for the zoning process *before* looking at the substantial zoning text changes. One consultant, she said, told her that Philadelphia was the only city in

8 Sokoloff, Bolender, and Breitstein, *Common Ground.*

which he had worked that had done this.

The ZCC approached the administrative processes systematically, by seeking to clarify and codify the role of the public in the development review process. Peter Kelsen said:

> It was very important to us on the Zoning Code Commission...to create a framework, an actual what I'll call regulatory framework, that set out how community dialogue, how information would flow from the developer, let's say—or the applicant, I should say—to the community, and from the community to the developer, and inform the process.

One of the most influential factors in the drafting of the changes to the development review process was the Common Ground series of meetings (already cited heavily throughout this paper). These meetings, convened with the support of the ZCC, were held over three days in January of 2010; one session brought together members of the development community, another was for civic leaders, and the third was combined. The meetings were meant to "zero in on the issue of public input inside project review," with the goal of "finding (or perhaps creating) common ground" to "assist in the drafting of a new code that answers to the needs of stakeholders, while helping to foster a vision of the city as a whole."[9]

Much of the content of the Common Ground meetings has been discussed in the previous section; however, the result of the sessions were a number of principles, based in significant points of agreement among participants, that could be used to create a better system. These were:

- "Every neighborhood should have a similar, widely known way to convene civic groups and concerned individuals for input into project review";
- "All projects of a certain level of impact, whether as-of-right or requiring variances, would benefit from public input";
- "When assessing a project's impact, go beyond size to look at how a project impacts or fits into its surroundings";
- "Issues of design and aesthetics should be reviewed, but on a basis separate from the parameters of zoning";
- "Early and effective notification about project proposals helps improve outcomes both for the neighborhood and the developer";
- "The project review process should be more transparent and predictable, in ways that inform, invite and engage constructive participation";
- "Clear review timelines should be set as part of a predictable public input process. This would reduce uncertainty and cost for the developer while ensuring the community gets sufficient time to assess, discuss and comment"; and,

9 Ibid.

- "The role of City Council members in zoning and project review should be made explicit and transparent."[10]

Each point had potential actions that the ZCC could write into the new code to enact these principles. In general, "common ground" seems to have been achieved; the principles emphasize the participants' interest in increased transparency, predictability, and rule-setting, with a concern for making public input meaningful and productive rather than simply obstructionist. There is a clear faith in the ability of better oversight to overcome the influence of politics and bad faith dealings. Most participants were happy with the idea of a better and easier process for developers, as long as there was some defined role for the community.

In anticipation of what they expected to be a dramatic drop in the frequency and importance of the substantial project review in which communities had been engaging for the past decades, the ZCC and its consultant teams considered a wide variety of changes to the process that could radically adjust the status quo to remove a certain amount of community review to streamline the process. Many of these included various means of shifting decision-making authority to PCPC staff down from City Council or the ZBA and up from community groups. The ZCC hoped that PCPC and the staff at the Department of Licenses and Inspections would be able to serve as gateways for new development, taking care of small variances and heading off potential problems before they could rise to the level of neighborhood or Council interest. Increased respect for the ability of PCPC staff to make informed decisions, as evidenced by comments in Common Ground, made these proposals feel justified to the members of the ZCC.

The new mayor, Michael Nutter, also promised to support these technocratic changes by reforming the workings of the Zoning Board of Adjustment. He stated, rather dramatically, "It's time to close the circus-under-the-big-top atmosphere and make land use decisions like grownups."[11] He promised to streamline the development process by removing small scale variances from the ZBA's purview and creating an administrative appeal process in the Department of Licenses and Inspections. Significantly, he also proposes overhauling the nature of the ZBA membership: "I support efforts to require that the five members of the ZBA be comprised of an architect, an urban planner, a traffic engineer, an attorney experienced in land use issues, and a representative of Philadelphia community groups that participate in land use issues."[12] While he would reserve the prerogative to appoint these people, he positions the ZBA not as a political board (as it was currently functioning) but as a review process by experts.

---

10 Ibid.
11 Nutter, *The Nutter Plan for Zoning and Planning Reform.*
12 Ibid.

On the other hand, despite the seeming agreement in the Common Ground report, many citizens still saw community control as central to the development process, and were reluctant to see it fade away. Throughout the process of drafting a new code, existing civic leaders, advocates, and neighborhood groups made very clear that they were very reluctant to give up the level of control and engagement to which they had become accustomed. Communities were suspicious of the effort by the city to remove them from the process, and often saw this as the city giving developers a blank check to remake neighborhoods to their whims. For example, Chair of the Center City Residents Association Zoning Committee Timothy Kerner gave testimony regarding the draft of the new code to City Council in 2011 and noted his concerns that "liberalization has gone too far." He said that "In the name of variance reduction, the proposed code liberalizes the review requirements for several uses that can have significant impacts on residential neighborhoods."[13] According to Kerner, "neighborhood impact should be considered on a case-by-case basis. This is why we have community zoning committees and the Zoning Board of Adjustment." His view, that "the variance review process is a good thing because it allows for the assessment of specific impacts on particular places," reflects the common wariness, particularly among long-established groups with experience negotiating with developers over zoning matters, that the "essential and intimate knowledge about their surroundings" that they had would be made less important in the process.[14]

Another important factor pushing towards the maintenance of something approaching the status quo of community input was the political reality of the zoning reform process. Any draft of the zoning code approved by the ZCC had to be officially ratified by City Council before becoming law. The dynamic between the ZCC and City Council was complicated. Like community leaders, many City Councilors were also wary about alterations to the existing status quo, which granted them an enormous amount of power over the development that occurred in their districts. Some Council members thought that their power was exercised for good, and felt that the push to eliminate some of their control over land use decisions was wrong-headed. Councilman (later Council President) Darrell Clarke wrote an op-ed on Philly.com in December 2011 defending "councilmanic prerogative" under the idea that a Council person's knowledge of his district and power over the process make for better projects. "Supporters of the project understand that without the Council member's support, the project could stall. This brings them to the table," he wrote. "Compromises are reached; legitimate neighborhood concerns are resolved; flawed projects ripen into worthwhile ones; and good proj-

13 Kerner, "Zoning Reform Myth Busting."
14 Ibid.

ects become superior ones."[15]

Most City Councilors were less interested in the smooth operation of the development system than they were in servicing their constituents; for many years, managing local land use and development had been a part of this. Lauren Vidas, now president of the South of South Neighborhood Association, was working in Mayor Nutter's legislative affairs office in 2011 and described the final push to convince Council to pass the code before the end of the legislative session: "At the end of the day you need to get the bill passed. And there were a handful of issues that the Council members had a lot of concern [about], because they're not elected by developers, they're elected by the constituents in the neighborhood." Ian Litwin at PCPC emphasized that the best way to convince City Councilors to pass legislation regarding zoning and planning is to convince them that the community is on board: "City Council usually looks to the community. So if the community is not going to support, they're not going to introduce it. So we have to start with the community, get them on board, and then get the City Council to go, 'You did enough outreach.'"[16]

3.3 STRENGTHENING MUNICIPAL PLANNING

Though community leaders may have been successfully convinced that procedural reforms could work in their interest, they remained extremely skeptical of the emphasis on eliminating the need for variances. The most obvious point of disagreement in the Common Ground meetings was the status of *by-right* projects, which require no special approvals from the community or municipal government to proceed—so can theoretically be built without any notification at all. Since weighing in on variances was the heart of the current provision for community input, many were uncertain that reformed administrative processes could prevent them from losing all control. This was singled out in the "Next Steps" section of the Common Ground report as an outstanding issue, stemming from the difficulty of bridging the fundamental interests of developers and civic leaders (at least, as they defined these roles for themselves): "However willing they might be to listen to neighborhood input, developers clearly don't want to create another regulatory hurdle. Yet civic leaders won't want to waste their time structuring and getting neighbors to attend 'input' sessions that developers are free to ignore."[17]

In order to create a resolution of this tension, the planning establishment

15 Clarke, "Must Council Rule Land Use?"

16 Other issues also may have stood in the way of easy Council acquiescence. According to Ian Litwin, the ZCC and the planning reform process in the city were seen as projects of Mayor Nutter, and "he doesn't have the best relationship with City Council." The general tension occasionally spills over to some of the other executive departments, like the City Planning Commission.

17 Sokoloff, Bolender, and Breitstein, *Common Ground.*

and the members of the ZCC generally took a more expansive view of the role of the community in these development decisions. While civic leaders may have been fairly attached to the reactive model of community input that had existed in the past, in which neighbors have the chance to weigh in on individual projects as they arise, the ZCC saw this as inefficient at best. In the thinking of much of the planning establishment of Philadelphia, instead of involvement in the ongoing administration of zoning, through leading and participating in meetings with developers, testifying at hearings, and other means, the community should be included heavily earlier in the process, in order to create zoning principles and neighborhood plans. The ZCC and other experts wanted to reestablish planning as an important process for setting ground-rules based on community input, in order to reduce the constant project-based negotiations that made development toxically political and uncertain. Natalie Shieh described a desire to simplify the rules and help the city and communities come to a general consensus about what a district should look like so that when new development was proposed, the same old battles would not need to be re-fought. Everyone could support this kind of development, they thought; Ian Litwin put this theory simply: "From a building industry standpoint and even from a planning standpoint, the more by-right development, theoretically, the better, because it brings development costs down and also, assuming we zone things right, by-right development would be according to our plan."

In the February 2009 meeting of the ZCC, Don Elliot, a representative of a consulting team hired by the commission to assist in the re-write of the code, laid out the vision of this form of community participation. He said that most community groups, when told that the commission was looking to radically reduce the number of hearings required throughout development review, do not understand how they would be able to participate in the process. He described for the commissioners what it could look like instead:

> Standard zoning practice is to extensively ask citizens for involvement in your planning and...take prospective zoning changes out to the citizens for their involvement in what the rule should be, and then not ask them individually to define what individual development applications [will be]. Our system counts citizen involvement up front with *decreasing* citizen involvement as you get towards the end of the process, and that's frankly the way it should be in most cities. There comes a point where you've had input in the plan, you've had input in the zoning, you've had input in your neighborhood plan—if you've tweaked the zoning for your neighborhood that's fine, but it's not a popularity contest. Each individual project is not subject to individual review by the citizens of the city.[18]

18 Walsh, "ZCC: Reduce variances, by all means."

There was general, if not always unanimous, agreement among commissioners that more by-right development was a positive goal for everyone in the city, not just for developers. By enforcing a code that reflected community input, neighborhoods could have less fear of development—while developers could have less fear of community opposition. Mayor Nutter himself laid out this vision in his "Plan for Zoning and Planning Reform." In fact, the re-establishment of planning as a key function of city government was a central principle throughout Mayor Nutter's campaign. He gave his thoughts on the potential for planning to resolve the problems of the current system:

> While the Zoning Board of Adjustment does solicit the opinion of neighborhood groups regarding variance decisions, the current practice is an unpredictable, ad hoc process that developers try to avoid...Ideally, these types of zoning decisions would be made as part of a well-coordinated, strategic plan that accounts for the complexities of the urban environment, and utilizes an established public process that ensures fairness.[19]

Mayor Michael Nutter. Photo by Tom Gralish for the Philadelphia

In addition to discussing his support for a Zoning Code Commission and his proposals for a new zoning code, he promises that his administration will reassert the importance of the Philadelphia City Planning Commission, and direct PCPC to create community plans that help communities guide development, rather than be forced to react to it. This will help create an environment that fosters development by creating achievable expectations for all participants: "Such enforceable, community-sponsored guidelines create standard expectations that developers must meet rather than treating all projects as negotiable. In addition, a standardized public engagement process should be established with clearly defined objectives and procedures that create more certainty for all parties."[20]

19 Nutter, *The Nutter Plan for Zoning and Planning Reform.*
20 Ibid.

Because the institution of municipal planning in the city of Philadelphia had been dormant for many years, it would take more than simple zoning code reform to create the conditions ripe for a more active planning discourse in the city. For their part, the Zoning Code Commission's four year life was characterized by a concerted to effort to create a basic literacy in and comfort with zoning and planning amongst as wide a constituency as possible. The ZCC had an active web presence; their website, www.zoningmatters.org, included, along with information about the committee and its mission, primers on different kinds of zoning and new trends in urban thinking in order to familiarize visitors with the concept of land use controls.

More important, however, was the simultaneous initiation of two other major planning undertakings: the drafting of a new planning "vision document" for the entire city and all of its neighborhoods, called Philadelphia2035, and the creation of a Citizen's Planning Institute. The CPI was established in 2010 as PCPC's education and engagement arm, with the mission of educating civic leaders and other Philadelphia residents "about the role good planning and implementation play in helping to create communities of lasting value." As of 2014, 270 people have been certified as "Citizen Planners" after having gone through courses on "planning issues and principles, land use and zoning, and the development process."[21]

The CPI was meant to strengthen the ability of communities with lower planning capacities to participate in the drafting of Philadelphia2035, the city's first comprehensive planning document in 50 years. Philadelphia2035, initiated in 2009, consisted of an initial Citywide Vision document and subsequent detailed plans for each of Philadelphia's 18 planning districts. The Citywide Vision was drafted simultaneously with the new zoning code and engaged citizens in similar discussions about the future of urban growth and development downtown and in their communities. According to the introduction to the Citywide Vision, "Philadelphia2035 provides a blueprint to guide public and private investment in the physical development of our city. Residents, business owners, builders, and public employees can use this Citywide Vision and the subsequent 18 District Plans to guide and understand the direction of growth and investment in the city."[22]

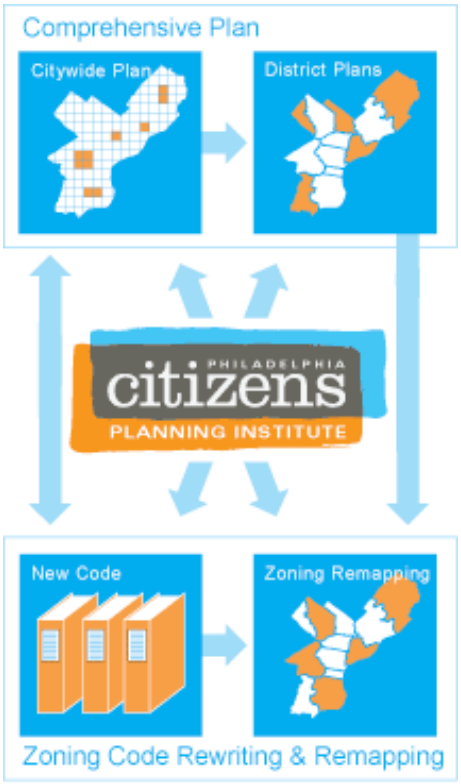
The ZCC was one of Philadelphia2035's main stakeholders, as it was understood that the results of the comprehensive planning process would be essential to the implementation of the new zoning regulations once they had been officially adopted. In order to complete zoning reform, the

21 Philadelphia Citizens Planning Institute, http://citizensplanninginstitute.org/

22 Philadelphia City Planning Commission, *Citywide Vision.*

new code had to be mapped onto the city; the district plans, in particular, would be the documents which would lay out community interests and expectations as a basis for the remapping of every one of the city's neighborhoods. The Citywide Vision laid out the path:

> Philadelphia2035 is also key to the PCPC and Zoning Code Commission's (ZCC) Integrated Planning and Zoning Process, which directly links zoning reform with citywide and district planning, and establishes a Citizens Planning Institute to serve as the PCPC's education and outreach arm. The Integrated Planning and Zoning Process is designed to enable long-range, citywide recommendations be further detailed in each of 18 District Plans, yielding a proposed land-use plan for each district, which in turn will recommend revisions to the city's zoning map.[23]



The integrated zoning and planning reform process, as envisioned by PCPC. Image from www.phila2035.org

The district plans, while of central importance for the integration of the zoning and planning processes, were a particularly ambitious and resource-intensive undertaking. While the first two were completed at the same time as the Citywide Vision, the expected end date for all 18 districts was not until at least 2016. The preparation of each of these documents was a very large commitment of the time, staff, and limited budget of PCPC.

Widespread buy-in by communities and leaders was utterly essential to

23 Ibid.

establishing the legitimacy of both the plans and the zoning reform that relied on them. Therefore, the process of creating the new zoning code, the Citywide Vision, and each of the district plans, necessitated extensive and painstaking community engagement, as well as coordination with other city agencies tasked with various aspects of implementation. The ZCC held numerous outreach meetings and presentations, in addition to the 50 public (and televised) meetings of the committee. By the time the full draft of the new zoning code was presented to City Council in 2011, the ZCC had held 36 community-based meetings at various stages in the process, at locations throughout the city, as well as two meetings to discuss a particular group's proposal. They initiated seven "Stakeholder X-Changes" like the Common Ground series of meetings discussed through this paper. Representatives were sent to dozens of community meetings to explain the work of the commission, as well as to two formal public hearings in City Council.[24] This outreach was a sustained level of engagement from residents from around the city about zoning and planning issues. The commission received thousands of comments from the public on the rewriting process, including input from 125 professional users that were interviewed and almost 2,000 individuals who received surveys.

A PCPC staff member discusses the plan. Image from PlanPhilly

For the Philadelphia2035 Citywide Vision document, PCPC held eight meetings in 2010 at locations around the city to solicit transformative ideas from citizens (in the first four meetings) and present various ideas to gauge their relative value to citizens (in the second four meetings). They also collected numerous planning and strategy documents from other departments and used these to compile priorities and strategies for the overall plan. The district plans doubled down on the community en-

24 PCPC, Zoning Matters website summary document.

gagement aspect, with several public meetings held in each district and the establishment of local stakeholder advisory committees.

For PCPC, this process was an opportunity to reestablish the importance of the organization as a central place for translating community feelings into actionable plans. The process of comprehensive planning was part of the effort to re-legitimize the work of planners and of planning in general as a means to express the wishes of the city as a whole; PCPC presented itself as the driving force behind teasing out and realizing the priorities of the city and its residents. In a section of the Citywide Vision called "PCPC at Center of Planning for Philadelphia," the plan characterizes the work of the plan as presenting a unified vision for the city in order to enable PCPC to reclaim the leadership role given to it in its establishing legislation in the Home Rule Charter. Unification of vision under the guidance of PCPC will create important synergies between the work of the different groups involved in zoning and planning reform, it says:

> Throughout the process, citizens and other stakeholders will be engaged through the work of the Citizens Planning Institute and other outreach efforts of the PCPC and ZCC. Private sector and community development organizations will be encouraged to coordinate their planning efforts with the goals of the Citywide Vision and District Plans. Moving forward, PCPC staff will take a lead role in facilitating the implementation of Philadelphia2035 by recommending zoning map revisions to City Council, and aligning work plans, capital program coordination, and development review with the plan's goals and objectives.[25]

This push to re-legitimize the importance of PCPC was successful. Constant work on zoning and planning reform for four years seems to have instilled a confidence not only in the importance of planning in the city, but in the particular skills of the staff at PCPC. For example, the years of community outreach efforts created a distinct niche for the organization as the interface between the public and city's more internally-focused departments. According to Ian Litwin:

> A lot of city agencies that don't have to do community outreach, when they do it, they don't do it well, or they just don't do it. There are probably community groups that hate the Planning Commission but, for the most part, we try to balance needs. So as this process has gone on it's helping us work with other city agencies better. Before the Nutter administration, the Planning Commission just didn't...we helped with neighborhood plans, zoning stuff, [but] Philadelphia2035 is the first citywide plan since 1960, so for a long time there was no reason to listen to us. We didn't really matter that much.

These efforts also created more interest amongst the public to have PCPC

25 Philadelphia City Planning Commission, *Citywide Vision.*

play a greater role in the development process. Throughout the documentation of ZCC meetings and outreach, there is an undercurrent of respect for the work that PCPC does and an interest in having the commission serve as coordinator, referee, or guide for the operation of planning and zoning in the future. PCPC was especially seen as a resource for creating a smoother process, with staff "establishing relationships, coordinating meetings and keeping a record of decisions," as the Common Ground report puts it. The report talks a great deal about potential new roles for PCPC and includes this statement:

> Both sides in general welcomed a greater role for the planning commission. Developers appreciate the professionalism of the staff; many neighborhoods have had good experiences with their PCPC Community Planner. This sentiment was especially prevalent in the neighborhoods with fewer local professionals (lawyers, planners, etc.) to draw on for pro bono services.[26]

While it seems that residents around the city were happy to be a part of the planning process, it is not clear how many participants in the public outreach process were aware that these meetings were meant to replace the project-by-project review that they were accustomed to having. In addition, certain groups were intensely suspicious of the entire concept of planning, accusing the city of using the planning and zoning reform effort to push for gentrification and displacement in low-income neighborhoods. They saw in the new comprehensive plan the codification of values that they did not share, and hoped that the entire effort would be scrapped. An op-ed on Philly.com in 2011 by three African-American community leaders summed up this reaction. "The Philadelphia City Planning Commission's recently completed comprehensive plan...is unfortunately a blueprint for the gentrification of African American, Latino, and poor white neighborhoods, as well as a chronicle of the utter neglect of their interests," they write. They go on to attack the basic premises of the plan as unjust and tone-deaf:

> The plan's energy goes chiefly into looking out for developers, upper-income suburbanites, and the new college graduates the city hopes to attract. It spends as much time on "farmers' markets" and "urban agriculture" as it does on the need for new supermarkets, and it hopes to convert "obsolete" industrial buildings into lofts for young artists instead of investing in the city's current residents and small businesses...The heart of the plan is to cannibalize neighborhoods in North, South, and West Philadelphia so that Center City can expand dramatically, joining University City to form a two-headed beast that it calls the "Metropolitan Center."[27]

They conclude by asserting that the people of the city that need the most help should be put in the driver's seat of priority-setting, not planners or

26 Sokoloff, Bolender, and Breitstein, *Common Ground.*

27 Nkrumah, Harris, and Chionesu, "Gentrification Is Goal of City Plan."

developers: "A truly democratic comprehensive plan would emphasize improving the lives of the city's current residents and helping existing neighborhoods grow. City Council and the Planning Commission must allow the people to shape the future of the city."[28]

3.4 THE NEW CODE

The Zoning Code Commission completed a draft of the new zoning code and sent its Preliminary Report to City Council in May of 2011. "The only question is whether City Council members, working with stakeholders that include planners, developers, and building-trades representatives, are willing to hunch over the drawing board to get the job done in time to make a difference," asked the *Philadelphia Inquirer*'s editorial board. "By sending a draft zoning rewrite to Council, a citizens' commission took a major step. Now it's up to Council to hold hearings and offer amendments that will assure eventual enactment of an update to rules that go back nearly 50 years."[29] At times, in the months that followed, City Council made motions that indicated it might scuttle the whole process over concerns about the new regulations, new processes, or plan for implementation.[30] However, after months of hearings and debate within City Council, the ZCC approved a final resolution which incorporated dozens of amendments recommended by City Council, and in December 2011 City Council approved the new code, to be put into effect in totality in August 2012.

