

PHILADELPHIA CITY PLANNING COMMISSION
August 17, 2010

PRESENT: Joseph Syrnick, Acting Chair
Brian Abernathy, representing Richard Negrin
Duane Bumb
Bernard Lee
Nancy Rogo Trainer
Nilda Ruiz
Anna Wallace Adams, representing Rob Dubow

ABSENT: Patrick J. Eiding

Executive Director: Alan Greenberger
Deputy Executive Director: Gary J. Jastrzab

Acting Chair Joseph Syrnick convened the City Planning Commission Meeting of August 17, 2010 at 1:10pm.

Mr. Syrnick welcomed new member, Anna Wallace Adams, who is here representing the Finance Director. She is replacing Chris Donato. Chris has taken a promotion with the Division of Technology.

- 1) Approval of the Minutes for the July 20, 2010 meeting.

Upon motion by Ms. Rogo Trainer, the City Planning Commission approved the minutes for July 20, 2010.

- 2) Executive Director's Update

Mr. Greenberger stated he had several things to report.

- **SPECIAL PCPC MEETING**

There will be a special meeting of the Planning Commission scheduled for September 7, 2010. It is the Tuesday after Labor Day. The meeting will begin at 2pm not at our usual 1pm. The purpose of this meeting is exclusively devoted for an in depth briefing on the proposed new zoning code. The new code has consolidated 3 modules, which will be delivered to the Zoning Code Commission meeting the following day. We would like to give the Planning Commission the first of several updates and previews, for those of you who have followed the work on the Zoning Code. We have all 3 draft modules in front of us. We are working very hard to try to mesh all of these pieces together.

Let's go over these dates:

September 7 at 2pm is a special Planning Commission Meeting.

September 8 is the regularly scheduled Zoning Code Commission Meeting. They will receive the consolidated new code.

September 21, 2010 is the regular City Planning Commission meeting.

Wednesday, October 6 is a regularly scheduled Zoning Code Commission Meeting. The Commission will deliberate on the new code.

On our regularly scheduled October 19 meeting, there will be more discussions on it

October 27 will be a special Zoning Code Commission meeting. They will ask for the adoption on the preliminary report on the new code; followed by transmitting to Council on November 10. And then there is a whole series of procedures that take effect.

According to the Zoning Code Commission's governing law, that will probably take about 6 months to get through, when you add up all of the time periods that allow for Council to deliberate, and hold their own hearings, and get back to us. The Zoning Code Commission will hold their own meetings, and then hopefully final passage. We are working hard on getting this together, and making it available on this schedule.

There were 4 public meetings held to review and provide public input to our Module 3. Those meetings have happened.

- **NATALIA OLSON URTECHO**

He stated you have probably seen in the papers or in the news, the Planning Commissioners have received noticed separately, about the resignation of Natalia Olson Urtecho from this Commission. He wanted to read a statement that Natalia sent to him. She was not going to be here anyway because she is traveling at the moment. He stated he wanted to read something from her and then he wanted to go over some business related to that.

He read Natalia's note:

"It is with deep regret that I submit my resignation to the Planning and Zoning Code Commissions. I hope that the good work and dedication we have put towards building a more transparent process where development and community interests are respected continues in the right path. I have always been honest and have spoken my mind in the interest of good planning, community involvement and sustainable development. I will continue to support the work and great efforts of this board which I hold closely to my heart and I hope will continue to make Philadelphia a greater city.
Sincerely, Natalia Olson-Urtecho"

He went on to state that he distributed a memo to each of the Commissioners of the Planning Commission, and the Commissioners who could not be here today, Nilda and Patrick will be getting this by mail. He read the following memo:

"In light of the resignation of one of our Commissioners, due to the political activity, I would like to remind the Commissioners of the following:
In December of 2007, the Board of Ethics rules that certain Boards and Commissions are subject to rules that limit political activity. Among those Boards are this Commission and the Zoning Code Commission. In your appointment letters from the Mayor, several forms were highlighted that required you to fill out and sign various financial disclosure forms, as well as, a form from the Philadelphia Home Rule Charter entitled "Acknowledgement regarding of political activity". Among the limitations of political activity are strict prohibitions on soliciting "whether voluntary or involuntary intended for any political purposes whatever", as well as, political participation "in management or affairs of any political party or any political campaign".

Mr. Greenberger went on to say he thinks this is clear to all of the Commissioners who have signed this piece of paper. If it is not clear or if it causes any confusion, feel free to consult with him on it.

- 3) *Information Only: Development proposal for the University City Science Center, 3737 Market Street (Presented by Christopher Kenney, UJMN Architects; Curt Hess, UCSC)*

Andrew Meloney, West Philadelphia Community Planner, stated this is a development item for 3737 Market Street at the intersection of University Avenue and Market Street. It is the gateway. It is a high traffic area.

Neil Sklaroff, attorney for the developer, stated for over the years the City Science Center has developed many projects on Market Street between 34th and 38th Streets, among

those have been the 3700 block of Market Street. The first two phases at 3701 and 3711 Market Street are completed and successful. They account for 557 sq. ft. of mixed-use development. We are here today to present the third and last phase of 3737 Market Street.

Christopher Kenney, Principal of UJMN, stated this building is the second phase of a 2 phase project at 38th and Market Streets. Both projects have green roofs. The first phase has LEED Silver Certification. Phase 2 is targeted for LEED Silver Certification. Phase three is tougher. He showed a drawing with the lower floors having 6 rows of parking, street frontage shows retail space and generous lobby located in 3711. In the tower, at 38th and Market, would have a double height lobby with retail space and state of the art conference centers, the upper stories would be a mixture of office spaces and laboratories. Market Street elevation would make a connection with the street, mixed-uses with plenty of transparencies with a restaurant, and they are hoping to secure another restaurant. It would have black granite that wraps around into the lobby. North elevation faces the school on Filbert Street, with curb cuts and service entrances. This shows their effort to fulfill RDA Master Plan agenda for a high-rise gateway building. They have recessed the entrance to the building to give it more presence. They are fortunate to have the support of RDA for the project.

Ms. Rogo Trainer said there is a lot to this plan. You have shown a lot of retail space along Market Street, but do you want to talk about the lack of transparency at the base of the building at grade level.

Mr. Kenney replied the divided part between the 2 buildings is parking lots. There were some structural and compositional decisions to separate the buildings.

Ms. Rogo Trainer replied both buildings have green roofs. Does it really have LEED Silver Certification?

Mr. Kenney replied yes, that building is two years old.

Mr. Syrnick asked when will we see this.

Curt Hess replied our hope is to break ground in November or December of this year. And assuming with all the approvals is granted and the necessary zoning approvals, the building would be delivered in May of 2012.

Mr. Greenberger asked them if they are coming back to this Commission for recommendations on entitlements, variances, or ordinances.

Mr. Hess replied they are going before the ZBA for FAR. Currently this building/land is zoned "C4". However, it has always been in conflict with the Urban Renewal Plan Agreement that they have with the Redevelopment Authority that envisions a gateway here. It would require 900% FAR. So they will be going to the ZBA for a variance.

Mr. Kenney replied the variance will actually be for 3737 Market Street.

Mr. Greenberger asked is this a single continuous property. What would be the entire total FAR?

Mr. Sklaroff replied 900,000 sq. ft. The total for 3701, 3711, and 3737 is 109,000 sq. ft., so 900% would be over 900,000 sq. ft. Their total is 877.

Mr. Greenberger said so when you talk about the 900 it is for the entire site.

Mr. Kenney replied yes. We have a letter of support from the Redevelopment Authority.

Mr. Greenberger said when you come back next month with your plan of development, you can show that.

Mr. Sklaroff replied we are here for presentation purposes. If we have a chance to come back we will do that. We don't have a zoning date.

Mr. Greenberger replied so you will come back and let us know what the ZBA has decided on that.

4) *Information Only: Proposed mixed-use development at 401 Race Street
(Presented by Ronald Patterson, representing the development team).*

William Kramer stated that he gets to introduce it, and then turn it over to Mr. Patterson who will give the presentation for the proposed mixed-use development at 401 Race Street. This item is bounded by a block on 4th, Race, and Warren Streets. It's currently zoned "L4" – Limited Industrial. It is an existing structure that will remain and will have further structure on top of that. It will be a mixed-use building. It will need some type of zoning relief, at this point it is not certain what form that will be. It could take the form of a Zoning Ordinance change or they could take the route of going to the ZBA. That's still under discussion. That will be determined at a future date. It most likely would be coming back in the future.

Ronald Patterson, attorney representing the development team, stated he is here with Bob Ambrosi, developer of the project. It is on 1.7 acres. It is an existing vacant building. It is located in "L4" - Light Industrial Zone District. We are proposing to add 6 stories on top of the existing building for a hotel with 150 rooms. The height would be around 135-145. We are proposing to have 3 types of restaurant uses; one is the hotel and one would be entertainment type complex. We are looking at second phase along 4th Street that would be residential development, but would not exceed the heights of the buildings along 4th Street. The "L4" District does allow commercial uses but not residential uses. In the code, it does describe the hotel as residential not commercial, so we would need relief for that provision. Parking and loading are more Industrial than Commercial. The property is located in 2 special control districts; the Old City Overlay and the Vine Street/Ben Franklin Bridge Approach. The Old City Overlay prohibits a height limitation and also prohibits new restaurants and expansion of existing restaurants. For these items and may be others we would need variances. Also proposing 350 parking spaces, to comply with the residential parking formula for 7 spaces per every 10 residential units. While they are being created to meet that, the Code does not recognize mechanical; the code recognizes side by side parking. So we analyzed what would be recognized under "L4" so we looked at what would be close enough for an Ordinance change that Councilman DiCicco would propose. It looks like "C-3" but not perfect. May be "C-3" with some adjustments to modify it; so that we would proceed as matter of right. We are very appreciative and sensitive to the Old City Neighborhood Association and the impacts to the surrounding area as we deviate from the overlay. We are working with members of committee on extensive parking agreement and licensing agreement for the LCB licenses. The final agreement is to fill in the gaps to protect us and the civic organization.