The new code made some extremely significant adjustments to the zoning regime of the city. In addition to radically simplifying and reorganizing the text and adding clarifying diagrams, illustrations, and tables, the code reduced, reformed, and rewrote district classifications, dimensional requirements, use regulations, and many other aspects of the city's outdated zoning. A discussion of all of the changes made is not within the scope of this paper; instead, the focus will remain mostly on the adjustments made to the systems of development review by the public and by the ZBA.[31] These were: the strengthening of hardship requirement lan-

---

28 Ibid.

29 Philadelphia Inquirer Editorial Board, "Overhaul Is Overdue."

30 The *Inquirer* and Philly.com provided extensive coverage of the back and forth that led up to the passage of the new code. See, for example, Philadelphia Inquirer's "Zoning reform is facing a threat," by Inga Saffron, on May 11, 2011)

31 Two non-administrative changes, however, should be emphasized. First, the new code reduced significantly the amount of parking that was required by new developments: for example, new buildings in rowhouse districts were no longer required to provide parking. Second, the height limit in residential and some commercial districts was increased from 35 feet to 38 feet. Both of these changes came only after intense negotiation between stakeholders, with developers (and many planners) pushing for more height and less parking, and other reacting against these ideas. These two topics are worth flagging because

guage, the creation of Civic Design Review, and the institution of Registered Community Organizations.

3.4.1 STRENGTHENED HARDSHIP LANGUAGE

In the expectation of much greater legitimacy and currency for the new zoning code and zoning maps, the ZCC felt it was reasonable to strengthen the criteria that applicants would have to prove to be legally granted a variance. According to Natalie Shieh, the ZCC spent a significant amount of time debating what it meant to prove hardship, and records of meetings show discussion about how detailed and formal the findings by the Zoning Board of Adjustment would have to be. Shieh said that the new code embeds language from recent court cases to bring the review process up to current legal standards. Peter Kelsen characterized these changes as "the bargain": "The bargain is, much more by right, [but] now if you go to the Zoning Board, you've gotta earn it. You've got to show that you couldn't use the property unless these standards were met—true hardship."

Now, instead of the ZBA being directed to "consider" the unique hardship and other objective factors, they are instructed that they "shall grant a variance *only* if it finds each of the following criteria are satisfied":

a. The denial of the variance would result in an unnecessary hardship. The applicant shall demonstrate that the unnecessary hardship was not created by the applicant and that the criteria set forth in § 14-303(8)(e)(.2) (Use Variances) below, in the case of use variances, or the criteria set forth in § 14-303(8)(e)(.3) (Dimensional Variances) below, in the case of dimensional variances, have been satisfied;
b. The variance, whether use or dimensional, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the use or dimensional regulation in issue;
c. The grant of the variance will be in harmony with the purpose and spirit of this Zoning Code;
d. The grant of the variance will not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare;
e. The variance will not substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property;

---

of their central place in local land use conflicts. According to PlanPhilly's Jared Brey, height and parking are at the heart of the majority of fights in residential neighborhoods between neighbors and developers; this point will recur in a later section of this paper.

f. The grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities;
g. The grant of the variance will not adversely and substantially affect the implementation of any adopted plan for the area where the property is located; and
h. The grant of the variance will not create any significant environmental damage, pollution, erosion, or siltation, and will not significantly increase the danger of flooding either during or after construction, and the applicant will take measures to minimize environmental damage during any construction.[32]

The text goes on to give details about the findings that the ZBA *must* make in order to justify granting a use or dimensional variance. The requirements for use variances are much stricter than those for dimensional variances, indicating the increased emphasis on the legitimacy of the zoning maps that result from the planning process, as well as the difficulty, noted by many throughout the process, of bringing buildings built long before zoning was invented, into dimensional conformity in the case of an alteration that requires zoning approvals. Use variances require that the ZBA find all of the following:

a. That there are unique physical circumstances or conditions (such as irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions) peculiar to the property, and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of this Zoning Code in the area or zoning district where the property is located;
b. That because of those physical circumstances or conditions, there is no possibility that the property can be used in strict conformity with the provisions of this Zoning Code and that the authorization of a variance is therefore necessary to enable the viable economic use of the property;
c. That the use variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
d. That the hardship cannot be cured by the grant of a dimensional variance.[33]

Dimensional variance approvals do not require these particular findings, and can take into account "the economic detriment to the applicant if the variance is denied, the financial burden created by any work necessary

32 *Philadelphia Zoning Code*: "Zoning Board of Adjustment"
33 Ibid.

to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood."[34]

Though they are extremely important in terms of the operation of the ZBA, these changes seem to have received little coverage outside of legal circles (likely because many property owners leave these concerns to lawyers).

3.4.2 CIVIC DESIGN REVIEW

In response to the desire for some kind of input process for projects that were by-right and needed no special approval from the city, the new code established Civic Design Review. The ZCC acknowledged that without some kind of forum to discuss these developments, both public satisfaction and urban design could suffer. As a result, CDR would be a city-wide forum for holistic review of significant projects: "CDR will replace a carousel of neighborhood meetings by consolidating the review of projects that have large public impact or are out of context with their surroundings."[35]

It also was meant to make community meetings easier by attempting to narrow the purpose of a zoning hearing. Traditionally, the use of the zoning process to force discussions about projects had made community meetings lengthy and contentious as any question and criticism was deemed fair game. CDR was meant for discussions between developers and stakeholders about design, general impact, and other non-zoning considerations, leaving the zoning meeting for discussions about specific variance refusals.

However, there was no intention of allowing this review for all projects. Debate within the committee focused, therefore, on what the specific triggers would be for Civic Design Review. Eventually, they decided that large size was the most important sign that a project needed to go through Civic Design Review. The determination of large size depended on the context of the development. The final text in the new code included three triggers: a project was required to appear before the CDR committee if it were

- Over 100,000 square feet or 100 units;
- In a commercial or industrial district but adjacent to a multi-family or mixed use district and over 50,000 square feet or 50 units; or
- Adjacent to any single family or rowhouse lot and over 25,000 square feet or 25 units.

CDR could also be triggered by projects that were much taller than was allowed in adjacent residential districts, or by master plans. By 2014, the

34 Ibid.
35 Gilewicz, "Civic Design Review: A Process with No Decision."

lowest trigger was eliminated because it was deemed to capture projects that were not truly significant.

Civic Design Review was an important concession to stakeholders, like many community groups, that had spent years being presented with designs they found unappealing and using the threat of delay or appeal to force limited concessions. Now, they would have a less charged atmosphere in which to discuss design and project impact, with the official sanction of the zoning code. There were some important caveats, however. First, the community groups would not be the only ones participating in the CDR; the CDR committee would be appointed, just like the ZBA, and would consist of experts in the field of architecture, planning, and design. Only one committee person would come from the community in which the project was located—though, as at the ZBA, the meetings were public and anyone would be allowed to testify. Second, though CDR would be mandatory, all recommendations made to developers would be advisory and non-binding. The decoupling of design review from variance permissions meant that formal leverage of communities had been removed from the variance process, an apparent blow to the power of community control.

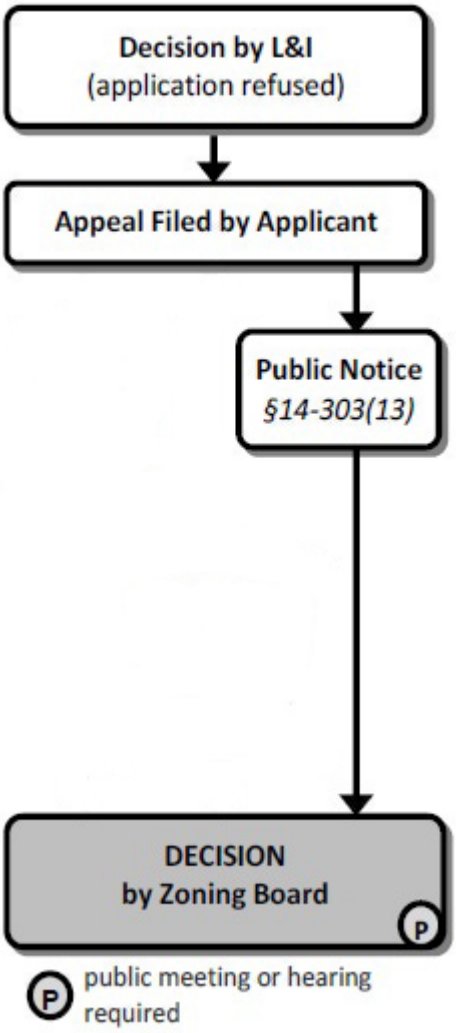
Perhaps because of the non-binding nature of the review, and because only large projects were subject, CDR received less discussion and controversy than the next major change.

3.4.3 REGISTERED COMMUNITY ORGANIZATIONS (RCOS)

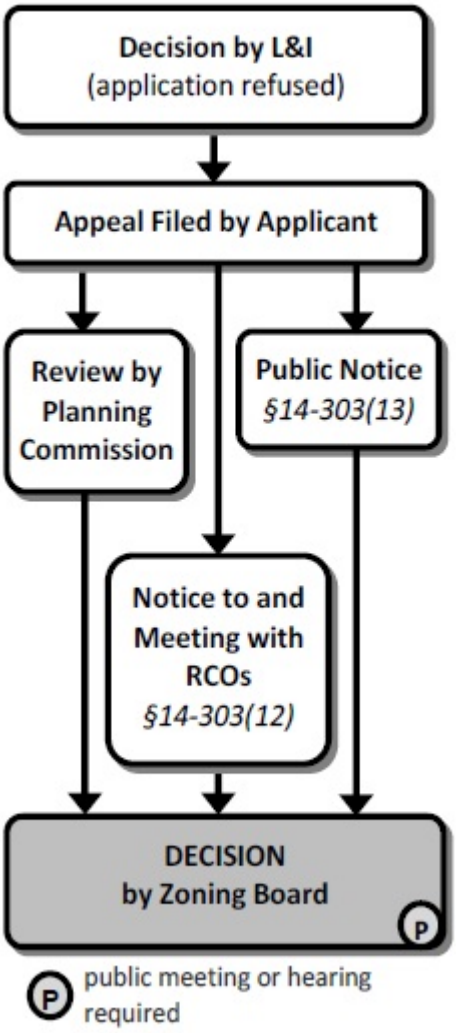
The centerpiece of the administrative changes, and by far the most consequential for the local reception of the new code, was the creation of the Registered Community Organization mechanism. Despite the talk throughout the reform years of removing the deal-making and politics that had plagued the city's development review process in the past, the strength of the city's collective attachment to the historical local levers of control in zoning was too hard to eliminate. Instead, community input in various zoning decisions was, for the first time, made an official part of the zoning process. Rather than being a de facto requirement of building under the city's broken code, meetings between community groups and developers would now be required in order to receive variance approval by the ZBA. Without proof of a meeting with an Registered Community Organization, the ZBA would continue any variance application until the meeting could be held.

The most radical innovation was the creation of a "registration" process for community groups. The new code established a Zoning Notification Registry, and groups that met certain minimum criteria could apply to be a Registered Community Organization, with a right to be included in meetings with developers and property owners seeking variances.

BEFORE ZONING REFORMS



AFTER ZONING REFORMS



RCOs would receive formal notice from the city about projects seeking variances or triggering Civic Design Review within their boundaries. In the words of PCPC's staff blog, "The new zoning code established both a registry and notification process so that community groups and near neighbors were alerted early on to an appeal application and could have an opportunity to obtain details on the proposal in a public meeting."[36] Abutters and neighbors within a certain radius of the project would continue to receive direct notice from developers.

While it maybe have proved too difficult technically and politically to remove the ability that community groups had to review individual projects up for development approval, members of the ZCC hoped that by creating a more orderly and formal system, some of the difficulties that developers had identified would be lessened. The purpose of this registration process was to address the uncertainty that was inherent in the old system of informal and often hastily organized groups. By standardizing the participants in the system, the process would theoretically no longer be plagued with the threat of new opposition at any moment. Peter Kelsen describes this as an effort to make the landscape of the neighborhood clearer for developers:

> Under the new program, the process is much more structured, much more formalized, and [with] a requirement to send notice within a certain time frame to the community's registered community group—and the reason that the zoning code was very insistent on having RCO involvement is because this gave the developers a location and an entity to deal with.

Many interviewees characterized this mechanism as a necessary compromise to communities wary about the emphasis on by-right development. Lauren Vidas described it as a "trade-off":

> There was a bit of the idea that the new zoning code was going to eliminate a lot of projects coming before neighborhood organizations, so as a trade-off the idea was: you're going to be seeing fewer projects, so what we'll do is we'll formalize your role in the process and give you, not necessarily more authority, but it is now beyond courtesy for the developer [to reach out]—they have to reach out.

Natalie Shieh spoke similarly, calling it an attempt to strike the right balance between forcing developers to accept community oversight in development projects and leaving only a toothless role for neighbors.

Opposite: The process for appealing a zoning refusal before and after the reforms of 2012. Graphic from the Philadelphia Zoning Code, modified by author.

The formal process of registering was meant to preclude the pop-up groups that so often derailed development by co-opting local groups into a more formal governance structure. Reporter Jon Geeting described this view on a political blog in 2013: "The white hot opposition from the nearest neighbors gets cooled a bit by having to participate in a formal

36 Philadelphia Planeto, "Fact-Check Friday – RCO Edition."

process, under the banner of longer-running, broader-interest community organizations that deal with more issues than just zoning."[37] On a more optimistic note, however, the PCPC blog wrote in 2012 that these organizations could also help empower communities:

> Our general philosophy is that organized communities are better communities. Community organizations enhance neighborhood identity and cohesiveness. Members of community groups are better informed and better able to network and share information. Having a community organization allows a neighborhood to be represented more effectively with local government.[38]

When it went into effect, the new code described two types of RCOs: local and issue based. Local RCOs were required to hold regularly scheduled meetings, have elected leadership, operate by official written bylaws, and adopt a mission statement that mentioned land use and zoning. The RCO could designate its own territory, though it had to be larger than five square blocks and smaller than seven square miles.[39] Issue-based RCOs advocated for specific issues, but also had to be incorporated as a non-profit and had to cover territory of greater than seven miles. Significantly, RCOs were allowed to have overlapping boundaries. RCOs had to be re-registered every year to maintain their RCO status.[40] In addition, in a concession to political realities, many existing political and quasi-governmental entities—Neighborhood Improvement Districts, Special Services Districts, and ward committees—were automatically given RCO status.

Developers would be required to have a meeting with the RCO (or RCOs) that had been designated for the area in which the development was to be built. These meetings were to be open to the public. In locations with more than one RCO, only one meeting was required for developers. According to Natalie Shieh, the Zoning Code Commission intentionally abstained from spelling out exactly how the different RCOs should coordinate this meeting, with the idea that the city should let communities decide how to run meetings. She characterized this as a leap of faith that groups would be able to work together. After this meeting, the RCO could send a letter to the ZBA indicating its support or opposition to the proposed project and to the particular variances requested. In addition, the local RCO would be able to send a representative to fill the spot on the Civic Design Review committee that was reserved for a community member from the CDR-eligible project's neighborhood.

---

37 Geeting, "How to Fix Philly's Registered Community Organization Process."

38 Philadelphia Planeto, "Get in the Zone."

39 Philadelphia is a total of 134 square miles.

40 Philadelphia Planeto, "Get in the Zone."

3.5 "OUR VOICE HAS TO BE HEARD"

As soon as it was promulgated to the public, the changes to the code were vehemently opposed by some in the city who felt that the ZCC had gone too far in streamlining the public input component of development. Most of the focus of community anger was on the Registered Community Organization aspect.

Advocates made sure to stress repeatedly that while being an RCO gave an organization the right to meet with a developer about a project, any individual or group could speak at these public meetings, RCO or not. This was true of ZBA hearings as well. However, almost immediately upon the institution of the new system, the registration process unleashed a slew of consequences, not all of them intended by its creators. Most seriously, the system came under severe criticism by advocates that saw it as a blatant disenfranchisement of low-income and African-American communities.

Amongst the more formal and established groups, which had been performing this zoning function more or less professionally for years, there was little sense of a radical shift in the business of local government. While many community groups remained wary of the general shift away from the system of ad hoc negotiations which had given them so much leverage in the past, the requirement to become an RCO mostly meant a strengthened system of early notification—something that they had pushed for throughout the reform process. In articles from the time the new code was instituted, there is a general sense of guarded optimism in a system that functions more smoothly and is less clogged with small variance requests. According to Shieh, because the requirements for RCOs were based on these groups, most of them had little difficulty transitioning to the new system. Steve Cobb, Director of Legislation for Councilman Kenyatta Johnson, echoed this sentiment: "From my understanding, the new code codified the custom which already existed."[41]

The ability of a group to define its own boundaries did cause some issues. Some groups tried to claim much larger boundaries than they had traditionally considered their territory because the regulations allowed them to do so. The issue-based RCOs raised some eyebrows, as well, because of their wide territory and corresponding wide inclusion in zoning matters, despite the kind of project or variance under discussion. Lauren Vidas described her reaction to these groups: "You could be an organization that covers half the city and developers were required to give you [notice]. Someone who was seeking a variance because they were going to put a roof-deck on has to let Scenic Philadelphia know."

41 Cobb, Steve. Interview by author. Recording. Philadelphia, January, 2015.

Some observers thought that the regulations for RCO qualification and function were in fact too loose. Next City, a nationally focused website on urban planning topics (headquartered in Philadelphia), wrote in its coverage of the new zoning code: "The new regulations don't set a very high bar for registrants and allow for significant overlapping. RCOs must have 'regular' announced meetings — exactly how 'regular' is unclear — as well as internally elected leadership, written rules and an established geographic boundary."[42]

In order to address the potential confusions of overlapping groups claiming zoning powers, Natalie Shieh described how some groups (likely well-established ones) wanted PCPC to sort RCOs into a kind of hierarchy that would help show which groups were more professional or legitimate. PCPC had no interest in doing this, preferring to preserve the local prerogative to work out internal dynamics.

A mistaken notion that only RCOs would be able to testify at the ZBA or participate in local hearings was one of the most persistent and harmful ideas about the RCO process, Shieh said. Technically, the only advantage of RCO status was advanced notice and a guaranteed audience at a public hearing with a property owner seeking variances, a point reporter Jared Brey, reporting for PlanPhilly, felt the need to make emphatically in a 2013 article about the controversies around RCOs:

> RCOs were not to be given any greater sway than any other groups when the zoning board was deciding whether to grant variances. At its core, the RCO system gives registered groups two rights: the right to be notified when projects in their areas need zoning approval or design review, and the right to meet with the developer before the hearing.[43]

Despite the reassurances, some groups that did not have deep experience with the zoning system were uncertain about how the new process would affect their operations and afraid that they would be disenfranchised. Natalie Shieh described a rush by groups around the city to register as RCOs, even amongst groups with no history of involvement in the zoning process, in order to insure that they would be able to participate if they ever decided to do so.

Some other groups, with less trust in the good faith of PCPC and the zoning reformers, were more direct with their criticism. In particular, one group called the Concerned Citizens of Point Breeze led an aggressive offensive against the new RCO system. Led by Tiffany Greene, members of this group appeared in public hearings and other forums to allege that the system was "exclusionary, unconstitutional, and somewhat border-

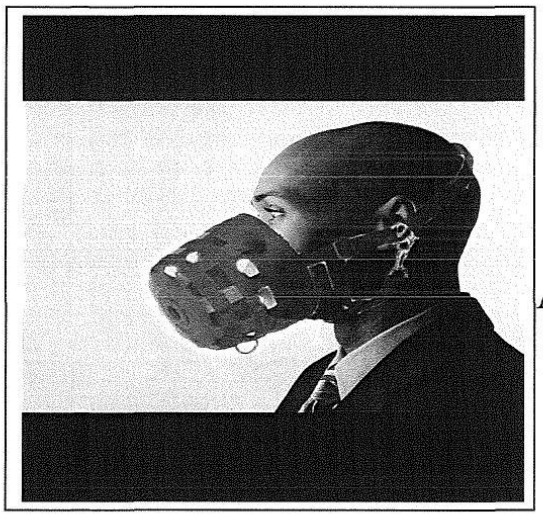
Opposite: Flyer distributed by Concernd Citizens of Point Breeze regarding the new code. Image retrieved from www.philadelinquency.com

42 Briggs, "A New Zoning Code for a Different Philadelphia."

43 Brey, "Debate over Registered Community Organizations in Full Bloom."

Stop the Policies that will Silence Community Voice

Down with The New Zoning Code



(Don't Let them put a MUZZLE over our mouth)

RCOs & By-Right Policy

(Developers can build without community input.)

Attention Philadelphia Residents:

The Mayor and the City Planning Commission passed a New Zoning Code, effective in August 2012, that includes a "By Right Policy" (Developers can build without community input) and created RCOs (Registered Community Organizations that must meet requirements, meetings, elections, minutes, mission and boundaries), and are the only ones developers have to meet with regarding development that will come into your community. These policies can lead to Massive Gentrification in low income, working class and African American areas that will push us out of our homes and communities.

These City of Philadelphia policies will:

1. **Take away residents' voices and votes**,
2. Give **certain Organizations**/Agencies the power to **get money from developers in return for support letters and favors with no accountability**,
3. **Favor large and/or sophisticated Organizations**/Agencies **over residents and grassroots groups,** (hand picked)
4. Lead to **City control over communities** and will not improve communications,
5. City funded organizations may be pressured to support certain housing projects.
6. **Open the door for Big Money Developers** to build $300,000 - $700,000 (3 story or higher) mansions in our communities with no input from residents.
7. Drastically **increase property taxes and rents** especially with the **Mayor's Tax Re-assessment plans**.

Come to the **Public Hearing, October 29, 2012 at 10:00a.m.** at City Hall, on 4th Floor in Council Chambers. **This will be your last chance to make your voice heard.** Call Councilwoman Blackwell (215) 686-3418 or 19 ask for Chris to sign up and Speak in front of City Council to voice your opposition to RCO Policy.

For Questions or Information Contact:

Concerned Citizens of Point Breeze (Email:ccpointbreeze@gmail.com)

Southwest District - swpds@aol.com -

line racist."[44] Their accusations rested on the minimum requirements for RCOs, which they claimed were discriminatory against neighborhoods where lower resources might mean a less formal organization of community advocacy. PlanPhilly reports that in 2012, even before the code was formally in place, Greene testified before City Council, "as she has said in previous meetings, that the RCO regulation favors wealthier, better-organized community groups at the expense of poorer groups, in particular 'black and brown communities.'"[45] A flyer distributed by the group in October 2012 demonstrates the depth of CCPB's anger over RCOs (see page 73).

CCPB was hardly the only group that had identified the potential for the RCO system to put wealthier communities at an advantage. An article in The Philadelphia Public Record, a weekly political tabloid, entitled "Who Speaks for The 'Community'?" noted the disparities in different civic groups around the city:

> RCOs needed to show a minimum level of organization...Many community groups were fine with that. But some low-income parts of town lack this level of organization. In poor neighborhoods, civic action often forms around informal leaders and impromptu rallies. These citizens felt shut out of the new system.[46]

We can also find examples of other local leaders in historically African-American communities with complaints about the new system. The Public Record article cites Lee Tolbert, a member of the West Philadelphia Coalition of Neighborhoods & Businesses upset about the interference of the city in local political dynamics: "'There was never anything wrong with the original process,' insisted Tolbert. 'We don't need the Planning Commission to tell communities who they are and what to do.'"[47] An article on Philly.com quotes Claudia Sherrod, a long-time presence in

Tiffany Greene of Concerned Citizens of Point Breeze testifies in City Council.

44 Brey, "Planning Commission Holds Hearing on New Regulations."
45 Ibid.
46 West, "Who Speaks For The 'Community'?"
47 Ibid.

South Philadelphia's civic improvement scene: "'Are they trying to rule us?' asked Claudia Sherrod, executive director of South Philadelphia Homes Inc., of the city's regulations. 'Our voice has to be heard.'"[48]

These objectors were not convinced that any project that a developer wanted to build could possibly be made to work for them and for their community. Logically, then, these groups were not likely to react peacefully to another policy which seemed to be restricting their rights to have their say in development review. The CCPB flyer contains a reference to something it calls a "By Right Policy," explained as "developers can build without community input." Natalie Shieh remarked that after hearing months of objections from community groups about the work of the ZCC to reduce variances and increase by-right development opportunities, she realized that some participants seemed to think that the ZCC had *invented* the concept of by-right development. This opposition was a further development of the push-back that planners received throughout the comprehensive planning process from community advocates suspicious of planning in general. Without faith that the new plans reflected their priorities, these citizens rejected the legitimacy of by right development outright. Communities sensitive to changing demographic and economics saw the zoning effort and all of the related planning processes as part of a pernicious effort to push gentrification in low income communities, as can be seen in the language from the CCPB flyer: "These policies can lead to Massive Gentrification in low income, working class and African American areas that will push us out of our homes and communities."

Into this growing outcry stepped Councilwoman Jannie Blackwell. Blackwell's views aligned with these groups, as can be seen in a speech to City Council about a later RCO bill in 2013: "What universities could do in times of expansion, this bill does, the zoning code does, AVI does, and all of these things—Philadelphia2035—all are opportunities for people to gentrify our neighborhoods, and that's what's at the core of all of this."[49] According to Natalie Shieh, Blackwell saw herself as standing up for the African-American community in the city and wanted to correct discrimination. She saw her role as standing up for communities against development interests, being given a golden ticket to gentrify low-income communities by the silencing of local voices of dissent.

Over strident objection from advocates of the new system who claimed that the requirements for RCO registration were minimally burdensome and quite fair, Councilwoman Blackwell scheduled hearings in 2012 to address the RCO system's potential inequities and, only a few months after the new code went into effect, introduced a bill to change significant provisions of the RCO process. "The intentions may have been good,

48 Ransom, "Does Blackwell's Bill Hurt City Development?"
49 Jannie Blackwell Speaks out on RCO Bill (Video).

but it just didn't work out that way," she said at her hearing. "There's just too much, it's just too difficult and it's just too hard."[50] Supporters of the system responded, including the co-director of the Common Ground process, saying that the Council should respect the process used to create the RCO mechanism and not adjust the code for a year, allowing changes to be made with more knowledge of how the system worked in practice. Councilwoman Blackwell's bill passed City Council; Mayor Nutter, a firm supporter of the work of the ZCC, vetoed the bill, but the veto was overturned by another Council vote, and the law was enacted in early 2013.

Blackwell's bill was an attempt to reopen a process which she believed to be closed to historically disadvantaged communities. Partly, this was by allowing for the more easy proliferation of new RCOs. Groups were no longer required to have regular public meetings or elected leadership. Boundaries could be defined in the registration statement, rather than in the group's bylaws. Groups only had to re-register every three years, rather than every year. She wanted developers to be responsible for more active recruitment of public participation, so she also greatly expanded the number of neighboring properties required to be given notice by applicants for variances or scheduled to appear before the Civic Design Review Committee. In addition, RCOs themselves were required to provide formal notices of meetings to neighbors of the properties under consideration. Most significantly in terms of the stated objectives of the zoning code, she made multiple community meetings possible, rather than forcing RCOs to work together for one joint meeting. The decision to hold multiple meetings could be made by any of the RCOs, by PCPC, by the ZBA, or by the local councilmember. In addition to the changes to the RCO system, the bill also adjusted the makeup of the Civic Design Review committee, adding an additional rotating committee person from the local RCO and a designee from the district Council member.

The allowance for a continued proliferation of conflicting interests and multiple meetings was also an attempt to reassert the traditional role of the councilperson in local politics. The more complicated landscape of development interests allowed councilpeople to set agendas, broker compromises, and negotiate with developers. Without a more streamlined process, councilpeople could retain their ability to work in their constituents' interest—against developers.

Though her organization, the South of South Neighborhood Association, was very experienced with zoning and easily met more strict criteria for an RCO, Lauren Vidas understood the logic behind Blackwell's bill:

> In a lot of neighborhoods, it's block captains knocking on doors saying, 'there's this new development—we're gonna meet about

50 Brey, "Planning Commission Opposes Bill Changing Registered Community Organization Requirements."

> it.' It's more informal. So I think the balance they were trying to reach was to have the developers know who they were dealing with and have a process that was sort of predictable for them, and on the other hand make sure that folks who were more informally organized and who only really met when there was a project before them—give them an opportunity to have their voices heard.

However, it became clear that something was not working with the RCO system. Over the summer of 2013, PCPC conducted a one-year review of the new zoning code (this project was also managed by Natalie Shieh). Their findings were compiled in a report to City Council published in August 2013. While the viewpoint of this report may be slanted by its authorship, it places blame for continuing hiccups in the operation of community input squarely on Blackwell's bill. The report summarized the feeling of about 125 participants regarding the changes to the system:

> Most of the comments related to RCOs were in response to these [Blackwell's] amendments. While participants understood that the goal of the Bill was to improve communication between zoning permit applicants and community members, responses indicate that the Bill has not achieved that goal and instead has created a process that is unpredictable, uncertain, and difficult to manage.[51]

In particular, their complaints were: the written notice requirements are "cumbersome, burdensome, and expensive"; the ability of RCOs to opt out of joint meetings is frustrating to developers but also made possible "applicants pitting RCOs against each other, selectively using RCOs for support," as well as creating "general confusion about how many meetings to attend"; and RCO "qualifications are too lenient and have resulted in RCOs who do not fairly represent the affected neighborhood." The proliferation of RCOs in certain neighborhoods has "resulted in 'turf wars' with an unmanageable number of RCOs having overlapping boundaries."[52]

In response to this document and to the resulting recommendations from PCPC, Councilman Bobby Henon introduced yet another amendment to the RCO process to City Council. His bill was made law in January of 2014, this time to objections by Blackwell and her supporters. The bill rolled back some changes made by Blackwell and compromised on others, as well as incorporating criticism from other quarters. Issue-based RCOs were eliminated and RCOs were limited to 20,000 parcels of territory (about four square miles instead of the original seven). Some of the existing neighborhood governance groups were no longer given automatic RCO status, but ward committees were. RCOs were once again required to hold regularly scheduled open meetings. Re-registration had

51 Greenberger et al., *One-Year Zoning Code Review: A Report to City Council.*
52 Ibid.

to occur every two years. Notice requirements for RCOs were reduced substantially, and reduced somewhat for applicants. Applicants once again had to attend only one meeting, and the district Council Member was given the power to select a "coordinating RCO" for projects to lead the local zoning administrative process by setting up and hosting the required meeting.

Established RCOs were supportive of the changes, which re-emphasized the need for basic organizational structures and operating ability to participate formally in the administration of zoning change. "This legislation is, for the most part, a step in the right direction and we are entirely supportive of Council's commitment to reintroduce a basic set of standards to guide organizations that wish to represent their communities on zoning matters," said Greg Lugones, the chair of SOSNA's zoning committee.[53]

Shieh believed that Blackwell was convinced of all of the worst myths about the system, and was perhaps blinded by this to the real purpose of the system. However, it is certainly possible that Blackwell simply held a different view of the purpose of civic organization than the zoning code reforms. While the ZCC and its proponents created the RCO system to create a more logical and technocratic process for development review, Blackwell and many in her constituency prioritized the ability of citizens to be heard, despite its impact on the smoothness of local governance. This division reflects fundamental differences in approaches to local control. The planning establishment seems to have been caught off-guard by the strength of some people's reaction to the code (the PCPC blog in 2014 actually asks, "Out of all of the changes to the code who would have predicted that RCOs would be one of the most contentious additions?").[54] But the new zoning code—rooted in a vision of streamlined, transparent administration—was so upsetting to Councilwoman Blackwell and many others who shared her viewpoints because of this fundamental disagreement about what local politics can and should achieve for neighborhoods and communities.

3.6 RCOs TODAY

Each of the people interviewed for this paper were asked for their evaluation of the city's current system of community-centric development review through RCOs. The responses pointed to a mixed reception. Many people had complaints about how development was received and reviewed by the city and by neighbors and how zoning was administered in Philadelphia. Almost universal, however, was the hope that the system of notice and meetings that centers around RCOs not receive any

53 Stumm, "Zoning Committees Feel Pretty Good about Zoning Changes City Council Passed Last Week."
54 Philadelphia Planeto, "Fact-Check Friday – RCO Edition."

more major overhauls in the near future. Once year since the last major changes were made by Councilman Henon, there seemed to be little will to keep adjusting how RCOs work. "It doesn't seem like anybody wants to touch it again at the moment," said Jared Brey. "It's at this sort of detente stage."

Peter Kelsen, the former Zoning Code Commissioner, was the most positive about the RCO system. "It is really a much more transparent process and, for the most part, I would say that the community groups and the developers who are real practitioners of the art recognize it and respect it and like it," he said. The first few years of debate made it difficult for participants to acclimate to the new system, which was detrimental to the implementation of the new regulations. However, he thought that walking back Councilwoman Blackwell's amendments was helpful for creating the right balance for participants:

> I think that right now, it seems to be working better than it was under the first amendments. We're still sorting out process, even though it's been about a year. I hope it's not further amended because I think if it's amended one way or the other...you're gonna get pushback from the community groups saying, 'You're taking away our ability to be involved.' If you make it more onerous—and that's what was happening in the first round—the developers and the applicants are saying, 'What are you doing? We just can't do anymore!' So I hope it stays the way it is. I think people are getting more comfortable with it. Community groups I think are getting more comfortable with it and on the other side too. So hopefully it will be more status quo.

Peter Kelsen. Image from PlanPhilly

Kelsen especially emphasized the value of the system as a process change, befitting his role on the ZCC. He believes that the new code creates a more predictable and fair process, one of the main goals of zoning code reform: "It's a good system. It's not necessarily a comfortable system, but it's gotten a lot better and I think it is a much fairer system, on both sides of the aisle, than it was prior to this." He recognized, like many others,

that the RCO system is captive to the larger forces at play in the city as regards development and urban change, but believes the new code is successful in creating a more solid foundation for negotiation and engagement than existed before:

> Now, again, there's always going to be little bumps and little disconnects. But it also depends on the motivations of the applicant, and the interest in the application to being open and transparent, and I would say the interest of the community —and I'm using community purposely, writ large - to be open and transparent and willing to engage. Doesn't mean you have to agree, or even reach an agreement, but that process is critical, and all you can do is create a framework for that to happen but the players have to approach it in good faith. That's the thing I'm proud to say I've seen, 90% of the time, occurring in areas where I'm doing stuff. So that's a complement to the process.

The RCO process and other changes to the place of the community in zoning and planning affected the deep-seated interactions between political actors engaged, fundamentally, in a debate over the expression of values within urban space. The fiery clashes that characterized the first two years of the new zoning code's life may have subsided, but the zoning code that emerged was a document shaped by compromise and tensions. The reformers may have had an image in mind of a harmonizing effort whereby tensions between communities and development interests were smoothed over by the re-legitimized planning process, but this optimistic vision was quickly tempered by the reality of Philadelphia, where communities and politicians were too distrustful of planners and developers and too wary of losing their hard-earned leverage over developers to give up the ability to participate in development review. Rather than removing, or at least de-emphasizing, community input in the variance review process, the RCO system legitimized and legalized this form of input. Communities were not asked to step back from individual project review; rather, they were asked to become even more important parts of this process.

The tensions unearthed by the rewrite process and adoption—between community input and development potential, between negotiation and standard-setting, between smooth administration and community rights—created a document that changed far less about the development review process than the reformers originally set out to change. As a result, the politics and process of development in Philadelphia's neighborhoods are plagued with thorny and complex tensions that could decide the ultimate success or failure of the new zoning code. The next chapter will examine the ways in which the code has succeeded or failed to change how Philadelphia handles new development within residential neighborhoods.

4 DOES THE NEW CODE ACHIEVE ITS GOALS?

It's very hard to stand in front of a group of people and say, 'I can't deal with that. Yes, this is the right committee; no, I have no control.' When someone purchases a property, they can then do whatever they want with it.

Hannah Angert, Newbold Neighbors Association

Philadelphia's integrated zoning and planning reform process instituted many significant changes affecting development in the city. The following analysis will for the most part leave the organizational changes or the changes to dimensional or use standards unaddressed. Rather, it will focus on the solutions that were offered to resolve one of the central tensions of planning as a practice: between community power and effective administration. The solution proposed in the new code was to attempt to clarify and rationalize the community's role in zoning administration and to shift community focus away from project review and towards neighborhood planning. I ask: does the emphasis on municipal

planning and the creation of the RCO system help reduce the reliance on zoning relief while improving on the methods of community input in development that had flourished as a result of the frequency of variance requests?

My analysis of the facts of the development process today reveal that it did not. Much of the development that happens in Philadelphia currently goes through a contentious project review similar to the process that existed before the efforts of the code reformers. However, despite the existence of formal community meeting requirements, community input is actually less relevant in the current system than it was before. These outcomes are the result of a number of failings on the part of the reform.

For one, the weakness of planning and zoning as consensus-building mechanisms has meant that zoning relief through variances has not gone away as a central tool of real estate development. Developers continue to seek the most favorable possible zoning for their projects, and are not intimidated by the prospect of community review.

At the same time, the community review process initiated by variance requests was made the only ongoing forum for neighborhood debate and discussion about planning topics. The continuous stream of variance meetings and the lack of alternative channels for communities to express their concerns about development in their neighborhoods has meant that communities have sharpened their focus on individual development proposals as a proxy for a larger planning discussion. The structure of the process continues to perpetuate the politicization of aspects of development like design and height.

The RCO system places the responsibility for managing these meetings in the hands of a diverse set of community groups with a range of capabilities and approaches to handle the strong feelings generated by new development. Some groups expend an enormous amount of time and energy running these meetings; however, the work necessary to be an RCO running a public meeting is not proportionate to the impact of the meeting on the outcome of the process, as RCOs simply provide an advisory letter.

The system is also stymied by the same internal community divisions that nurture these strong feelings. Because multiple RCOs readily form based on ideological differences, especially in regards to development, no one group can fully claim to speak for the neighborhood as a whole. This confusion has been passed on to the ZBA, which can now be faced with a spectrum of groups with the same legal right to review a variance. What's more, community review over variances has confounded the conflicting effort to enforce firmer, more objective standards at the ZBA. Community review has no clear role in the legal variance process; as a

result, the ZBA has not been seen to consistently apply either community opinion or objective standards to variance applications.

In sum, the system is most stymied by the maintenance of community review over variances and the lack of alternative means of continuing a conversation about planning and development begun by the reform process and made continuously relevant by the rapid changes to the city's landscape. Likely the reformers thought that maintaining community input in variances was both the most politically feasible, as it was the historic status quo, and the least consequential concession to communities, as they expected the need for zoning relief to fall away with the new code. But this decision has created a real paradox in the planning structures of the city: while communities participate actively, it is in an improper place in the process that minimizes their voices and would function better without them.

Any analysis of the new code is necessarily limited by the fact that it has existed in its current form for only slightly more than a year. It is certainly possible that time will smooth out some of the wrinkles and issues identified within this section as various actors fully incorporate the new requirements and processes into their operations. However, I believe that there are certain structural issues and contradictions that are unlikely to fade completely with maturation of the code or with a slowdown in development activity. I have attempted to emphasize these in this anaylsis.

This chapter will elaborate on these points in more detail.

4.1 ZONING RELIEF CONTINUES TO BE CENTRAL TO THE DEVELOPMENT PROCESS

Developer attitudes towards variances have not been changed nearly as dramatically as the zoning code reformers likely hoped they would be. Little seems to have fundamentally changed in the way developers approach their projects: they still seek to build outside the formal zoning constraints, and have little reluctance to ask for variances to realize projects. While the changes to the code have eliminated the need for variances on trivial changes to property, new construction by many developers continues to be completed through the variance process.

The code rewrite does, on first glance, appear to have shifted development towards by-right projects. At the time of the One-Year Review (August 2013), by-right applications accounted for 71% of completed applications. This is a noticeable departure from the trend of the preceding years, when by-right permits hovered between 64% and 66%.[1] There was

1 Because of a lower total number of applications in 2013, the number of by-right permits granted was nearly identical (3955 in 2012 versus 3947 in 2013). The One Year Review attributes this to an uptick in applications submitted in

a corresponding drop in the number of applications for variances, from 1845 to 1249. The use of special permits also dropped significantly.[2] Data provided by PCPC indicates similar trends in the years following the One-Year Review. Direct comparison is difficult because the numbers are for calendar years rather than August to August, but calendar year 2013 saw 79% of applications granted by-right and in 2014 the percentage granted by-right was again at 80%.[3]

The review attributes the increase in by-right permits to the elimination of the need for variances for some common permit activity: "Under the old code, there were numerous ZBA appeals for relatively minor variances for commonplace zoning activities such as decks and fences. The codification of simple rules for these structures has led to an increase in the number of by-right permits and created more predictability in the zoning process."[4] Removing the need for these small, mostly administrative variances to "gear up the business of government,"[5] as consultant Don Elliot told the ZCC in February 2011, was a real accomplishment of the new code. PCPC's Ian Litwin also pointed to this as a fulfilled promise of the zoning reformers: "A lot of Zoning Board cases are, 'I want to build multifamily in a house that's zoned single family,' or, 'My roofdeck is not set back five feet.' A lot of it is smaller stuff. One thing the new code does is it allows L&I discretion if it's a foot or two. It's supposed to make it easier, and I think it does." The One-Year Report also mentions that the number of variances requested by any one project was also reduced, likely because of the technical changes made to different zoning districts.

However, a closer look at the numbers reveals a different story. While the proportion of applications granted off-the-shelf permits has increased, the percentage of refused applications that go on to file an appeal for a variance has remained remarkably constant. 77% of applications that received refusals in the year after the code change went on to appeal for variances, within the high range of the four years preceding the code change (67%-83%).[6] In calendar year 2013, 73% of refused applications requested an appeal; in 2014, this percentage increased even further, to 80%.[7]

It is therefore clear from this data that applicants that do receive refusals are just as likely, if not more, to appeal these with a request for a variance. This suggests that the refusals of the applications is not the result of a misinterpretation of the code or accidental failure to incorporate the new standards; in that case, we would expect to see the percentage of

2012 in advance of the switch to the new code.

2 Greenberger et al., *One-Year Zoning Code Review: A Report to City Council*.

3 Per an email exchange with Ian Litwin.

4 Ibid.

5 Walsh, "ZCC: Reduce variances, by all means."

6 Greenberger et al., *One-Year Zoning Code Review: A Report to City Council.*

7 Per an email exchange with Ian Litwin.

variance appeals decrease as developers got used to the new code. Rather, it shows that around 20% of applicants for permits continue to see the the variance process as the default zoning approval process. These applicants are likely submitting plans which they know will not be approved, with the expectation of contesting their refusals.

This steady stream of applications expecting zoning relief is made even more apparent by a new reality in the city: the explosion in interest in building in recent years, especially residential construction in and surrounding Center City. As a result, property owners are swamping PCPC with applications and the Zoning Board of Adjustment with variance requests. "We are getting more development now than we were having before the recession. Our population is growing every single year since before the recession. So we're growing for the first time in 60 years," said Ian Litwin. The result has been an overall increase in development permits: "The number [of cases reduced going to ZBA] is probably not reduced as much as we would have liked, but the overall number of permit applications is higher." When the ZCC was rewriting the code, they could not have expected growth in population and development in the city to reach the rate that it has in recent years. "We rewrote the zoning code during the recession. The pace of development is pretty crazy," he said. "We predicted the increase in population in the Citywide Vision, but I think what we're seeing is on the higher end of that."

The exact causal relationships between the new code and development activity is hard to assess, given the plethora of macroeconomic factors also present in Philadelphia that have had a major impact on the real estate market. But it seems likely that the increasing viability of development in Philadelphia has heightened the incentives for property owners seeking to capture a piece of this new effervescence to push against zoning constraints that might surpress economic value below its highest potential.

Indeed, as developers have begun building more and more buildings around the city, the gaps between the expected smoothness of the new zoning regime and the current realities have become more apparent. The promise of the reformers—more by-right development guided by a community-created plan mapped onto the city using the language of the new code—turns out to be very difficult to achieve in practice. The process of translating community input into a zoning map is in reality a difficult one, characterized by compromise and negotiation.

The most obvious problem has been the length of time that this process takes. The growing pace of development has meant that the difference in the timeline for zoning code reform and the completion of the individual district remappings has become a major problem. The process of preparing a district plan and subsequently translating planning goals into

zoning designations has been slowed significantly by both the intensity of the process and by political factors. Ian Litwin described it as at least a 10-month process (the Central District Plan took closer to 20 because of the very detailed zoning recommendations), with PCPC actively working on only one or two plans at any time. PCPC can only work so fast with its limited budget and staff.

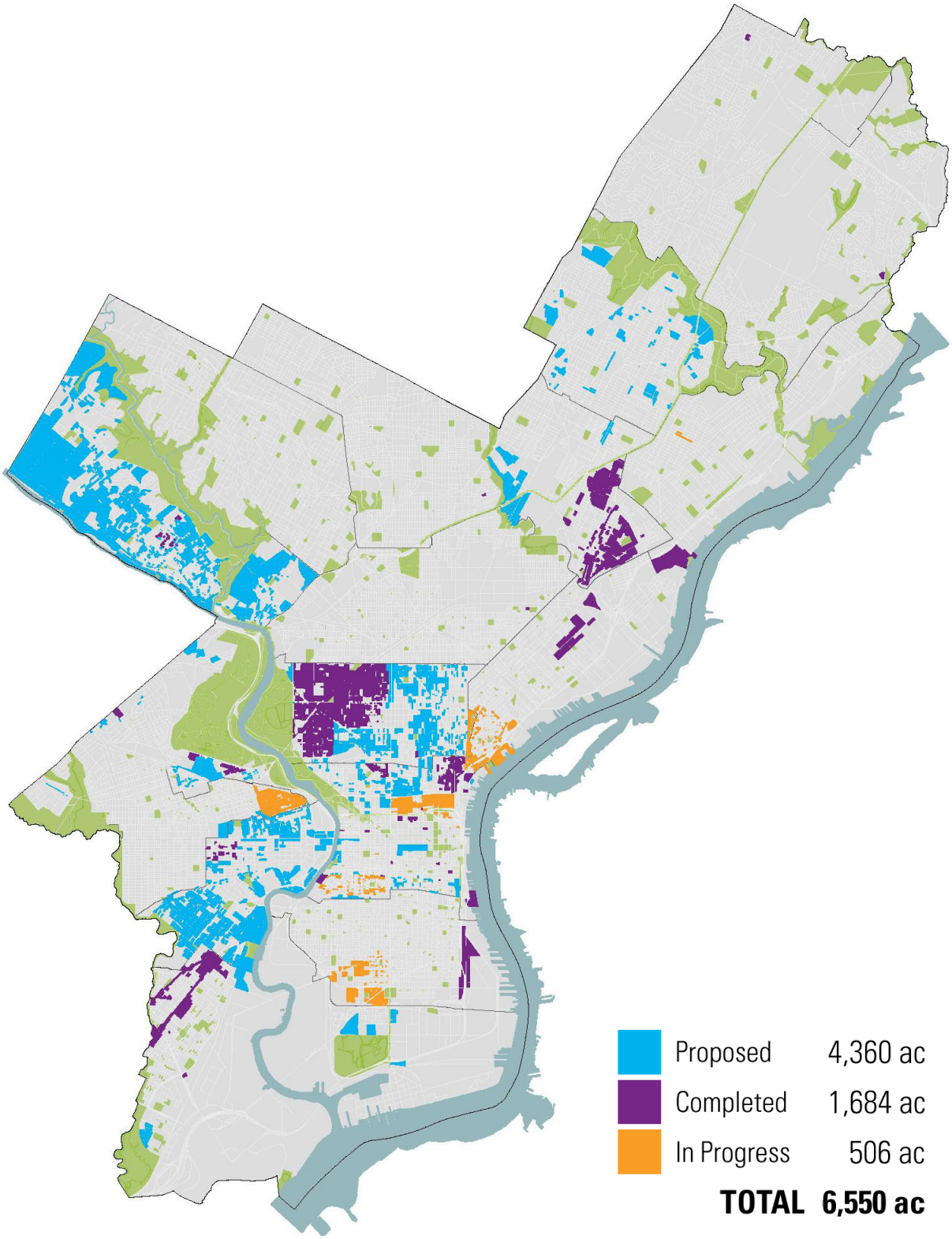
Much of the city continues to be poorly zoned because of the length of the process, and communities that expect new development are clamoring for remapping despite the lack of resources at PCPC's disposal. Ian Litwin described the dilemma that PCPC is in: "What we're finding now is the pressure to remap. Because development is picking up, we're getting pressure from communities to remap at a faster pace than we can handle."

Remapping involves a number of steps. The first part of the process of preparing the plan is a detailed land use inventory of the district, which can be very difficult: "We need in many cases to do deep research. If we're not matching what's on the existing zoning maps—just for legal purposes we need very specific dimensions, which we need to get from deeds. Which in a city like Philadelphia can be very complicated." After an inventory is prepared and general plan is made, PCPC works with the community to translate the ideas into zoning recommendations. "We start with this map that we proposed for the plan," Litwin described. "The neighborhood, the neighborhoods are smart, especially the closer you get to downtown. They know about zoning. They have their recommendations, [and] what we end up with usually is even more changes than was recommended in the plan."

However, neither PCPC nor the communities that help create these zoning recommendations have any independent power to enact them. Instead they must be introduced and passed by City Council members, which opens them up to limitless changes. "Every one of the recommendations in this plan is simply a recommendation, everything," he said. "The Planning Commission doesn't own property, doesn't have budget for things. We're simply trying to encourage policies...in order for any one of these to happen it needs to be a bill of City Council." City Councilors sit on the steering committees for all of the plans, but it can still be very difficult to pass these bills. The initial failures of PCPC's approach to the legislative process forced them to reevaluate:

> I think it's something like a quarter of what we've proposed so far we've actually gotten through Council. I would say for the first three or four district plans we moved almost nothing through Council, so we at the Planning Commission had to reevaluate how our office is. We hired a legislative affairs person. We have a department here now that deals strictly with dealings with Council and zoning bills.

Opposite: Progress of the remapping process as of December 2014. Image from PCPC


Proposed 4,360 ac
Completed 1,684 ac
In Progress 506 ac
TOTAL 6,550 ac

Luckily, this seems to have worked, according to Litwin:

> We're starting to pick up a lot of steam. Depending on the Councilperson. The way Philadelphia City Council works is they have Councilmanic prerogative, so if it's something in your district no other Councilperson will touch it. And if you introduce a zoning bill in your district, no one else will vote [against it]. Getting to that point is challenging for us.

The lack of remapping progress is certainly spawning many of the requests for zoning relief. Developers often present these variance requests as "corrective rezonings" that help align the outdated maps with the ideals of the new code. Steve Cobb, Councilman Kenyatta Johnson's Director of Legislation, described how this works in his South Philadelphia district, the location of many new development projects[8]:

> In the second district specifically, there's a lot of development going on, and a lot of that development is going into neighborhoods that haven't seen a significant amount of investment in a while, and maybe the industries and the economies have changed. A lot of the projects coming in sometimes don't meet the requirements of the existing designations, so we'll get a lot of property owners coming in and saying that their property is actually mischaracterized and needs to be correctively zoned.

Ian Litwin said that PCPC is generally supportive of awarding zoning relief to developments that accord with the goals and priorities of the new code, even if it jumps ahead of remapping. We might ask why so much zoning relief continues to be sought through variances, rather than through legislative rezoning, considering the very obvious push to make variances rarer and harder to obtain. According to ZCC member Peter Kelsen and to Ian Litwin, smaller developers without significant political capital continue to see the legislative rezoning process as too arduous and difficult to go through for most developments. In fact, Peter Kelsen said that the calculus remains the same for developers, and since variances are still seen as much easier to obtain than rezonings most developers continue to ask for them. "I don't necessarily see personally a lot more of the legislative rezoning efforts versus the variance efforts," he said.

Likely a major driver of this failure to shift developers away from inappropriate variances is the continued ease of obtaining a variance approval from the ZBA. The percentage of variances that were granted to applicants by the ZBA did not deviate at all from the very high trend of the preceding years (between 91% an 94% approval).[9] Little seems to have changed at the ZBA for developers.

---

8 Home to both Graduate Hospital and Point Breeze.

9 This point will be expanded upon in a later section.

The message of leniency emanating from PCPC and from the ZBA is clearly contributing to the high number of zoning relief applications. However, there is a very blurry line between a corrective rezoning and a developer simply asking for as much as he thinks he can get. It can often seem that developers are using the state of the zoning map simply as a pretense for negotiating more favorable development terms. The lack of a unified approach to remapping has created opportunities that savvy developers can exploit. "A lot of developers, when they go to the Board will be like, 'this parcel is zoned industrial—I can't build industrial here.' So then you are getting a use variance, but your bulk requirements [are industrial]. So the process of remapping the entire city is a sticking point right now," said Ian Litwin.

But, he said, communities and observers have been disappointed by what they see as the continuation of an ad hoc approach to zoning that was supposed to have been eliminated with the new code. Without zoning that follows a plan, these one-at-a-time fixes are overly dependent on the follow-through of the developers that brought the individual proposal—something communities distrust. He noted:

> A lot of neighborhood groups oppose those [rezonings] simply on the grounds that you wrote a new zoning code and told us we wouldn't have these anymore. If this developer doesn't build it, a new guy can come in and he now has CMX-5 zoning and he can build a building twice as tall [as the proposal].

The completion of the remapping project will likely reduce somewhat the number of variances requested in certain areas, especially for use. However, it is unlikely that remapping will make the mismatch between developer interests and zoning constraints disappear. The end result of the planning and remapping process is hardly a universally appealing document. Once community participants, PCPC staff, developers, and City Council have their say on a district's zoning, the end result is a map that continues to reflect the mish-mash of planning priorities that exist in Philadelphia. It is clear that the new zoning maps, once they are completed, will hardly be the developer-friendly and market-based regimes that developers hope to see, given the importance of the community's priorities and the need to appease City Council to pass the remapping bills. As a result, developers seeking to build will likely continue to push up against planning and zoning when they see it as interfering with the highest and best use of a parcel — or at least a higher and better project, as they imagine it. This tendency is hardly unique to Philadelphia.

The difficulties of creating a zoning map that appeases developers, communities, and politicians reflect a deeper issue with promises of the zoning and planning reformers. As discussed in an earlier section, the construction of the new code was itself an intense negotiation between stakeholder groups and it is a document that reflects this. It was unreal-

istic to think stakeholders would accept the final dictates of the code simply because the rewrite had concluded; the negotiations of the code-writing process continue today, in the push and pull between developers and the dictates of zoning. Parking requirements, as always, seem to be another major generator of variance requests; according to Litwin, developers in residential areas often want to build more than allowed by code while developers in high-density Center City areas requesting the ability to build less.

Another very apparent example is the residential height limit. Many interviewees pointed to the 38 foot height limit in many residential districts as spawning a large number of zoning appeals because it is lower than what many developers desire to build. While this limit was the result of a negotiation process between the higher heights desired by many developers and the low-rise desires of certain neighborhoods, developers have not given up pushing for taller projects when they believe they are economically feasible. Ian Litwin and PlanPhilly reporter Jared Brey both mentioned that the building industry would like the height limit to be 42 feet in these neighborhoods. This was corroborated by a small developer in South Philadelphia, Max Glass, who said that he would be asking for a variance to build 42 feet for his next building, because it allows for a higher level of finish and detail for four story buildings than 38 feet (for example, a previous building, which received a variance to be built at 39 and a half feet, was built without a forced air system because it would have taken up too much height).

It is also important to note that the new RCO process has hardly scared off developers looking for these lucrative variances. Developers that were comfortable with the extremely complicated and political process of development before code reform are now faced with in fact a more simplified process now. Though they have enhanced requirements for notification of near neighbors to their projects, the formalization of community input has meant that developers have been granted the certainty and set timeline for the process that they desired. The registration requirement for community groups means developers no longer struggle to identify the relevant groups and need attend only one meeting; in addition, developers are no longer responsible for organizing these meetings.

In South of South Neighborhood Association President Lauren Vidas's opinion, the result is that developers rarely see the community input process as a sufficient reason not to push against planning constraints:

> [SOSNA's] not seeing fewer projects because a lot of the compromises that were made in terms of height and setback and things like that, to appease the neighborhood folks—if the developers who have been used to going through the variance process for the last God-knows-how-many years, they're familiar with it. There's very few projects where they're like, "I'm just going to build this

> by right."

Peter Kelsen also emphasized that for many developers, the economic incentive to build is stronger than the deterrant of the formal community process:

> Here's what I've actually seen: more development. In various ways: big development, small development...But I'll frankly tell you that's because of the economy. It has nothing to do with the notice provisions [for developers to neighbors of projects]. I would like to think it has a lot to do with the new zoning code and having more opportunities and more by right stuff, but I think you'd have what you're having here with the notice requirements or without the notice requirements, because people are still going to do it.

Indeed, developers continue to expect a certain amount of political negotiations in order to achieve project approvals. Alex Feldman of U3 Advisors also pointed out how developers in many areas are prepared to go through extensive community review in order to build a sensible project:

> The mapping of our sites is antiquated. We have a new zoning code—that has not been applied to our city grid, and there are specific parcels in the city that should be zoned at a higher and more efficient use than they currently are. So until that's done, a process like this [with extensive community input] is probably necessary, because you will need a tremendous amount of variances.

But the fact that so many developers are continuing to go to the ZBA for each project, rather than building by-right, indicates that there may be no point at which the "corrective zoning" will be sufficient to completely end the friction between developer desires and planning restrictions. The lack of completeness of new maps may simply be a convenient excuse that allows them to frame their desire to build their individual visions within the language of the zoning and planning reform effort. Most likely developers will continue to try to build what they believe will sell, whether this conforms to the new code and new maps or not, and as long as the ZBA is seen as friendly to their interests they will not hesitate to ask for zoning relief.

While the technical changes to the code was meant to reduce the friction between what developers want and what they were allowed to build, thereby allowing variances to be proposed only for true hardship cases, this has not been the case in practice. Compromise is central to the nature of planning and zoning, and it was unrealistic to expect that the new zoning documents could truly satisfy both developers and communities. Since developers will always chafe against a regulatory regime that seems unfriendly to their efforts, we must therefore conclude that

the planning and zoning reform efforts were unlikely to fully eliminate the need for some kind of zoning relief.

4.2 COMMUNITY INPUT IS CONFINED TO ADVISORY ZONING PERMIT REVIEWS

As development heats up and RCOs around the city have seen more requests for meetings from applicants for zoning relief, RCO zoning meetings have become very active forums. It is clear that communities are talking more about the role of planning to shape development; however, the ongoing impulse towards discussion about neighborhood issues and priorities does not have a real home in the current process. The zoning code authors hoped that communities would participate in neighborhood planning and step back from review of individual projects. This has not been the reality. Instead, communities have continued to use the zoning process as an unofficial opportunity for local project review.

The strengthening of a community's desire to participate in zoning administration after participation in a official planning process is reflected in research done in similar situations. In a 1988 paper, Hutcheson and Prather examined a very similar situation in Atlanta and conclude that community participation in planning is likely to make some citizens more willing to engage in the avenues for *continued* participation, rather than satisfied enough with the results of the planning process to walk away from the day-to-day implementation. The city had instituted a neighborhood planning initiative to involve more citizens in land use decisions. "Few functions of local government involve higher stakes, and few activities elicit more intense citizen interest," the authors say; however, traditionally participation has been muted amongst certain demographics.[10] The hypothesis was that planning participation would increase participation in other land-use decisions: "The neighborhood planning process was believed to sensitize community residents and organizations to land-use issues and mobilize citizens for participation in the zoning process."Acknowledging the work of Susan Fainstein, the authors state that "the effects of citizen participation on the distribution of power and benefits must be addressed...Participation without influence may foster withdrawal, but tangible results are likely to reinforce and broaden participation."[11]

Through an analysis of ten years of zoning applications, including information on speakers and letters of recommendation submitted during hearings, they determined that "the effects of the neighborhood planning system varied in different types of communities."[12] They found that

10 Hutcheson and Prather, "Community Mobilization and Participation in the Zoning Process."
11 Ibid.
12 Ibid.

the new mechanisms for neighborhood-based planning had indeed increased participation in public zoning hearing procedures amongst the groups that had traditionally declined to participate in these forums—even though these procedures had themselves not been changed significantly. Community participation in lower-income areas rose dramatically. However, the opposite was true of higher-income areas which had participated heavily before the new planning system. The authors also concluded that, "Although higher-income areas were still more likely to oppose zoning applications, the relative effectiveness of lower-income [and black] areas in mobilizing opposition seems to have increased."[13]

They also made another interesting discovery: the patterns of participation suggested "that decreases in participation were precipitated by previous and continued success in blocking undesired applications and a decrease in community interest where applications were viewed as innocuous."[14] They draw a conclusion that in high-income and already gentrified areas, participation decreased because "battles had been fought and won," whereas in low-income, racially mixed, and gentrifying areas participation increased because of the ongoing nature of struggles over land use.

The conclusion that can be drawn from this paper is that the assumption made by zoning reformers that communities will be satisfied enough with the results of a neighborhood planning process only applies to certain communities. This accords with the evidence from Philadelphia throughout the zoning and planning reform process. In general, groups from wealthier and more advantaged neighborhoods seem to have acquiesced much more readily to the regime of increased by-right development and de-emphasized community control over individual projects. In lower-income neighborhoods, especially those experiencing change and new construction, opposition to reduced opportunity to fight new development grew quickly.

We can likely expect that in these communities this engagement with the zoning administrative apparatus will only grow with time, as these communities gain experience with neighborhood planning through the PCPC remapping project and through the active work being done in city government to make planning more relevant and accessible for citizens. PCPC and the city have made great strides in making data and information more democratic and available in order to educate the public and make them more able to engage, something praised by active community members like Hannah Angert, chair of the Newbold Neighbors Association's zoning committee:

> Over the past five years, the leaps and bounds of the technical end of Philadelphia have been astonishing. I can't praise the mayor

13 Ibid.
14 Ibid.

> enough for the changes that have taken place in his term, whether it's his doing or not. Over the course of his term, this city's website's, L&I's websites, 311, all of those things, have contributed to a wonderful turnaround.[15]

But the system instituted by the new code is not set up to embrace the continued and passionate input on neighborhood planning that the city will likely see, especially in lower-income neighborhoods. The planned-for shift from community review of zoning permits to community participation in neighborhood planning was meant to address the widely expressed criticisms of using community feeling as a standard for variance review; however, the formalization of community input in zoning permit review has instead strengthened the focus on the zoning administrative process as a means for expressing community concerns and priorities. The system for ongoing community participation instituted by the new code continues to be a wholly reactive mechanism, confined for the most part to variance review, occasional Civic Design Review Committee input, and the rare special permit recommendation. Variance reviews constitute the most frequent activator of RCO meetings and therefore most community discussion about planning and zoning happens at these meetings.

As a result, variance meetings have continued to be ground zero for all of the local conflict regarding neighborhood change. By being regular, ongoing occurrences connected to a specific location, zoning meetings have given community members a forum to talk about planning that does not exist elsewhere, so RCO meetings are usually the first and last resort for planning discussions for members of the community. It is understandable, therefore, that meeting attendees rarely focus on the zoning refusals that are technically being evaluated. Instead, there is a clear attempt to use this process as a holistic project reviews and as constant referendums on new development in the neighborhood.

Civic Design Review was a reasonable attempt to allow these discussions to happen in a context more amenable to general project review. However, the size threshholds for CDR are high enough that projects that trigger the process are rare in most neighborhoods. Many community members continue to feel that they deserve input in projects because of their proximity, not just because of their size, so the priorities of the process do not match those of many communities. The importance of CDR as an outlet for community discussions about neighborhood issues is therefore stymied by the frequency of variance meetings, which, for most participants, seem to offer the same opportunity.

Unfortunately, this has meant an ever-increasing scrutiny and politiciza-

15 Angert, Hannah. Interview by author. Recording. Philadelphia, January, 2015. See Note Regarding Interviews, page 6.

tion of *individual projects* and of the design decisions of individual property owners. Discussion with a presenter regarding his proposal is often overwhelmed with comments on a wide range of design critiques rooted in neighborhood planning issues that cannot easily be addressed within the structures of a zoning meeting. This is especially true in rapidly changing neighborhoods, which have seen venomous debates between longer residents, newcomers, and developers play out in RCO meetings about particularly touchy developments.

Jared Brey has been reporting on conflicts like these for a number of years. To him, these discussions about design, dimension, and other minor development characteristics often seem to be masking deeper cultural and political conflicts. "The generous viewpoint is that people truly do care about the character of the neighborhoods and they say, 'We're a place of two story houses or we're a place of three story houses and we have this cornice line, it's nice, and you don't want people just going above that and breaking it just because they can, just to get richer folks in," he said. "The less charitable view is just that people, I don't know, have some animosity towards new development in general and see tall development in particular as a slap in the face to people who have been living there a long time."

One of the flashpoints for this kind of conflict is Point Breeze, a lower-income and heavily African-American neighborhood in South Philadelphia that has seen a recent influx of newcomers as gentrification has spread south and west from Center City and other residential neighborhoods with more established white and higher-income populations. Newbold is a subsection of Point Breeze that was first to see major demographic and cultural changes, and has gained an identity separate from the larger neighborhood at least partly through the work of local community associations.[16] As chair of the zoning committee for a Newbold RCO, Hannah Angert has experienced years of pushback against the narrow scope of a zoning variance meeting from a community clamoring to discuss larger issues. When asked what the biggest points of contention in her meetings are, she answered:

> One is basically capitalism in general. And I know that that's big, but there is no solid understanding of the impact of new construction on taxes. The [Actual Value Initiative] crossed over so much with the speed of development in Newbold that I can understand why people conceptually didn't get it. But there's truth to it just because it's the rumor, and people fear tax increases.

16 Indeed, the idea of Newbold as a place at all was conjured into existence by one of the first developers to appear in the area in many years, John Longacre, who created a new civic association for the area and named it the Newbold Civic Association after the old name of one of the area's main streets. Longacre has a history of butting up against longer-term residents and his developments have received their fair share of controversy. For more, see coverage of the conflict over the opening of Longacre's American Sardine Bar.

> People on fixed incomes are right to fear tax increases. So it's very hard to stand in front of a group of people and say, 'I can't deal with that. Yes, this is the right committee; no, I have no control.' When someone purchases a property, they can then do whatever they want with it. And you can't say, we will approve it if you give money to the school—which is what a lot of people stand up and say.

A three story new construction row house abuts older two story homes in Point Breeze. Image from Philly Urban Living Blog

She also mentioned a divide in the neighborhood between the "two story people" and the "three story people," which is a reference to a resentment that lingers as the result over an attempt to use zoning to directly address gentrification. In 2011, current district City Councilperson Anna Verna proposed a bill (at the urging of Concerned Citizens of Point Breeze) which would have banned all construction over three stories in Point Breeze; these homes, many marketed to and bought by white newcomers, were seen as causing gentrification. The bill was presented in language relevant to zoning ("preserve the uniformity of the streetscape and the current scale and density of the area," as the bill states) but was defended as an anti-gentrification mechanism.[17] Lauren Vidas, who was working for Mayor Nutter when this bill was proposed, explained the reaction to it: "People were claiming that three story buildings were causing heart attacks, or that they were providing access for people to climb down chimneys to rob people. It was ludicrous." The bill failed after a bitter fight within the neighborhood, but the memory of this attempt to zone away gentrification is still present and still has echoes at community zoning meetings today. Evidence to this fact was apparent from attending just one meeting in January 2015, when one presenter

17 Pompilio and Bender, "A Wary Point Breeze Confronts Its Demographic Shifts."

faced opposition for a three story proposal because audience members claimed that the third story would be "setting a precedent that would destroy that block."

Vidas saw the three story ban as a clear symbol of the ongoing tendency in the city's neighborhoods to try to use zoning to address more difficult-to-grasp problems. However, by asking zoning to address these issues, communities are setting themselves up for failure:

> I think that's what's frustrating—a lot of times the zoning code is a proxy for other things, and it's frustrating. Because people have very legitimate concerns. People in Point Breeze—that's where the bill covered—are worried about being priced out of their neighborhood, and that's an absolutely legitimate concern. Absolutely. But by trying to use the zoning code as a mechanism to stop that, rather than looking at a more holistic solution...you're not actually fixing the problem. It's frustrating because then it becomes a zero sum game where it's like, if there's three story buildings the residents that live there lose. And it shouldn't be. There's a solution that's a finer solution than just banning things outright. But that's the gut reaction. And you see that with other things where people try to use the zoning code to get aesthetic changes to projects, and they're threatening to hold up the variance unless you use a different color of brick. That's not really the point of the zoning code.

While more established neighborhoods may face less direct internal conflict about development, new proposals inevitably stir up debate in any neighborhood where they are proposed. Graduate Hospital is an area directly north of Point Breeze which transitioned rapidly from a low-income neighborhood to a fairly gentrified one in the mid-2000s.[18] This is the home of the South of South Neighborhood Association, which Vidas now heads. People come to SOSNA meetings to vent, just like they do at NNA meetings. "Parking, density, height. Those are the trifecta of NIMBYism in Philadelphia," she described. "You have to let people say their piece. But what I do think is helpful is that we can say, we will take note and we will try to address those issues. And our zoning chair...does a really great job at refocusing people."

The channelling of ongoing community discussion into the zoning process has had the effect of maintaining the difficulties of zoning review

18 This rapid change remains reflected in the nomenclature of the neighborhood, which is different for different people. Older, black residents tend to continue to associate the area with the rest of South Philadelphia, while newer, whiter residents are more likely to call the area Graduate Hospital or another name which connects the area to Rittenhouse Square or Center City while dissociating it with less "desirable" places to the south. For an interesting study of the psychogeographies of Graduate Hospital, see "The Social Construction of a Gentrifying Neighborhood," by Jackelyn Hwang.

while simultaneously dampening the official power of the community. Community input in the variance meeting hardly makes the process easier for developers and property owners who must fend off the intense scrutiny of neighbors. While the meetings are ostensibly meant to be a presentation of the "refusals" that require variances for a project, presenters of projects must come prepared to address a much wider variety of community concerns, even if they have no obligation to alter their project in response. An article in *Philadelphia Magazine* about a controversial project in Point Breeze made this point:

> Working with the community is not easy: Residents have their own agendas that often really are at odds with those of builders and developers. RCOs in many neighborhoods often pick projects apart with myriad detailed complaints, delaying them and adding to their cost. Just about every developer in the city can recount a project that had a difficult birth because of the community zoning process.[19]

It is certainly possible that the intense scrutiny of development proposals by the public has raised the average quality of design in the city. This is a difficult theory to test, though some developers, such as Max Glass, acknowledge that some level of zoning friction can help insure that projects consider neighborhood interests rather than simple economic returns.[20] It is clear, from observations of zoning meetings, that most developers do strike a conciliatory tone to the community in the attempt to maintain goodwill towards them and towards their proposals.

But this conciliation is only to a point. The formal power that RCOs have over individual developments is very small. The outcome of an RCO zoning meeting is simply an advisory letter to the ZBA, who remain the ultimate arbiters of zoning relief. Developers are not required to address any of the concerns raised in the RCO meeting; in fact, according to Peter Kelsen, the zoning reformers included a provision in the new code that any agreements between the developer and the RCO would not be enforceable by the city in order to lessen the power that communities had to dictate the terms of zoning approval.[21]

The new code, therefore, creates a mismatch between the way that neighborhoods use the zoning process and the real purpose of zoning meetings. Rather than being given a place within the planning infrastructure of the city, communities have been relegated to an advisory role in an administrative process. In creating the RCO system, the focus of the zoning

---

19 Smith, "The Other Message from the ReNewbold Groundbreaking."

20 He mentioned a desire to force corner parcels to go through heightened zoning scrutiny as a means to create more commercial uses instead of purely residential buildings.

21 In the past, these agreements could be attached by the ZBA to a zoning permit as conditions of approval.

code authors seems to have been too focused on repairing the variance review process that they neglected to see that a neighborhood-level entity with a formal role in the administration of zoning can, and perhaps should, have a larger role than simply serving as a gatekeeper for the ZBA. Instead of embedding the RCOs into the planning structure of the city, they confined their influence to an extremely narrow stream of issues. This has created an unbridged chasm between what communities want from RCOs and what role they actually play.

RCOs are expected to review individual projects but have not been given the power or capacity to engage in more holistic and comprehensive planning discussions about their neighborhoods. RCOs have no power over the zoning or planning of an area and can simply provide a forum for the consideration of projects needing variances and give fairly mild recommendations to the Zoning Board. The Philadelphia zoning code makes no mention of RCOs in the section about initiating a plan, and there is no formal process by which an RCO can initiate a rezoning or creation of a new plan by PCPC. Indeed, RCOs are given input in the review of variances but seem to have no formal part of a *legislative* rezoning process. Public discussion around an area's planning and zoning values would a more natural fit in this process than in the variance process, where an applicant's legal rights must be considered; however, RCOs have no formal role in the process of making a map or text amendment. Because any legislative rezoning would be the charge of City Council, it is logical to assume that RCOs would be incorporated into the process by the district Councilmember; but this function is explicitly not mentioned in the code text about RCOs or rezonings. Amendments to the map or code are forbidden without a formal review by PCPC: while PCPC is required to incorporate certain criteria in their evaluation, none of these are the recommendations of a local RCO.

Given that RCOs seem to have been written into the process to be a kind of administrative graveyard for planning discussions within Philadelphia neighborhoods, it then makes sense to ask if PCPC makes an effort to send representatives to RCO meetings, collect feedback from RCO zoning boards, or foster any kind of formal relationship with RCOs to watch and react to community dialogue happening outside of the formal planning process. The answer appears to be no. Hannah Angert, for example, described the difficulty that she has maintaining relationships with contacts at PCPC, especially given her experience of operating a committee in the midst of a relatively high turnover of city staff.

There may be a continued sense at PCPC that the planners and planning structure of the city should strive to be above "politics" in order to better serve the needs of the city as a whole. These RCOs are seen less as potential partners for planning initiatives and more as just one more actor in the fiery politics of planning that want to put their spin on the

land use regime of the city, for better or for worse. Giving RCOs a role in the zoning process allowed them to advocate more loudly, but this is a positive for communities that is not necessarily an advantage for "good planning." "A lot of communities think developers have all the power and are making so much money. And developers are like, 'You make it too hard to build things.' And we are always caught in the middle," said PCPC's Ian Litwin. He continued:

> There's communities, there's developers, there's Council, there's what we think is good planning...it's never perfect...The system we have now with RCOs now is probably better, because it puts every RCO on equal footing, whether they deserve it or not, and it makes a system for making the developer go to the community.

The conclusion, therefore, is that the RCO system serves more as venting session for community input than a real, productive forum for discussion about neighborhood visions, priorities, and concerns for local development. While development continues to be a political and contentious process, community input has not been given greater meaning in the zoning process and has little impact on the institutions of municipal planning.

4.3 COMMUNITY DIVISIONS AROUND DEVELOPMENT ARE BUILT INTO THE SYSTEM

The reformers of the zoning and planning system seem to have underestimated the depth to which divisions, centered around land use, defined the dynamics of local political and social life in Philadelphia.

The ability for more than one RCO to claim control over the same territory has created a complicated landscape of community groups. By creating fairly low barriers to entry and refusing to create a hierarchy or discrimination scheme amongst groups, the city has ensured that no group is the single mechanism of community participation for any particular area. Without a formal hierarchy of groups or an overarching organizational structure for groups in one neighborhood, there is no clear way for one group to claim a monopoly on community opinion.

Because of the role of RCOs in the zoning relief process, the solidification of the community into opposing pro-development and anti-development camps is given official support by the RCO system and thus community opinion on any one project is often sharply divided. Though all groups must meet with the developer at once, these meetings have done little to smooth divisions since there is no requirement that groups form a consensus, and each RCO can send its own letter to the ZBA regarding the project. As a result, the RCO system has further problematized the idea that there exists a singular stream of "community opinion" that can be used to evaluate the quality and local impact of projects.

Natalie Shieh, project manager of the code reform, explained that many of the groups that had rushed to register at the implementation of the new code eventually dropped out, when it became clear that they were not interested in zoning administration and lost interest in notifications from developers. In addition, the changes of January 2014 eliminated the issue-based RCOs. However, the city is still blanketed with RCOs. According to Ian Litwin, PCPC tends to accept any group that applies to be an RCO as long as they meet the minimum qualifications: "The way it works with RCOs, just for political reasons, [is] almost everyone who applies to be an RCO is accepted, whether or not they are using good practices or not. Any political board—how Philadelphia politics works is there are political wards—all wards are automatically approved."

While the desire for community groups to participate in the administration of zoning is perhaps an indication of a robust democratic system, it has made it impossible for many groups to establish a broad-based legitimacy within a neighborhood. Instead, groups tend to form along lines which reflect the existing divisions within communities, whether these be ideological, cultural, racial, or otherwise. Every group that participates in a meeting with a property owner about a variance appeal is empowered to send its own letter to the ZBA regarding its opinion on the variance. There is no requirement for groups to reach consensus, and when projects are controversial they often do not.

Peter Kelsen recognized that this has become a serious complication to the simplicity imagined for the RCO:

> The system is now been worked in some cases so that you can have multiple RCOs within the same geography, and I can tell you that there are situations where we have been dealing with 8 or 9 different groups literally in the same geography that are now RCOs, so they are formalized under the process. And frankly [they] may have in some cases different agendas, and those agendas may extend beyond land usage.

On the other hand, he believed that this did not necessarily reflect the intentions of the ZCC, saying the profusion of RCOs is "something that has occurred as a result of certain amendments that occurred after the code was originally enacted."

However, the amendments he is referring to, the Blackwell and Henon bills, resulted in an RCO qualification list and administration that is not substantially different from the original proposals. There does not seem to have ever been a limit to the number of RCOs in a certain space. Shieh made it clear that the ZCC was always aware that multiple groups could be formed.

The RCO system, rather than diffusing local conflict about development, has become one more weapon with which these conflicts are fought.

RCOs tend to form not simply on spatial lines but also based on demographic, cultural, political, and ideological factors which inform residents' approaches to new development. These factors themselves often divide communities, and as a result, the RCO landscape of a neighborhood often reflects its internal divisions regarding the acceptability of development and the welcome of developers. This is especially acute in areas where development itself is a flash point for internecine conflict, and neighborhoods where gentrification pressures or demographic change exist can spawn a multitude of groups.

Some groups use their RCO status to explicitly fight against new development that they see as changing the character of their neighborhoods. The resistance of some long-time communities to development in their neighborhood follows a logic that is familiar in planning literature. In *Keep Out*, Sidney Plotkin describes how many urban communities see a turn towards an exclusionary view of property and personal rights as their only defense against a radical restructuring of society along the lines of corporate convenience. "It seems as though, in fighting to keep out the unwanted—the production system and its facilities—many Americans are desperately trying to preserve their personal rights and existing community and family relationships," he writes. The increased tenor of land use battles in recent years is the result of "the clash between capitalist growth and a powerful counterlogic of exclusion."[22]

By providing a municipally sanctioned mechanism for input in the process, however weak it may be, the RCO system presents an opportunity for the groups that feel put-upon or underpowered to boost the volume of their opinions through collective action. There is a long literature about the uses and abuses of community organizations in lower-income and minority communities; Hutcheson and Prather, for example, write:

> Since individual community residents may lack the resources required to effectively 'play the game,' a community that mobilizes the collective resources of its residents increases its chance of winning, and communities are advantaged at the outset when individual residents have more personal resources.[23]

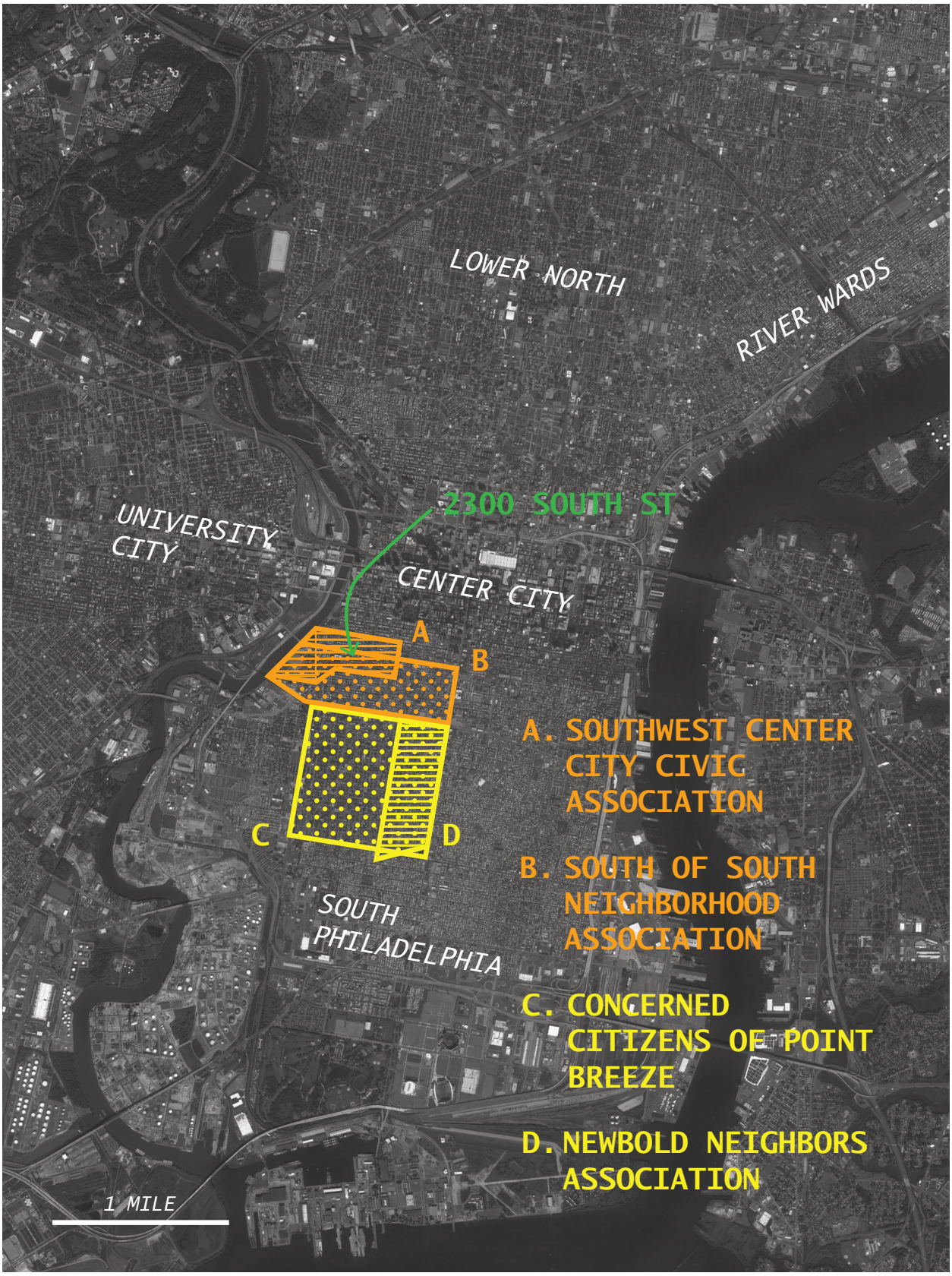
Allowing multiple groups access to a theoretically even playing field in the process of development review, granted through official channels by the Planning Commission, led to groups that had trouble forming a coherent opposition or alternative to existing community organizations in the past to jump on this chance. "More people want to have a seat at the table," Peter Kelsen said of the multiplication of groups in the same neighborhoods. He explained:

> For years, the 'registered community organizations' were almost

Opposite: Overlapping RCOs in South Philadelphia. This map includes only the RCOs mentioned in this paper; it is hardly exhaustive.

22 Plotkin, *Keep Out.*

23 Hutcheson and Prather, "Community Mobilization and Participation in the Zoning Process."


LOWER NORTH
RIVER WARDS
2300 SOUTH ST
UNIVERSITY CITY
CENTER CITY
A
B
C
D
SOUTH PHILADELPHIA
1 MILE
A. SOUTHWEST CENTER CITY CIVIC ASSOCIATION
B. SOUTH OF SOUTH NEIGHBORHOOD ASSOCIATION
C. CONCERNED CITIZENS OF POINT BREEZE
D. NEWBOLD NEIGHBORS ASSOCIATION

> synonymous with the official civic association that existed for many, many years. In some neighborhoods that really never had the ability to have their own dedicated community organization, for whatever reason doesn't really matter, now see opportunities. And more and more people want to have input, but their agendas may not align. Therefore, they create separate groups.

Point Breeze, a flash point of controversy about gentrification and development, is in spots covered by the territory of eight separate RCOs. One of these is the Concerned Citizens of Point Breeze, discussed earlier as a fierce opponent to the new code and to the RCO system. Another is Hannah Angert's Newbold Neighbors Association. She explained the contested space within which her group operates:

> When we look at the distribution list from the ZBA, there are like eight RCOs that overlap. And we can't identify like four people on the list—we have no idea where they are...Here's what happens. You have South Philly H.O.M.E.S., which is Claudia Sherrod and Zelda Simpkins. And you have Concerned Citizens of Point Breeze, most of whom don't even live in our area.

She has made an effort to forge connections between her group and CCPB for the sake of smoother operations, but it has not always been easy because of the different outlooks of the groups. "I think that we have a love-hate relationship with one another. It was a hate-hate relationship at one point, but on a personal level I've made a lot of effort to develop a relationship," she said. "But it's not as consistent as it could be, and I think that's because they get mired in the topics that are not zoning related."

The division of the community into different groups has strengthened rifts in the neighborhood. "I'd like to see the outreach committee focus on bringing the predominant ethnic communities together in some way." But, this has been difficult: "It's awful. It's very, very hard [to bridge gaps]," she said. "Overall there's a great deal of misunderstanding among a lot of the cultures." In addition, the dominant tensions amongst largely white newcomers and largely black longtime residents has caused a drowning out of other potential participants in the system: "We focus so much on the black-white issues in this neighborhood because the black community has been here longest, but the truth is we completely ignore the Asian community, and we have virtually no Asians come to our meetings, with the exception of attorneys and expediters."

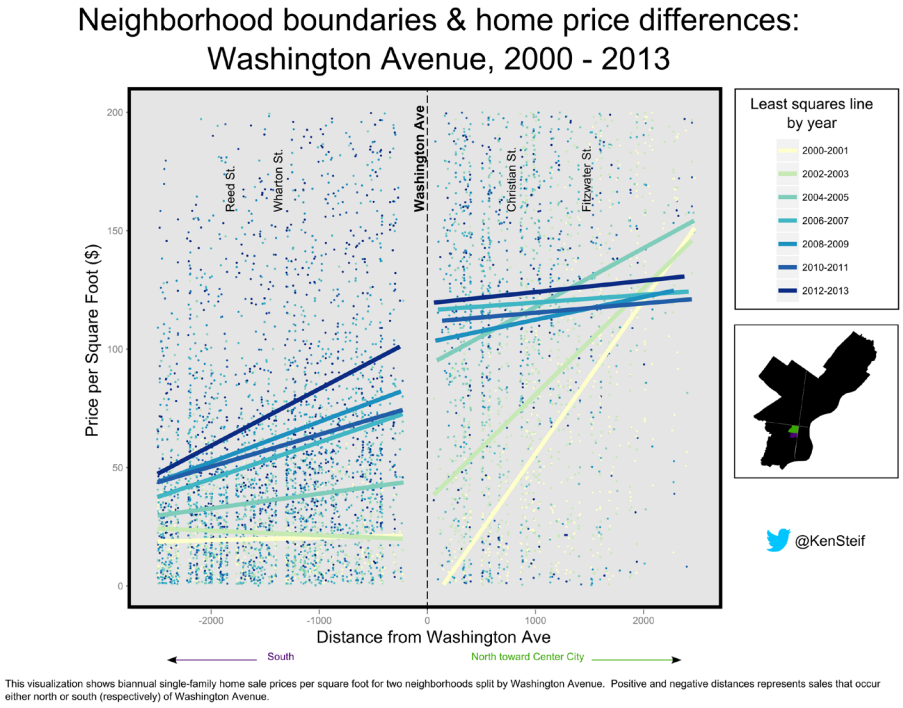
This dynamic is not limited to communities experiencing gentrification pressures. In Graduate Hospital the radical demographic shifts of gentrification are a thing of the past: a wave of building in the mid-2000s changed the face of the neighborhood so rapidly that older residents had little chance to respond, said Lauren Vidas.[24] In this neighborhood, the

24 In fact, she explained that much of the current controversy in Point

divisions now tend to be less obvious. Inga Saffron, the *Philadelphia Inquirer*'s Pulitzer Prize winning architecture critic, wrote a column in July 2014 characterizing the cultural conflict between the new residents and old. "As the area has gentrified, Graduate Hospital has become one of the city's most improvement-obsessed neighborhoods," she writes. This spirit of improvement has become a source of conflict for neighbors:

> Here the battle lines are more likely to be determined by age. Lately, the disagreements have centered around what you might call sidewalk issues. Should a new restaurant have outdoor tables? How can residents get the city to stop approving garage-fronted rowhouses? What can be done to encourage more corner shops? For millennials, encouraging pedestrian street life and discouraging driving is the key to a lively neighborhood.[25]

Older residents, on the other hand, are not necessarily pleased with this approach, content as they are with the existing status quo, especially in regards to parking issues.



Home price differences across Washington Avenue, the dividing line between Point Breeze and Graduate Hospital. Graph by Ken Steif of PennIUR

While SOSNA's constituency tends to lean towards a pro-growth and pro-development perspective, Vidas acknowledges that this view is not shared by the whole neighborhood: "We're generally a neighborhood that I feel like supports development, supports mixed use, supports density, supports all of those sort of things that developers seek. But also

---

Breeze is motivated by residents with a legitimate fear of seeing the same rapid changes happen in their neighborhood.

25 Saffron, "Changing Skyline."

recognizing that we are just SOSNA—SOSNA is different from the community." Though SOSNA is well-established and very active, they have had to adjust to a newly populated landscape of RCOs with rights to participate in a process that they had managed solo for many years. "I think for us the biggest change has been the idea that there are competing RCOs within our neighborhood for projects that hit multiple [RCO territories]," she explained. "We are the coordinating RCO for projects. For us, we've got the Washington Avenue Property Owners Association. You've got the South Street West Business Association. You've got the South Street West Civic Association. You've got North of Washington Avenue Coalition…"

Some of these other groups are characterized by their dislike of development, and tend to engage in the zoning process only negatively, Vidas lamented:

> South Street West Civic—their attitude is basically like, we're only going to do anything if it's a big project, we'll just let SOSNA take care of the rest. They only organize to say no to things. It's awful. If you want to do zoning, then do zoning. It's just frustrating. They are essentially an organized NIMBY group...and I'm not saying they don't have a value add, but it's frustrating that they only choose to add value when they're against a project.

Failed proposal for 2300 South Street. Image retrieved from Naked Philly Blog

One fight between the pro-development constituency of SOSNA and the "NIMBY" constituency of South Street West Civic Association became a symbol within Philadelphia's media and in planning-aware circles of the frustrations of dealing with communities divided into different competing RCOs. "One issue that we've dealt with and I think is problematic is that you can have multiple RCOs covering the same jurisdiction. I think a good case to look at is 2300 South Street...that is a sore subject in this neighborhood," said Lauren Vidas. She saw this case as emblematic of the different lifestyles of established residents in the area, especially in the more wealthy area directly to the north of South Street, and the newer

arrivals, who are younger and more likely to support urban density and car-free lifestyles: "That particular battle is more a metaphor for the shifts in the neighborhoods that you've seen over the last 15 years here."

In 2013, a developer proposed a small apartment building with a commercial street front at 2300 South Street. This location was a particularly noteworthy one, as it was adjacent to a small public plaza that had been carved out of a low-traffic street after years of advocacy by the leadership of SOSNA. The proposed building was five stories tall and exceeded the 38-foot height limit in place in the base district, so the RCO process was initiated. The project had no dedicated parking, as it was no longer required for a project of this size by the new code.

The project immediately generated controversy, and the developer met with all of the local RCOs which covered the parcel. At the time, the process had not yet been adjusted to require only one meeting. A development-focused blog called Naked Philly described one of the last SOSNA zoning meetings on the project:[26]

> Developer Jason Nusbaum, owner of two neighborhood supermarkets, started things off by listing the dozen or more meetings he's attended regarding this project over the past couple of months. He met with the SOSNA Architectural Review Committee twice. He presented to the South Street West Business Association. He met repeatedly with the South Street West Civic Association, a new RCO that pretty much only involves itself with large development on or around western South Street West. He sat down with several immediate neighbors. This was his second presentation to the SOSNA Zoning Committee.[27]

To attempt to appease neighbors, he lowered the proposed height to four stories— now just eight feet over the zoned limit. The project continued to expose the deep rifts within the community. Naked Philly goes on to describe the discussion: "Nearly two-dozen neighbors spoke up, pretty much evenly divided on the issue. Most of the strong opposition seemed to come from north of South Street, and most of the strong support seemed to come from South of South," it writes.[28]

It seemed, however, that the real issue some neighbors had with the de-

---

26 This blog is run out of the office of another developer in the area, Ori Feibush—an exceedingly controversial figure, especially in Point Breeze, where his aggressive approach to development and community engagement has earned him a legion of detractors. As of the writing of this paper, he is currently running for City Council against Councilman Kenyatta Johnson on a platform of de-politicizing the process of development, especially of land being sold off by the city.

27 "Neighbors Near South Street West Debate: Is Parking a Right or a Privilege?"

28 Ibid.

velopment was not the height, but the lack of dedicated parking for each unit. The message from the developer was that his project was being built for renters who do not own cars: a vocal segment of the community did not seem to believe that this person could exist, while many others pointed to themselves as proof that city living sometimes means having no car or occasionally searching for parking.[29] Vidas summarized the debate: "Parking. Absolutely parking. It's always parking," she said. She goes on:

> They claimed that it was too tall for where it was. It was historically a four story building and a four story building was proposed. But the issue was that they weren't providing parking spaces and—blah blah blah, I want my parking. And you will hear stories about how, when I first moved into this neighborhood I could park in front of my house. Well you can't. You're not entitled to. It's a city...most folks who would gravitate towards a place that doesn't have parking probably don't have a car. And the building owner went so far as to say that he would make it a condition of the lease that you weren't able to have a car. This was being marketed to folks who ride bikes, take public transit. And blah blah blah *parking*. And it killed a really, really great project.

The project was, in fact, killed in the ZBA, when it was refused variance approvals. SOSNA sent a letter of support, while SSWCA sent one of opposition. After six hours of heated testimony from proponents and opponents at the December 2013, the developer was allowed another month to try to work out a compromise; none came, and the project was eventually denied. Vidas pointed to the extra political power on the side of SSWCA for the opponents being given more weight than the supporters, despite both groups having the same legal standing in the variance review process:

> That was a case where you have overlapping RCOs, you had support from the Councilman's office, you have support from the South of South Neighborhood Association, but you had South Street West Civic Association, which is led by a committeeperson who really made it a very political battle.

The committeeperson she mentions is Barbara Failer, head of SSWCA and longtime member of the area's political establishment. Inga Saffron spoke with her about her opposition to this project: "Failer complains that the millennials are too besotted with their big ideas about cities. 'They have a macro view of the world,' she explains, 'while I care about the micro issues,' such as whether a new development makes it hard for a home-owner to find a parking space on his block."[30]

---

29 Incredible vitriol was spilled in comment sections on articles about this project on Naked Philly and elsewhere, where the sides engaged in a vicious, and largely anonymous, online debate.

30 Saffron, "Changing Skyline."

As we can see, the ability of competing groups to derail a project is still very much present. While these groups may be operating more openly now, they still hold a variety of stances on development in their neighborhood and compete viciously to assert their vision of urban space. The choice to allow multiple RCOs in one area was a conscious decision, but may have been a lost opportunity to create a more cohesive sense of community rather than allowing community divisions to be strengthened. The long-term effects may be a declining interest in participation as residents begin to tire of the constant conflict between groups that all claim legitimacy. Hutcheson and Prather cite the work of Verba and Nie about this phenomenon, saying that "participation in urban communities declines as a result of an inability to identify personal stakes with community interests because the definition of community is ambiguous...if there is no 'center' of a community, one is always on the 'periphery.'"[31] Unfortunately, the RCO system seems likely to make community input processes in Philadelphia more contentious than ever by crystallizing the community divisions that inform citizen's approach to development.

4.4 RCOS HAVE A DIFFICULT RELATIONSHIP WITH THEIR PROCEDURAL RESPONSIBILITIES

Much of the reason for reforming the role of the community in the zoning and development process was to clarify the process for developers and property owners and to smooth out the significant differences in the process that existed in different neighborhoods. Unfortunately, the inconsistencies in procedure continue to exist as a result of both an unclear mandate for RCOs and because of substantial differences in the capability to manage a difficult public process.

By asking RCOs to be part of the formal administrative mechanism of zoning relief, the city has indicated that they expect these groups to participate in good faith and with a professionalism that comes with their responsibilities. A presentation from June 2014 given by PCPC to various RCO leaders (now made available on the PCPC website) claims that RCOs should be "representative of the community, and not a small special-interest group or a few neighbors with an ax to grind."[32] However, examining the interactions of groups amongst themselves and with the city, it is clear that this objectivity is hard to achieve in practice, and sometimes not very appealing to RCOs.

As discussed above, RCOs often form with a specific orientation towards development which deeply informs their participation in the variance review process. While many still claim to speak for the "community," it

31 Hutcheson and Prather, "Community Mobilization and Participation in the Zoning Process."

32 PCPC, "Registered Community Organizations Workshops"

is immediately obvious that the true objectivity of any of these groups is questionable. Indeed, it seems that nobody in the ZCC really thought these groups could be entirely impartial: Natalie Shieh's emphasized that the decision not to establish clear rules about how groups should interact with each other or run their combined meetings was a strategic one meant to preserve local autonomy, and to allow local democracy to proceed without intervention from PCPC.

As a result, there exists a clear tension for RCOs when they participate in the zoning process: should they try to keep their viewpoints out of the public process for variance evaluation, or should they serve as advocacy organizations for the local issues that gave birth to the group in the first place? The result is a wide range of approaches towards leading meetings, gathering neighborhood input, interacting with property owners, inviting discussion, and other aspects of the administration of the public meetings required for RCOs to be able to participate in variance review.

Some groups very clearly choose to use their role in the process as a platform for advocacy, and chafe against the idea that RCOs are merely arbiters of public discussion. These include groups like South Street West Civic Association and Concerned Citizens of Point Breeze, discussed above, for whom collecting and relaying broad neighborhood sentiment is secondary to having their voices heard.

South of South Neighborhood Association. Image from SOSNA Twitter feed

Sometimes, the discomfort that these advocacy RCOs have with the expectation of professionalism and neutrality can spill over into their adherence to ideas of "fair" operations. Lauren Vidas of SOSNA mentioned that she has heard stories of groups deliberately manipulating the requirements for RCOs in order to strengthen their position within their community and to silence the voices of dissenting constituencies. In particular, she said that some groups seemed to be purposely excluding

some neighbors from notice about upcoming meetings, to make sure that their viewpoints were presented at meetings without opposition. "I think some groups don't necessarily want notice to get out about projects, so they're selective in how notice gets out," she said. "

> We [SOSNA] try to be heavy handed, in the sense that we're fair in making sure everyone gets notice. I think there are folks that are heavy handed in the other way, where the folks that they want to get notice get notice, and the folks that they don't want to get notice don't get notice. This is one of the problems in putting so much control in the hands of an RCO, is you really have to have good faith that they are following the rules and doing things in an equitable way.

As this statement shows, other groups like SOSNA put a much greater emphasis on attempting to uphold the standards of neutrality and administrative clarity that would be expected from an organization essentially running a public process for the city. However, in addition to suppressing the ability of group leadership to affirmatively state their opinions on development in their territory, these standards put a significant burden of work on the RCOs, whether they have the capacity or resources to handle it or not. The arduousness of running contentious public meetings and translating them into recommendations for the ZBA means a great deal of time and effort must go in to creating a process that works and can be replicated whenever community variance review is necessary. As a result, the disparities between RCOs have an enormous influence on the experiences that both neighbors and developer-applicants have with the zoning relief process. While some groups are adept at processing zoning requests, facilitating productive meetings, and providing quality feedback to developers and the ZBA, other struggle to keep up with the tasks they must fulfill.

Some of the largest constraints for RCOs are time and money. For the most part, RCOs are volunteer operations. "RCOs vary in terms of their size, how long they've been around, whether they have formal funding, the types of activities they're involved in, but most of them, or all of them are staffed by volunteers who are concerned about their neighborhood," said Steve Cobb, who works for the local councilman. But volunteer operation comes with inherent constraints on the capacity of an organization and its leadership. Even dedicated RCO volunteers have only a certain amount of time and energy they can devote to the organization, and RCO work often must take a backseat to other priorities. Hannah Angert runs up against this problem constantly: "I and my board work, and even though I have a fairly flexible schedule as a realtor, I can only commit so much time a month to this organization. I love it, but I have to work." In addition, RCO boards are made up of residents from a certain neighborhood, so the RCO reflects the corresponding community's ability to contribute time, money, and expertise. Some RCOs can overcome

these limitations with the assistance of paid staff members that support the work of the volunteer leadership. However, many organizations do not have the ability to pay a staff person, and must do without.

Natalie Shieh says that these disparities were a subtext in the discussions of the elaboration of the new system, but were rarely discussed outright. The fact that some neighborhood organizations could count on a more professional board because of the demographics of the territory meant that some groups would be much more adept at running meetings and negotiating with developers, while others would be less successful. A low bar to registration meant that groups without long-established expertise in the realm of zoning could become RCOs, but this was seen as preferable to excluding groups from the system because of their limited resources. Lauren Vidas pointed to these disparities as one of the caveats to the idealism of the RCO system:

> Not all RCOs are created equal, in the sense that there's some RCOs that are very well organized and funded, and their neighbors have demonstrated a really strong ability to organize and to fundraise and essentially run a professional operation...Their voices shouldn't be any more relevant in their neighborhood than a neighborhood where there maybe isn't strong organization—because it's a more transient population, it's a higher poverty level, people are working two jobs, so people aren't going to go to monthly meetings at 7 o'clock.

The cases of Newbold Neighbors Association and South of South Neighborhood Association are illustrative of the disparities between groups.

NNA is a fairly new group, founded in 2007, in a changing neighborhood and struggles to get by with very few resources—financial or human. "I wish that I could be the full time zoning chair, that would be great," said Hannah Angert:

> But I wish even more that we had an administrative person that could take care of a lot of the back end so I could do the things I talked about in the beginning—I'd like to develop a relationship with the members of the ZBA, I'd like to go in to PCPC and have quarterly meetings, maybe, with our sector person.

NNA's core constituency tends to be young, and the lack of professionals in the neighborhood with both experience in zoning or planning and an interest in volunteering is a real barrier to the professional operation of the organization. "I think that if we ever get [to the point of running like an experienced non-profit] it will need to involve having some more people who are out of their twenties on the board," noted Angert. "I love that this is the first exposure that a lot of people have to this type of experience, but it's also getting a little old to me that we don't have an architect on our board, we don't have an attorney on our board, we don't

have anyone who serves on any *other* boards."

Newbold Neighbors Association seems to be an organization with RCO status that has an uncomfortable relationship with its own role in the administrative process. Angert explained that they have struggled with recruiting volunteers for the zoning committee: "I would love to find a way to get more people involved in the committee, but I think people are nervous about it too because they don't want the stress of it. They see it as a stressful, not fun volunteer position. You have to have an interest." This is compounded by the fact that many, even in the leadership of the organization, see the primary responsibility of the group as providing a social infrastructure for the neighborhood, rather than running zoning meetings for neighbors. She explained that many in the group and in the neighborhood were much less interested in NNA sustaining and nurturing the zoning capacities of the organization than in events and gatherings for the community. She said that this dynamic could end up being the demise of the organization: "I think there's going to come a time when the social portion of the group branches off from the practical end...I think if there is a demise, that's what it's gonna be, a fracture among the board about what the association really stands for."

Newbold Neighbors has struggled with establishing procedures and gaining momentum for the zoning review role that they have been given. They serve as the coordinating RCO for projects within their territory, partly as a result of the retreat of other groups from the zoning process. However, creating procedures and guidelines for meetings and for applicants to follow falls to her and the other committee members, and the work is substantial. She is currently trying to rewrite the guidelines for people appearing before the committee: "We had a manual for applicants. The one that's on our website right now is totally outdated. I'm reworking it."

The difficulty of establishing a manageable and legitimate procedure is complicated greatly by the deeply controversial nature of development in the neighborhood. As discussed in an earlier section, community members come to these hearings eager to discuss any and all opinions on planning and real estate, which in this community are often negative. In addition, Angert's meeting must somehow incorporate the members of other RCOs that choose to participate in the meeting. In the January 2015 meeting, NNA was joined by representatives of Concerned Citizens of Point Breeze, a group, as we have seen, with a very different approach to zoning and development than NNA's. Angert's attempt to keep the meeting moving and focused on the particular refusals of the projects being presented were sometimes met with open hostility by some audience members ("Don't make people feel they are being blown off," one audience member said). When members of the audience began accusing a developer of shirking his responsibility to get neighbors' input, Angert

eventually cut them off, saying, "That's what this meeting is for."

Angert also talked about the lack of ability to cultivate productive relationships with city staff and with other groups in the area because the organization lacks volunteers and time. "If I could have a committee member for every role that would be great—I'd have someone on enforcement, I'd have someone on follow-up to check on all the hearing outcomes. We would definitely have things to do," she said. She expressed a feeling of frustration with the lack of sway that they hold over the Department of Licensing and Inspections, despite what she sees as frequent violations by builders and developers of promises made to the RCO and to neighbors. Notification requirements have been easier since the latest changes to the code put more responsibility on the developer, but she still struggles with methods to inform the community of upcoming zoning meetings.

On the other side of the spectrum is the South of South Neighborhood Association. Angert pointed directly to SOSNA as an example of an organization with a very high capacity to run zoning meetings: "I'm ashamed when I go to their meetings. They cause me anxiety." A major factor she identifies is the fact that they have much greater resources than Newbold Neighbors does. "SOSNA does it well....because they have staff people. They have an office," she pointed out. "We have a shed, and my basement, and the trunk of my car. Which I took out of Joe's basement, which he took out of Andrew's basement. That's where we are." She attributed this difference to the demographics of their constituency and the length of their tenure:

> They experienced the same growing pains that we have, but they come from—they are a more monied community, and I think that unfortunately, or fortunately, at the time that they were developing, the existing community was not prepared to fight them. It was such a different time. The crack epidemic hit these neighborhoods so hard, and the community activists were just completely overshadowed by the drug dealers. So it was a different thing and SOSNA had a whole different experience. But they have a lot of money and they're great at what they do.

Lauren Vidas emphasized the work that SOSNA has put in to make sure their zoning process is well-developed and effectively run. "I think we were very active in the zoning code process [before the new code] and our big thing is transparency and protocols," she explained. "It's not because we're goody-two-shoes— I mean, we are—we're a bunch of goo goos—but also because it's easier for *us* to have a predictable process." While dissent and disagreement may still be present in the process, SOSNA strives to make sure it does not derail the process itself: "You create a process that's consistent for every project, and at the end of the day people might not like the result but they'll appreciate the fairness. It's easier

for everyone involved."

SOSNA's approach to dissenting viewpoints has been an attempt to balance an allowance for public input with their responsibility as a coordinating RCO with zoning administrative power to keep the process on track. "We strive very hard to be inclusive. When we have zoning meetings, we have a protocol so when those RCOs attend, they get to speak, we really respect their rights under the zoning code," Vidas said. However, the behavior of other RCOs can make this difficult:

> We've had experiences, though, from some RCOs are being disruptive. So it's trying to balance the idea of letting—it's the same sort of grander scale balance you see in the city. How do you let everybody speak without disrupting the process? How do you let everybody have input as long as that input is substantive and is not just trying to derail for the sake of derailing?

This often means recognizing that SOSNA must function in a way which subordinates the opinions of the organization to their role as a semi-administrative body for the city's zoning process. They have established complicated metrics for tallying community input on projects, and as much as possible stick to presenting these results to the ZBA when writing letters on behalf of the organization:

> When we do a zoning committee vote, we take votes from near neighbors, we take votes from the committee, and we take votes from community members as a whole. And you're not going to get a letter of support from us...you can just look at our protocols, but essentially it doesn't matter what the organization thinks. I see us as a facilitator for conversations and dialogue with the community and the developers. So we want everybody at the table, we want the best project we can get. We're not going to roll over the developers just because [we can].

Perhaps the most effective innovation for staving off the chaos of many variance hearings in Philadelphia that SOSNA has made is the establishment of their own form of design review. They have created an Architectural Review Committee before which applicants can choose to appear for an advisory meeting about the design of a proposal. This creates a forum for discussion about all of the aspects of the project which cannot be addressed in a zoning meeting; in addition to creating a more substantive dialog between SOSNA and the developer, the ability to direct these kinds of comments from the public to these meetings allows zoning meetings to be much more orderly and focused. Lauren Vidas explained:

> We try to separate the aesthetics of the project from the underlying variance. So if you're looking for less lot coverage, I don't want to bog down a zoning hearing meeting talking about your choice of materials or what your pilot house looks like. So for bigger projects what we do is, if there's a lot of issues there we

> ask the developers to meet with the Architectural Review Committee which is made of design professionals that are essentially sitting there just spitballing: "Have you thought about doing it this way?" We've gotten so many positive changes, and that's a voluntary thing. I think the developers appreciate it because it takes the pressure off of them at the zoning committee to have to negotiate aesthetics, and they can focus on the refusals that they're seeking.

As Hannah Angert noted, the ability to create and enforce an administrative process means that SOSNA's zoning meetings are noticeably more orderly than Newbold Neighbors'. During the January 2015 meeting, the zoning committee board made sure to read prepared statements that laid out the purpose of the meeting and went out of their way to explain the role of the RCO in the zoning process. Comments were taken at a microphone set up in the aisle of the space, rather than by calling on audience members directly. Each developer presentation was preceded by a listing of the refusals in front of the committee (at the Newbold Neighbors meeting, on the other hand, the developer representatives had this responsibility). The committee also discussed the recommendations given to a developer by the ARC, if any meetings had occurred. No proposal seemed to derail the proceeding of the meeting, even though some were presented which stirred up numerous comments from the public (such as those which eliminated street parking).

However, it is hard to tease out a lack of serious contention at the SOSNA meeting from the community's greater acceptance of development, just as it is hard to separate the inflamed sentiments of neighbors in Newbold from their reaction to developers' proposals in their zoning meeting. Unlike at the same month's Newbold Neighbors meeting, community members at SOSNA's meeting seemed generally accepting of new construction and development, even large projects. There was no palpable sense from the audience that they distrusted the presenters or the board, and the audience did not often challenge their assertions as the audience at the NNA meeting had. The majority of comments revolved around parking concerns, especially about the loss of street parking spaces, regarding which the SOSNA Zoning Committee members were able to articulate a clear and consistent policy of opposition.

But it is obvious that SOSNA, as an organization, is highly capable and has embraced its strengthened role in the city's zoning structure in a way that Newbold Neighbors Association has not, or has been unable to. While the city continues to emphasize the importance of running good meetings and of facilitating productive debate in its materials for RCO leaders, this seems to ignore the realities of how RCOs form and how difficult and unappealing this task may be. The division between groups that have extensive experience with running meetings and creating ro-

bust administrative processes and groups that may not have the resources, collective support, or desire to serve this role, is likely to endure. The great gap between communities in Philadelphia with resources and those without makes this division inevitable.

The result is wide swings in quality of procedure throughout the city. This has serious ramifications not only for the communities that rely on these meetings to give their input, but also for property owners that must appear before these groups and for city departments that rely on the results of these meetings to make decisions about development.

4.5 THE ZBA CONTINUES TO LACK A CONSISTENT APPROACH TO ZONING RELIEF

While RCOs serve as the administrative gatekeepers to the variance process, the final say on the granting or withholding of zoning relief falls, still, to the Zoning Board of Adjustment. In the past, the ZBA was attacked for having opaque and subjective criteria for evaluating variances, and failing to hold applicants to a high enough standard for deviation from the zoning code and map. At the same time, communities felt that the board did not take their input seriously enough, listening selectively to supportive groups and granting variances with conditions based not on community concerns but on the individual idiosyncrasies of the chairmen.

These complaints pulled the drafters of the new zoning code in two different, and opposing, directions. The new code strengthens the requirement for a hardship finding and instituted mechanisms to emphasize the legitimacy of the new code and map, with the goal of reducing the subjectivity of variance review; at the same time, they tried to insure that community groups would have a more definite say in the process by formalizing the submission of community input to the ZBA.

However, these goals are very often in conflict. The assent of the community regarding a project's merits is not one of these objective standards in the legal purview of the ZBA. While the variance language of the new code does clearly establish that the variance should not create a *nuisance* for neighbors, and should not alter the essential character of the neighborhood or district, these criteria are not given more weight than less community-centered ones. Also, RCO letters are based on a very broad concept of project review, rather than an understanding of the legal concepts at play.

It is also apparent that the input of neighbors cannot be used as an effective method for evaluating the applicants' adherence to the unique hardship standard or other objective criteria. Community members that participate in zoning hearings clearly do not see their role in the process

as simply reinforcing legal standards, given the wide range of non-zoning topics covered in RCO zoning hearings. This would hardly be an appropriate role for communities to play: indeed, it is rare that attendees of RCO meetings on variances have a particularly sophisticated understanding of unique hardship. The concept seems to occur only when adept RCO leaders see it as a tool to oppose a development.

The community review of variances therefore has no obvious role in the process of being granted zoning relief by the ZBA, despite the simultaneous legal requirement to meet with RCOs. Despite this, the sending of letters to the ZBA does clearly provide a constant pressure from communities to downplay the importance of standards of review. The result has been an uneasy, and unsatisfying, detente between the objective standards and the realities of local politics.

Hardship does seem to have an increased relevance in the process, at least in name. Applications for variances submitted to the ZBA now ask applicants to address directly the criteria for approval, including hardship as well as other nuisance considerations. According to ZCC project manager Natalie Shieh, hardship was never even discussed in the past, but lawyers testifying at ZBA now spend significant time making a case for hardship with each variance. Peter Kelsen agreed, and added that the ZBA is more conscious of these standards: "I would say to you that my experience, at least with this Zoning Board, the Zoning Board after the code—and then there was a little learning period so give them that—has really been very, very strict about honoring the standards that should be maintained for variance relief."[33]

However, as Natalie Shieh noted, just the fact that lawyers now make an effort to establish hardship does not mean that an actual hardship exists, and the ZBA may not be fully equipped to distinguish between legal misdirection and true hardship. In her experience, many lawyers are begging hardship but only arguing for an economic diminishment, which case law holds to be insufficient. Without advice from proper counsel and a detailed examination of the case, however, these things can be hard to distinguish; though the city does now have a contract for legal counsel to support the Board, she explained that the advice this counsel provides is most often procedural rather than substantive.

By accepting, with little complaint, many of the arguments for unique hardship that come before them, the ZBA grants zoning relief applications an assumption of reasonableness and worthiness. According to Ian

33 He also said that the Board has, as a result, turned down more variance requests, which does not seem to be true—at least as of August 2013, the latest date that for which official statistics are available (in the One-Year Report). It is possible that he is speaking anecdotally about a shift that he has noticed in his dealings with the ZBA in the last year.

Litwin, because the hardship standard is so tricky to uphold in day-to-day practice, the ZBA continues to put its faith in the various gatekeepers of the process to weed out unqualified applications. He explained:

> Because of the RCO process, every developer who is going to the Zoning Board theoretically met with the community. So their committee is sending in a letter of that meeting, the developer is sending in a letter to the meeting, City Council—if it's a big enough case—will make their recommendation, and the Planning Commission has a rep who sits through every single hearing and gives our recommendations. So the way the Zoning Board sees it is, by the time that process is done, if nobody's against it at that point, they usually support it.

As a result, it seems that the new strengthened legal requirement for hardship has made less of an impact on the process than it should have; the continued high rates of approval of variances, discussed in an earlier section, seems to indicate that the standards of review, if they are being applied, are not being applied in the ZBA hearing.

The audience of a ZBA hearing. Image from Philadelphia City Paper

But has community input been given a corresponding boost in importance to the process? It seems that it has not. Unfortunately, the method of evaluating variance applications by their ability to surmount regulatory hurdles inevitably downplays the substance of the review done by RCOs. Because of the advisory nature of RCO letters, even a project that creates serious objections from neighbors will still appear in front of the ZBA. Indeed, the fact that just as many variance requests receive approval now as they did before community input was formalized is a good indication that communities have not been granted greater signifi-

cance in the process. Strengthened community control over variance review would almost certainly manifest in a lower approval rate, given the intensity of community responses to new development. (The idea that RCOs might send only positive letters is obviously not realistic given the controversy over almost all projects in many neighborhoods.)

Part of the problem is likely the frequent lack of unanimous opinion among RCOs and other political actors asked to weigh in on zoning relief requests. As discussed earlier, any RCOs with a right to advisory review over the relevant parcel can send their own letters to the ZBA; as these groups very often have different viewpoints, disagreement is common. At the same time, the embedding of community divisions into variance review has raised the stakes for RCOs that participate in the process. While some RCOs like SOSNA make an effort to state when there is a difference of opinion between near neighbors and the general public, this is not required. While sending conflicting letters may be logical for the RCOs, it makes the relevant community sentiment very opaque or even makes the very idea of a singular "community" meaningless.

Garage-fronted row homes, a topic of significant controversy for opponents of the current workings of the ZBA. Image from Next City

As a result, the new code forces the ZBA to become a political actors that chooses winners and losers in any development battle. Peter Kelsen described the difficulties facing the ZBA in identifying the most "legitimate" viewpoint for municipal policy-making:

> At the community level, when you have these different groups, who's really the "supergroup" if there's dissension? I wish I could answer that question. I don't think that there is an answer. I think that it's case by case, and in many cases the Zoning Board, for example, may look to the interests of, let's say, the established RCO—I mean, pick a name, SOSNA—or they may say, geez, SOS-

> NA's got the geography but this group here, this other RCO, let's say, consists of near neighbors to the project, and geez, their interests are very different—they're more proximate the project, et cetera. So it's really hard to say definitively who defers to whom.

In communities where development decisions have become enmeshed in cultural conflict, there seems to be little ability to rely only on RCO letters to determine the will of the community without significant pushback. The conflict over the project at 2300 South Street is again a useful lens through which to see this problem. Both sides had a claim to the "spirit" of the zoning and planning reform: while SOSNA may have seen the requested variances as simply a "corrective rezoning" like many others performed in areas where remapping has not yet occurred, SSWCA could claim that granting another variance after the extensive discussions of the reform effort was a way to undermine the value of the new regime. But the real conflict was cultural, and the ZBA was forced to pick a side. After months of debate between SOSNA and SSWCA and their respective partisans, the ZBA eventually ruled with the opponents of the project.[34] The subsequent disappointment by advocates for the project and by supporters around the city indicate that trying to use the formal input from the RCO process to determine the community sentiment about the project was a losing prospect: no matter how the ZBA had decided, the side that lost could easily claim that the "real" will of the community was overturned.

Indeed, there seems to be no way that the ZBA members can fairly adjudicate between groups without falling back on personal opinion or subjective evaluation. This has been particularly noticeable in recent years, as the transition between the old code and the new has added an additional variable for judging the legitimacy of a request for zoning relief. "It's weird because the Zoning Board will approve things like front garages, which in the new code are pretty much not allowed anywhere. But something like [2300 South St.], that a lot of more progressive people in planning circles though was a good proposal, it gets [denied]," said PCPC's Ian Litwin. An article published in Philadelphia City Paper in July 2014 was entitled "Why Philly's Zoning Board Is Still So Dysfunctional"; this article asserts that the ZBA has undermined the spirit of the new code by continuing to approve variances that contradict the progressive goals of zoning code reform, while denying others: "Sources familiar with ZBA decisions say that leniency is selective. The board tends to take a principled stand when it comes to denying arbitrary requests for taller buildings or extra housing units, but such zeal is strangely lacking when it comes to parking-related issues." When the author of the article reached out to the ZBA's chairwoman to ask her about how the ZBA

34 Some have also suggested that the ZBA only sided with the opponents as a message addressing recent criticism of their lax approach towards granting variances.

evaluated applications, she was not forthcoming: "ZBA chair Chapman, who has been praised for running orderly meetings, was mum on the board's purpose or motivation. Reached on her mobile phone, she described a request for comment about ZBA members' philosophies and decision-making process as 'bizarre.'"[35]

Participants in the RCO system from around the city seem to be equally frustrated by the ZBA's lack of consistent criteria or commitment to upholding the spirit of the new zoning code. 26 of the 71 public comments received for the One-Year Review regarding the ZBA suggested that the ZBA is "not basing decisions on existing code" and that the lack of application of the supposed standards for variances makes them too easy to obtain—thereby putting a greater burden on the RCOs who have to review subsequent requests. This prevents the new code from working as intended and "undermines the intent of the new zoning code."[36]

With some projects, the divides between the opinions of the community, and the dictates of legal review and between the existing zoning and the values of the new code are so vast that the problems of the ZBA become impossible to ignore. One such project is 4224 Baltimore Avenue, in West Philadelphia. This project went through an elaborate public input process in order to create a design with widespread buy-in (including overwhelming support from local RCOs), but was later forced to go through the ZBA to gain variances, despite a lack of real or unique hardship.[37] The parcel has not been remapped, but even a full remapping would likely not allow for the building being proposed. In situations such as these, where the ZBA has obviously conflicting sources of pressure, they seem to fall back to subjective project review to evaluate the case for relief. At an April 29, 2015 hearing, ZBA members questioned the need for dimensional variances based on a discomfort with the design choices or height proposed. In the hearing, Chairwoman Chapman questioned the fit of the building in the neighborhood: "I just have a different perspective of Baltimore Avenue," she asked. "Why don't you want to complement what's been there and continue what's been there?"[38] She also questioned the height of the building's ceilings. The fate of this project is not yet determined as of the writing of this paper, and is hard to predict given the widely differing standards of review in play.

Some observers have suggested that, in response to a lack of formal

35 Briggs, "Why Philly's Zoning Board Is Still so Dysfunctional."

36 Greenberger et al., One-Year Zoning Code Review: A Report to City Council.

37 This project is being developed by Alex Feldman and U3 Ventures. He said that the original intention was to seek a rezoning to allow their plans to be built without having to go through the ZBA, but a lack of support from the local councilwoman, Jannie Blackwell, forced them to seek variance relief.

38 Brey, "Future Still Uncertain for Apartment Project at 43rd and Baltimore."

mechanisms for adjudicating between conflicting local RCOs, a sense has emerged among the ZBA members and the political establishment about which groups are more "legitimate" than others. While the "coordinating RCO" is not given more formal weight in the process, the very fact that they were chosen by the local council person to manage the process likely represents a vote of confidence in their input. "One of the RCOs would have been the coordinating RCO and they have to coordinate the meeting, but it's not like they are given more leverage. I think the members of the Zoning Board kind of have an idea of which groups are more legit than others. As do Council people and the Planning Commission," said Ian Litwin. He could not say for certain, however, how important this was for ZBA decision-making: "I'm assuming they assign more weight, but don't know." Both Newbold Neighbors Association and South of South Neighborhood Association are coordinating RCOs, and Lauren Vidas mentioned that she suspected that the local district councilperson values SOSNA's input perhaps more highly than others because of their ability to maintain a fair and organized process for all participants. Given the disparities in ability and willingness by groups to manage the local zoning meeting, as well as the tendency for some groups to participate disruptively or negatively instead of constructively, it is logical to think that the ZBA might begin to value some input over others.

4224 Baltimore Ave., a plan with an uncertain future. Image from U3 Ventures

On the other hand, this does seem to contradict the spirit of the RCO mechanism, which was meant to legitimize and strengthen all voices in the debate over local land use. The need to somehow sort through the range of opinions on a particular project in order to gather a credible sense of neighborhood sentiment will tend to favor the groups which are most happily embedded within the administrative processes. Making the ZBA's job more difficult is not likely to lead to favorable long-term relationships. Groups like SOSNA and NNA, which see themselves as facilitators of civic discourse within the zoning bureaucracy, will be preferred by the ZBA as sources of community input over groups like

CCPB that are more likely to disrupt or oppose the system entirely as a source of advocacy. These groups may find themselves marginalized in the long run.

However, a disconnect will continue to exist between the ZBA and all RCOs because of the uncertain role that they play in the process. This was manifest in the comments of the One-Year Review. There is a palpable frustration with the ZBA and a sense that they have no real respect for the work that RCOs do. One commenter asked: "Does the ZBA even understand the roles of the RCOs? It seems not."[39] Hannah Angert of NNA also feels that the ZBA does not respond to her group's input. "It's also very disappointing that we've spent so much time and put so much effort into holding these meetings monthly, and the track record recently with this ZBA has been arbitrary. They do not take our recommendations into a lot of consideration. So that's really brought morale down among our committee," she noted. In general, she said, RCOs have little relationship with the ZBA: "We have no relationship with the ZBA and we should, and so should other RCOs." She suggested that because the ZBA is not as familiar or comfortable with the RCOs as they are with the community members that come to the actual ZBA hearings, the board continues to place too much emphasis on hearing testimony. This devalues the work done previously by the RCOs. "I realize that they are looking citywide, [and] they have a very different perspective on their task, but when you institute a policy that puts so much burden on the RCO, then you need to listen to the RCO," she said. "We can't send people to the hearings—I and my board work."

Natalie Shieh believes that many of the outstanding problems with the ZBA stem from its continued lack of knowledge about the realms of policy upon which it rules. While Mayor Nutter did consult with his deputy mayor for planning and economic development before appointing the board, she said that most of the members of the board are not planners, designers, land use lawyers, or other professionals who could make more informed judgments about variances and other deviations from the code. A proposal to create minimum qualifications for ZBA board members was not pursued because it would have required a change to the City Charter, something that requires a great deal of political capital. As a result, the board approaches their responsibilities without a deeper understanding of the relevance and importance of their decisions. Whether this is truly the problem with the board or simply an additional barrier to creating a more systematic scheme of zoning variance review is difficult to determine.

In any event, the ZBA continues to receive the same criticisms as before reform—inscrutable, inconsistent, and inexpert—because of the lack of clarity in its attempt to balance the mandated legal criteria, the letters

39 Ibid.

from the community, and other political factors. The new code, therefore, does not seem to have created an environment where objective review of zoning relief applications is made simpler. Hardship is as always a tricky subject to pin down objectively, and though it has been established as a criterion for review it does not seem that the ZBA is eager to preference an investigation of hardship over a review of community concerns. The RCO letter, however, is not enough to inform the ZBA about much of anything besides the advocacy of a particular group.

	BEFORE REFORM	AFTER REFORM
Unique Hardship	A criteria of variance approval, but not required. Usually not mentioned by applicants or enforced by the ZBA. Difficult to define.	Officially required by the Zoning Code, and usually addressed by applicants. Still difficult to define and difficult to evaluate. Often assumed to exist.
Zoning Code Authority	Nonexistent. Zoning code seen as an impediment to development, rather than a guide.	Stronger, but complicated by lack of progress in remapping and disagreement about standards. Developers and communities continue to argue against it.
Community Group Zoning Recognition	None. Groups engaged in zoning if interested, and often formed spontaneously in opposition to particular projects.	Formal, through the Registered Community Group process. Groups required to have a land-use related mission and other requirements.
Community Review of Relief Applications	Informal but often required by City Council representatives. Neighbors often participated late in the process and in ZBA hearings. Questionable relevance at the ZBA.	Formal and required through RCOs. RCOs send letters based on a meeting with developer. Questionable relevance at the ZBA.
Neighborhood Project Review Power	Not official, but often provided because of the difficulty of approval without community support. Permit approval often threatened by opposition, leading to the possibility of community benefit extractions.	Not strictly allowed through the RCO process, which is advisory. Neighbors often try to use the process in this way, with mixed results depending on developer amicability.
PCPC Authority	Very little.	Advisory, but stronger. Zoning amendments still require City Council support. Given advisory review of zoning relief applications.
Local Planning Forums	Nonexistent.	Provided occasionally through the district planning process. RCO zoning meetings often treated as such.
Political Influence on Land Use	ZBA approval often conditioned on support of local politicians through Councilmanic prerogative. Neighborhood participation allowed as a courtesy by local City Council member.	Still important. Responsible for designating a Coordinating RCO. Conflict between local RCOs and developers often mediated by local district Councilman. Retain ability to introduce zoning changes.
Community Agreement Enforceability	Negotiated agreements often attached by the ZBA as conditions of zoning approval.	Not enforceable by the city. Enforceable as third-party contracts.
Local Zoning Process	Wildly unpredictable and incoherent. Often required many meetings.	Incoherent, but predictable. Groups given a definite timeline to meet and can only require one meeting. Exact process is determined by each group and in conjunction with other area groups.

Opposite: Summary of some of the more significant changes to Philadelphia's system of development review after the reforms of 2012.

5 LESSONS LEARNED & RECOMMENDATIONS

The reformers of the zoning code hoped that their concessions to powerful communities and to political realities would be enough to convince Philadelphians that a development regime that operated largely unencumbered by negotiations and project review could work for everyone. They hoped that municipal planning could gain enough legitimacy and buy-in that zoning relief would no longer be necessary in most cases. However, they failed to account for the ways in which planning and zoning are products of compromise, and for ways in which developers and communities would continue to push against planning and zoning constraints after the promulgation of the new code and plan. Instead, the system gave both developers and communities the ammunition and incentive to continuously undermine the plan and zoning documents that they had helped create.

Much of the problem seems to have originated in the lack of confidence in the same municipal planning processes that were supposed to help Philadelphians become more comfortable with development. While much of the planning and development establishment had faith in the competence of Philadelphia City Planning Commission staff in creating an efficient and fair zoning regime, communities and politicians were not so convinced.

Ultimately it was necessary to maintain some kind of community review over individual projects given that many city leaders remained focused on the potential failures of planning and zoning. Support for the planning and zoning process was undermined by apocalyptic visions of unscrupulous developers and unfamiliar newcomers using the new plan as a tool to steamroll communities. In response, the legitimacy of the plan was undermined by attempts to "legislate for the exception, rather than the rule," as Lauren Vidas put it. "We're so worried about that one project slipping through that we're gonna make people jump through all these hoops so that one project doesn't slip through instead of just say, we're going to get it right 90% of the time--and that's what counts," she went on. "We let perfect be the enemy of the good and it ends up bogging down the system."

To repair the contradictions of the zoning administrative processes of Philadelphia, it will be necessary to change the role of the RCO. The following recommendations spring from the analysis in the preceding chapters and seek to lay the framework for a better role for the community in Philadelphia's development and land use administration.

Formal RCO review should be removed from the variance process.

There is an inherent contradiction in the reform's promise to strengthen, rather than replace, community input as a centerpiece of variance administration, and the desire for a broad-based acceptance of development without variances. Enforcing the community review of routine zoning relief applications has muddied the waters of planning in Philadelphia by creating a perverse incentive for communities to wish for more zoning relief requests from a code and map which they helped construct. This fundamentally undermines the legitimacy of planning and zoning which the reformers sought so hard to reestablish.

Community opinion is not an appropriate standard of review for this adjudicative process, as it does not have an interest in preserving the legal rights of applicants and is of questionable validity as a yardstick for good land use policy. However, the existence of pressure to incorporate the view of the community is too strong for an appointed board to withstand, suppressing considerations based on the legal rights of property owners and the legitimacy of planning in the city. In order to ensure procedural due process and administrative clarity, community review facilitated by RCOs should be eliminated from variance proceedings.[1]

More pressure must be placed in the abilities of elected officials and plan-

1 This role, however, can be maintained in the CDR process and for special permits, where community review is less contradictory.

ning professionals to administer the necessary valve of zoning relief according to legal standards and with the interests of the city as a whole in mind. A more professionalized board may help eliminate the tendency to be swayed by last-minute testimony from vocal neighbors hoping to use the variance approval process as a roadblock to local development.

Most major cities do not make special accommodations for the community in variance evaluation, instead using the mandated public hearing at a zoning board (or similar body) as the sole provision for community input.[2] This is a logical decision which emphasizes the lack of legal authority that community feelings have over the zoning board in granting variances. Including the community meeting a requirement of a variance hearing lends the misleading impression to applicants that zoning relief is based on the view of the community; unlike Philadelphia, some other cities take pains to emphasize to applicants that variances are granted only if objective standards are met.

In New York City, community boards are given official notice of the hearing date for relevant variance appeals, but are not expected to meet officially about the project under question; removing the RCO zoning meeting requirement would leave a similar process in Philadelphia. This would maintain the ability of neighborhood groups to be informed of changes in their neighborhoods, but would not force them to run constant difficult meetings of uncertain impact. In the situation that a variance hearing raises enough community interest, an RCO would be free to organize attendance and testimony at the ZBA hearing.

City planning officials should be given a greater role in not only speaking for the values of the code and comprehensive plan, but also for communities that are impacted by the potential zoning relief. PCPC currently makes a recommendation to the ZBA about variance requests; PCPC district planners familiar with the relevant neighborhoods could be asked to weigh in formally on a variance request before it appears before the board. RCOs should also be asked to lobby PCPC directly about concerns with particular variances, so that their concerns can be taken into account in the official PCPC recommendation. This can add a layer of community-centered review without opening up the process to direct adjudication by local interests.

These measures should be towards the end of de-emphasizing the variance as a means of legislating zoning. As we have seen, developers will always push against planning and zoning constraints; this dynamic should be acknowledged, and the potential for zoning change should be accepted as a continuing necessity for the functioning of an effective and flexible zoning regime. However, substantive changes that are not based in the demonstrable existence of unique hardship should be pushed to-

2 This includes New York City, Boston, San Francisco, and others.

wards a legislative zoning amendment process, and RCOs should be made a formal part of this process. Zoning amendments must be made easier to introduce to City Council and the process must be made more predictable for property owners so that small developers are not discouraged by the difficulty of the process and pushed towards asking for variances. In order for this to happen, rezonings should not be the exclusive province of City Councilors. PCPC should be able to introduce a rezoning directly to City Council after consulting with local RCOs. This should also make remapping faster, solving many of the current problems of lag between new code and new map.

Removing the constant stream of questionably deserving variance applications on the ZBA docket should clarify the mission of that body and relieve the temptation to ignore the formal standards of review in the name of maintaining a necessary level of zoning flexibility.

A community-centered design process should be available for significant projects.

Communities and neighbors to real estate do have a reasonable expectation of protection from nuisance and a general diminishment of the public welfare; however, development review should not be set up so that fears of even the most theoretical nuisance can be projected onto even the smallest projects. Many developers are willing to engage the community in some form or another, if the expectation of return is great enough, but the protraction of debate and delay over every project is harmful for the legitimacy of the planning infrastructure and has serious implications for construction costs and housing affordability.

If the city is serious about making development easier and permitting faster, they must enforce a separation between projects that truly could have real effects on the neighborhood and those which simply end up as cannon-fodder in an ongoing culture war about the built environment. Developers should not have to argue about facade materials and placement of balconies with neighbors in order to obtain zoning permission for small projects of little significance. (The city's creation of the Civic Design Review process was a positive step towards creating an enforceable barrier between projects worthy and not worthy of review, but lost a large degree of legitimacy because of the sharp community focus on local forums for discussion--despite the fact that these forums were, at best, an imperfect place for discussions about design and community benefits.)

However, some larger projects do, indeed, benefit from neighborhood buy-in, and frequent and meaningful community input can create mutual gains with less conflict for developers. Currently, there is no mechanism in place to allow projects of genuine significance to be put through a different process from the small developments that are put through the

local political gauntlet under the variance review mechanism.

This problem is evident in projects like 4224 Baltimore Ave., in which an innovative collaborative design process was stymied by the lack of avenues for approval that respected the widespread buy-in. The developers of this project set up their own meetings in the community in order to create a mutually beneficial design; the resulting design, supported by the community, was stymied by the need for a long list of rezonings. Without the support of the local district Councilwoman, Jannie Blackwell, the project has been forced into the ZBA process for variances--opening it up to precisely the kind of late, unproductive opposition that the new code, and this extensive community process, was meant to curtail. Claims of hardship for this project are not realistic, and the community input provided by RCO review of the variances requested is clearly second-best to the direct collaboration demonstrated initially.

Projects like 4224 Baltimore Ave. show that a model exists for large projects in significant locations. PCPC should create a new floating zoning overlay (perhaps called Special Project - Neighborhood, based on the existing naming convention for special zones) that can be applied to certain large parcels within neighborhoods. This designation should waive all but the most basic dimensional requirements for the underlying zone, conditioned on a process of public consultation throughout the design and development of the project on site, as well as formal site plan review by PCPC. The developer, working with RCO zoning committees, should set up a number of meetings or design sessions with RCO membership in order to generate a design which all parties can support. A support of two thirds of the local RCOs should trigger PCPC review; after the design is given PCPC site plan approval, the project should be given zoning permits.

The benefit of such a zoning designation would be to allow community members to have a true opportunity for project review, in which architectural and design and other considerations that are not easily accommodated in the variance review process can be discussed. What's more, this RCO project review would not simply be advisory but would be part of a negotiation process with a developer that has a tangible impact on the final outcome. By providing the incentive for greater density, more profitable projects, and more community support, the process should also be eagerly taken to by developers.[3] This process would also allow the city to play an active role in negotiating with the developer early on in the process.

RCOs could also be asked to play a role in designating particular parcels

3 Alex Feldman also stated that the cost of the design process for 4224 Baltimore Ave. was insignificant considering the amount of money and time that endless opposition by neighbors can eat up for contentious projects.

as worthy of this enhanced project review. As part of the neighborhood planning process, RCOs could be asked to allocate a certain limited number of SP-N designations within their boundaries; this would allow them to insure that important parcels are not developed without their input, while also forcing them to prioritize their scrutiny on projects that are truly significant. Asking RCOs to collaborate on this decision would also allow them to have an internal dialogue about planning priorities within their neighborhoods. The mechanism should also be available to developers, through a regular rezoning process, that believe they can achieve mutual gains through it.

Planning and zoning must be an ongoing process, facilitated by PCPC.

Removing neighborhood input from most routine development projects should not mean that community is removed from having more general power over local zoning and planning. Many of the problems with the community input aspects of the new code arose because of a notion that fixing the code and the plan would bring about a state in which there was general agreement that planning was "completed;" process reforms would be simply to handle the few anomalies that popped up until the map and the code reflected the reality of the market and of community preference. But this is an impossible state to achieve. Planning is not an outcome, but praxis; as John Friedmann writes in "Planning in the Public Domain: Discourse and Praxis," a notion of what is good only emerges from discussion, and this discussion can never really be said to be over. He says: "The public good is a notion of process; it emerges in the course of planning itself, and its concrete meaning is constantly evolving." Planners must see their discipline not as a technocratic realization of administrative and regulatory perfection but as an ongoing dialogue that they must guide continuously towards the "utopias of our imagination."[4]

Planning and development will always inflame internecine conflicts over the ways in which culture, economic status, racial identity, history, and values are made manifest in urban spaces, as we can see in Philadelphia's lack of ability to reach a lasting consensus about the status of the zoning map. In practical terms, this means that planning cannot be thought to end with the comprehensive plan. Continuous conflict between groups should be accepted as an ongoing organizing principle for the infrastructure of planning in the city. "All effective planning is therefore a negotiated process amongst affected parties who have different values, concerns, and interests at stake," Friedmann writes.[5]

Therefore, RCOs should be allowed to operate as true advocacy groups for local issues, including in the realm of planning and zoning. Simply

4 Friedmann, "Planning in the Public Domain."
5 Ibid.

giving communities the ability to run meetings regarding variances does not at all ensure that communities will ultimately be empowered or heard by decision makers; instead, it sets up community groups that cannot or choose not to engage in the rational and technocratic fashion expected of zoning due process for irrelevance or disdain from the ultimate decision makers. This seriously undervalues the perspectives of these less professional groups. Volunteers that are committed to their communities should not be expected to suppress their opinions in order to be taken seriously by the ZBA and PCPC, and community dialogue on local issues should not be relegated to advisory review on zoning approvals.

To facilitate this shift in the nature of RCO activity, PCPC must be prepared to take a much more active role in facilitating and guiding local debates about ongoing neighborhood feelings about development, planning, and fears of change. For municipal planners themselves, this may mean a greater emphasis on mediation between parties, as suggested by a variety of commentators like Lawrence Susskind and Noah Dorius. PCPC planners must be ready to engage citizens not simply in the formal planning processes that they initiate but on a recurring basis, within their communities. Communities need to be given a real forum within which to discuss local issues, and they need to feel that their input is being heard and processed by PCPC. In "Democracy Takes Command," John Kaliski gives this same advice to planners and designers in Los Angeles: "If eliciting a broad spectrum of public input leads incrementally to better urban form, then planners and designers will need to participate in more of the events (and, properly, be paid to do so) that people are already attending."[6]

In addition, one RCO should be designated the permanent coordinating group for an area, and should be treated by PCPC as a formal part of the planning infrastructure of the city. These groups should have formal ongoing relationships with the PCPC district planner for the area. A PCPC staffer could also serve as an administrator for these groups, allowing the burden on the volunteers of the RCO to be lessened. At the very least, PCPC should provide much more technical assistance to RCOs that have taken on roles as forums for community discussion in order to even out disparities in neighborhood resources.

6 Kaliski, "Democracy Takes Command."

6 OPPORTUNITIES FOR FURTHER RESEARCH

This paper offers only an early evaluation of the mechanisms created in Philadelphia to streamline and improve community input in land use. The most important continuation of this research will be another similar analysis some years in the future to check and adjust the claims made here.

In addition, the integrated zoning and planning process in Philadelphia is rich territory for planning scholarship, and while this paper focuses on the tension between community input and administrative clarity, there are many larger questions about the value of local control over land use that have been left unexamined.

This paper makes little attempt to analyze the impact of the continuation of a fairly standard Euclidean zoning scheme into the new code. Perhaps a more flexible or modern zoning approach, such as a form-based code, would change the dynamics of zoning approval. A more in-depth examination of the dimensional and use standards of the new code would provide an interesting counterpart to the process-centric analysis provided in this paper.

One area which was touched on only briefly in this paper is the reaction of the political establishment to the growing movement towards a vision

of "good government" that eliminates an explicit role for the council person in brokering development deals. Many interviewees touched on the role of the political system in perpetuating old systems, and a political movement is growing within the city to elect leaders more friendly to a technocratic management of the land use system. An analysis using political theory about the operations of city councils and local government could provide context for a deeper exploration of this topic.

Old and new stand in contrast in Graduate Hospital.

This analysis could be enriched by looking at the conflicts described through a more explicitly sociological lens to understand different reactions to development and community change. This could include a more in-depth study of the role of home ownership in creating and maintaining land use and zoning conflict; Philadelphia has a relatively high rate of ownership for a large city, and observers such as William Fischel have written about the impact this has on the often exclusionary impulses of communities.

In addition, the systems of development review examined in this paper could be looked at from a more explicitly economic point of view, with an eye to housing production rates, costs of regulatory delay, and housing affordability. There is a deep connection between local regulation, community control, and the issues of housing supply and demand which have created an affordability crisis in many American cities. A researcher with a more quantitative approach could analyze local spatial and real estate market data to explore this aspect.

In addition, these processes could be examined through the lens of management theory and public administration literature to understand how the approach taken in Philadelphia could have been improved.

7 THE PROMISE & PITFALLS OF PLANNING IN A CHANGING CITY

I think the thing that the Planning Commission does the worst is explaining to people what planning can and can't do...I think there needs to be a happy medium between 1960s planning and planning since then, where it's more about community input."

Ian Litwin, Philadelphia City Planning Commission

How can a whole city, composed of many different groups and many different outlooks, be convinced that growth does not have to be a zero-sum game? How can planning be both democratic and effective? How can development be made agreeable not just to developers but also to reluctant communities? These questions are central to the discourse of planning practice today. Planning for decades may have been characterized by a palpable split between the top-down and the bottom-up, but this firm division has gradually been replaced with an ideal of planning which allows that this dichotomy is both unproductive and potentially reconcilable. However, creating both a planning and zoning regime that

is inclusive and legitimate as well as effective, efficient, and fair is often easier said than done, and the struggle to bring communities on board with planned changes and neighborhood development continues.

In Philadelphia, a concerted effort to re-establish the legitimacy of planners as synthesizers of multiple interests in the comprehensive plan and local planning process was proposed as a solution to the perennial clashes between community and developer. However, the integrated planning and zoning reform process did little to channel neighborhood desires to participate in the creation of urban space into a productive or ongoing process. Planners and reformers never managed to convince reluctant communities that planning could work in the interest of the public, rather than simply the interests of developers; as a result, communities cling to a system of development review that seems to offer them at least a sense of control over their environment.

But community input under the newly rationalized regime is easily marginalized and confined to endless contentious and exhausting local zoning meetings, with little chance to cohere into a more holistic community consciousness of planning and zoning issues. This has implications for the long-term health of a planning and zoning regime eternally tied up by cultural and ideological debate. Without a firm basis of trust in the planning and zoning apparatus of the city, communities will continue to fight a zero-sum game against developers and by-right development.

Further discussion will be needed, in Philadelphia and elsewhere, about the appropriate role for public input in private real estate development efforts. While giving communities or community groups direct input in zoning variances and other administrative or adjudicative functions may seem like a logical means to make municipal planning and zoning more inclusionary and democratic, it is a mistake to assume that every community group or neighborhood has the ability to and the *desire* to manage a technical process in a way that satisfies the needs and maintains the rights of all players. Zoning and development are often ciphers for deeper debates about cultural and political conflict, and building this conflict into zoning permit review is neither helpful for administrators nor cathartic for communities.

To create broader buy-in for progressive and liberalized approaches to development, planners must be ready to get their hands dirty in local fights over growth and change. Planners must understand that no plan, no matter how efficient or progressive, can satisfy everyone; contention over urban space is unlikely to disappear. Therefore, for input to be meaningful for communities and for developers, public participation in zoning and development must be managed; planners must be deeply aware of the differences between *more* local democracy and *better* local democracy.

BIBLIOGRAPHY

"2300 South Street Denied." Naked Philly Blog. *OCF Realty*. April 30, 2014. http://www.ocfrealty.com/naked-philly/graduate-hospital/2300-south-street-denied.

Anastasio Law Firm. 2015. "When Does the ZBA Grant a Variance?" *Guide to the New Philadelphia Zoning Code*. Accessed April 27. http://phillyzoning.com/when-does-the-zba-grant-a-variance/.

Babay, Emily. 2014. "Census: Philadelphia Population Grows Again, but Rate Slows." *Philly.com*. March 27. http://www.philly.com/philly/news/breaking/032714_Census_Philadelphia_population_grows_again_but_rate_slows.html.

Babcock, Richard F. 1966. *The Zoning Game: Municipal Practices and Policies*. Madison: The University of Wisconsin Press.

Blanchard, Matt. 2007. "No. 6: A Crucial Ballot Question." *PlanPhilly*. May 6. http://planphilly.com/articles/2007/05/06/no-6-crucial-ballot-question.

Brey, Jared. 2012a. "Planning Commission Holds Hearing on New Regulations." *PlanPhilly*. June 13. http://planphilly.com/articles/2012/06/13/planning-commission-holds-hearing-new-

regulations.

———. 2012b. "Planning Commission Opposes Bill Changing Registered Community Organization Requirements." *PlanPhilly*. November 20. http://planphilly.com/articles/2012/11/20/planning-commission-opposes-bill-changing-registered-community-organization-requirements.

———. 2013. "Debate over Registered Community Organizations in Full Bloom." *PlanPhilly*. October 29. http://planphilly.com/articles/2013/10/29/debate-over-registered-community-organizations-in-full-bloom.

———. 2015. "Future Still Uncertain for Apartment Project at 43rd and Baltimore." *PlanPhilly*. April 30. http://planphilly.com/articles/2015/04/30/future-still-uncertain-for-apartment-project-at-43rd-and-baltimore.

Briggs, Ryan. 2012. "A New Zoning Code for a Different Philadelphia." *Next City*. August 23. http://nextcity.org/daily/entry/a-new-zoning-code-for-a-different-philadelphia.

———. 2014a. "Guac Blocked: How Overlapping Civic Groups Can Stand in the Way of a Simple Taco Stand." *Philadelphia City Paper*. January 23. http://citypaper.net/article.php?19371.

———. 2014b. "Terry Gillen's Confusing Stance on Development." *Philadelphia City Paper*. July 21. http://citypaper.net/article.php?20803.

———. 2014c. "Why Philly's Zoning Board Is Still so Dysfunctional." *Philadelphia City Paper*. July 21. http://citypaper.net/article.php?20734.

Carney, Donna. 2014. "Registered Community Organizations RCOs Workshops." Powerpoint, Philadelphia, June.

"Citizens Planning Institute | Learn to Plan, Plan to Change." 2015. Accessed April 27. http://citizensplanninginstitute.org/.

City of Philadelphia. 2015. "Mayor Nutter Appoints Julia Chapman to the Zoning Board of Adjustment." *City of Philadelphia's News & Alerts*. Accessed April 27. https://cityofphiladelphia.wordpress.com/2013/04/30/mayor-nutter-appoints-julia-chapman-to-the-zoning-board-of-adjustments/.

Clarke, Darrell L. 2011. "Must Council Rule Land Use? Yes." *Philly.com*. December 12. http://articles.philly.com/2011-12-12/news/30507234_1_council-member-retail-space-project.

Eichel, Larry. 2014. *Millennials in Philadelphia*. The Pew Charitable Trusts.

"Fact-Check Friday – RCO Edition." Blog. *Philadelphia Planeto*. February 7, 2014. http://philadelphiaplaneto.com/myth-busting-monday-rco-edition/.

"Finally, No More Hearings for 2300 South Street." Naked Philly Blog. *OCF Realty*. December 12, 2013. http://www.ocfrealty.com/naked-philly/graduate-hospital/finally-no-more-hearings-for-2300-south-street.

Friedmann, John. 1989. "Planning in the Public Domain: Discourse and Praxis." *Journal of Planning Education and Research* 8 (2): 128–30.

Gates, Kellie Patrick. "ZBA Boss Defends Caseload Numbers." Blog. *PlanPhilly*. October 26. http://planphilly.com/articles/2007/10/26/2155.

Geeting, Jon. "How to Fix Philly's Registered Community Organization Process." Blog. *Keystone Politics*. October 30, 2013. http://keystonepolitics.com/2013/10/fix-phillys-registered-community-organization-process/.

"Get in the Zone: Registered Community Organizations." Blog. *Philadelphia Planeto*. October 1, 2012. http://philadelphiaplaneto.com/get-in-the-zone-registered-community-organizations/.

Gilewicz, Nick. 2010. "Civic Design Review: A Process with No Decision." *PlanPhilly*. November 10. http://planphilly.com/articles/2010/11/10/civic-design-review-process-no-decision.

Greenberger, Alan, Julia Chapman, J Jastrzab, Gary, and Carlton Williams. 2013. *One-Year Zoning Code Review: A Report to City Council*. Philadelphia. http://www.phila.gov/CityPlanning/projectreviews/PDF/OneYearReport.FINAL.pdf.

Hutcheson, John D., and James E. Prather. 1988. "Community Mobilization and Participation in the Zoning Process." *Urban Affairs Review* 23 (3): 346–68.

Jannie Blackwell Speaks out on RCO Bill. 2014. https://www.youtube.com/watch?v=YggxWO2BQWU.

Kaliski, John. 2005. "Democracy Takes Command: New Community Planning and the Challenge to Urban Design." *Harvard Design Magazine*. http://www.harvarddesignmagazine.org/issues/22/democracy-takes-command-new-community-planning-and-the-

challenge-to-urban-design.

Kerner, Timothy. 2011. "Zoning Reform Myth Busting." Design Advocacy Group.

Mandelker, Daniel, John M. Payne, Peter W. Salish, Jr., and Nancy E. Stroud. 2005. *Planning and Control of Land Development: Cases and Materials*. 6th edition. Newark, NJ: Lexis/Nexis.

"Neighbors Near South Street West Debate: Is Parking a Right or a Privilege?" Naked Philly Blog. *OCF Realty*. August 22, 2013. http://www.ocfrealty.com/naked-philly/graduate-hospital/neighbors-near-south-street-west-debate-parking-right-or-privilege.

Nkrumah, Akili, Carla Harris, and Phile Chionesu. 2011. "Gentrification Is Goal of City Plan." *Philly.com*. August 15. http://articles.philly.com/2011-08-15/news/29889339_1_comprehensive-plan-gentrification-neighborhoods.

Nutter, Michael. 2007. *The Nutter Plan for Zoning and Planning Reform*. White Paper.

Pew Charitable Trusts. 2015. *Philadelphia 2015: The State of the City*. http://www.pewtrusts.org/~/media/Assets/2015/04/2015-State-of-the-City-Report_Web.pdf.

Philadelphia City Planning Commission. 2011. *Citywide Vision*. Philadelphia2035. Philadelphia.

Philadelphia Inquirer Editorial Board. 2011. "Overhaul Is Overdue." *Philadelphia Inquirer*, May 24, sec. Opinion. http://articles.philly.com/2011-05-24/news/29578165_1_zoning-rules-zoning-panel-outdated-zoning-code.

Philadelphia Magazine Staff. 2007. "Power: King David." *Philadelphia Magazine*, June 8. http://www.phillymag.com/articles/power-king-david/.

Plotkin, Sidney. 1987. *Keep out : The Struggle for Land Use Control / Sidney Plotkin*. Berkeley : University of California Press.

Politano, Frank L. 1972. "Community Participation and Reform of the Zoning Process in New York City." *Columbia Journal of Law and Social Problems* 9: 575.

Pompilio, Natalie, and William Bender. 2011. "A Wary Point Breeze Confronts Its Demographic Shifts." *Philly.com*. March 24. http://articles.philly.com/2011-03-24/news/29181715_1_point-breeze-

public-hearing-construction-of-three-story-dwellings.

Poole v. Zoning Board of Adjustment of Philadelphia. 2010, 10 A.3d. Pa. Cmwlth.

Puritan-Greenfield Improvement Ass'n v. Leo. 1967, 153 N.W.2d. Michigan Court of Appeals.

Ransom, Jan. 2013. "Does Blackwell's Bill Hurt City Development?" *Philly.com*. January 31. http://articles.philly.com/2013-01-31/news/36638187_1_council-member-new-code-meetings.

Saffron, Inga. 2012. "Changing Skyline: New Zoning Code: Toward a More Competitive, Livable City." *Philly.com*. August 25. http://articles.philly.com/2012-08-25/news/33367899_1_new-code-variances-livable-city.

———. 2014. "Changing Skyline: A Generational Divide in Graduate Hospital Neighborhood." *Philadelphia Inquirer*, July 5, sec. Entertainment. http://articles.philly.com/2014-07-05/entertainment/51078436_1_graduate-hospital-millennials-committee-seats.

Smith, Sandy. 2013. "The Other Message From the ReNewbold Groundbreaking." *Philadelphia Magazine Property Blog*. October 13. http://www.phillymag.com/property/2013/10/18/message-renewbold-groundbreaking/.

Sokoloff, Harris, Kiki Bolender, and Linda Breitstein. 2010. *Common Ground for Building Our City: Developers, the Public, and the Zoning Code*. Philadelphia: Penn Project for Civic Engagement.

"Some People Really Hate the Proposal at 2300 South Street." Naked Philly Blog. *OCF Realty*. December 5, 2013. http://www.ocfrealty.com/naked-philly/graduate-hospital/some-people-really-hate-proposal-2300-south-street.

Stumm, Albert. 2014. "Zoning Committees Feel Pretty Good about Zoning Changes City Council Passed Last Week." *Passyunk Post*. January 27. http://www.passyunkpost.com/2014/01/27/zoning-committees-feel-pretty-good-about-zoning-changes-city-council-passed-last-week/.

"Today's Question: Development as a Rigged Game." 2007. *Philly.com*. May 10. http://articles.philly.com/2007-05-10/news/25228846_1_zoning-code-master-plan-zoning-and-development-decisions.

Volk, Steve. 2010. "Turf Wars: Neighbors Gone Wild." *Philadelphia Magazine*, June 25. http://www.phillymag.com/articles/turf-wars-

neighbors-gone-wild062110/.

Walsh, Thomas J. 2009. "ZCC: Reduce Variances, by All Means." *PlanPhilly*. February 11. http://planphilly.com/articles/2009/02/11/zcc-variance.

West, Tony. 2013. "Who Speaks For The 'Community'?." *The Public Record*, December 1. http://www.phillyrecord.com/2013/12/development-who-speaks-for-the-community/.

Zoning Board of Adjustment. n.d. *Philadelphia Zoning Code*. Vol. 14.

Zoning Code Commission. 2007. *Home Rule Charter*.

"Zoning-Code Reform: A Great City Needs a Better Plan." 2007. *Philly.com*. February 7. http://articles.philly.com/2007-02-07/news/25238805_1_zoning-code-civic-groups-master-plan.

"Zoning Matters Website." n.d. Philadelphia City Planning Commission.