Bob Ambrosi stated the name of the development is One Franklin Square. The location is at the foot of the Franklin Bridge, directly across from Franklin Square. The existing building would have a hotel on top with 135-150 rooms. The entire first floor would be retail; the second floor would be parking. Then on 4th Street there would be residential building to match the residential on 4th Street. There is a basement in the project. The first floor of the plan doesn't show the residential along 4th Street; that would be done at a later phase. There is also parking all around the site. The third floor could be parking or retail. Hotel plan would have a sky park, a pool, a gym, walking trails, outdoor areas so that anyone visiting the hotel would be elevated and look at the Liberty Bell or the Constitution Center from this location. The sky lounge will have a direct view of the Constitution Center. We have been working on project for more than two years now. We have been sensitive to all of the neighbors, the Constitution Center, and the Visitors Center. The Constitution Center needs to be the anchor to the neighborhood.

Mr. Abernathy asked him has he purchase it.

Mr. Ambrosi replied that he bought it from a private owner. The last project they did in Philadelphia was 10 Rittenhouse Square.

Ms. Rogo Trainer asked are the two floors above grade parking.

Mr. Ambrosi replied this would all be retail, this would be parking. They are working on the final designs. Don't take this as final design. Look at this as a base massing plan. It would have glass and banners on the bottom and the front.

Ms. Rogo Trainer asked about a plan with parking away from the street.

Mr. Ambrosi replied all of our parking is on the second floor. That is an option over time that could be done in a second phase. So we could take the first 120 ft. of the deck for parking with residential. Right now the economy is off. The final plan that you will see this as residential homes. Time we expect to break ground is the end of next year in December 2012.

Ms. Rogo Trainer asked about the height.

Mr. Patterson replied under "L4" we will need a lot of variance relief. We would pursue an Ordinance.

Ms. Rogo Trainer asked how does that work.

Mr. Ambrosi replied building from 1912.

Mr. Greenberger replied it was originally a 12 or 13 story building, that was zoned Industrial. It is in a strange location with the bridge on one side, and the back of Mint on Race Street side. It's not hanging on to the fabric of Old City. So to repurpose the site, it is so dramatically different, it should merely be a rezoning of it by an Ordinance. If it is an Ordinance, it is before Council and we need to advise Council. If it is a ZBA case, we will ask for it to come back here so that staff could give a recommendation to the ZBA for review. We don't jam up the Commission with the small stuff.

Ms. Rogo Trainer said she is concerned with parking and the parking garages.

Mr. Ambrosi replied he can see her point, but the economy is limiting them.

Mr. Greenberger replied Old City has height limits.

Mr. Patterson replied they pushed the hotel away from the residential.

Mr. Ambrosi replied we need to have a certain number of hotel rooms to make it feasible. It needs to have some presence. It is an important site, an architecturally it should be treated as such.

Mr. Syrnick asked where is the drop off for the hotel.

Mr. Ambrosi replied pull in lane and drop off, and then pull into the parking garage. There will be a 1-way entrance in.

Mr. Abernathy asked has that been deeded back to the City.

Mr. Ambrosi replied agreement is in place.

Mr. Abernathy asked what is the condition of the building today.

Mr. Ambrosi replied it is completely uninhabitable.

Joe Schiavo stated he is here as Vice Chair of Development Committee of the Old City Civic Association and particularly the subcommittee, that has been working with Mr. Ambrosi since the onset of the project for the past 23 months. We would like to see the project developed at this corner of this block. It is very important, and we see opportunity here. And we have a good positive working relationship. We see positive the massing, and the organization, and comments about the project. A question was asked, "How does the Civic Association feel about excess going over the 65 ft. height limit?" We understand that there are certain issues here at this particular parcel and the re-use of the existing building and height mass. We think it is positive that the existing building is being used as a parking structure at least on two floors. We think that surface parking would be impractical. This is a very positive re-use of an adaptive structure. As far as the hotel component goes, we feel very positive that there might be a hotel at this corner. It is important for the Independence Mall Complex in general. As you know the Holiday Inn, at 4th and Arch Streets, has one of the best occupancy rates of any hotel in the City of Philadelphia. The Holiday Inn can share the occupancy with this project. In terms of stylist approach, we are comfortable. We believe as far as the massing of the 4th Street parcel, hanging on the east side of 4th Street, we feel strongly about that and the decking being used as at the top of the existing building, we feel very positive. There is a prohibition on new food uses in that area of Old City, but we understand that hotel will have food uses, and will need LCB liquor license. We understand. And it has also been discussed early on the possible use of the large commercial use on the first floor is about 33,000 sq. ft.; for Old City that is a negative use, whatever it is, it is a negative use. So we are looking at this very carefully. While we understand that the re-use is a very practical use. We are to a point very supportive of the hotel component of this entire package. We understand there will be a liquor license there and have written a proposed draft agreement, and we are working with Ron Patterson on those conditions, and there is an agreement there. But there is an issue there with the entertainment component at this point. So what he is trying to point out is that we have been really trying to work closely and effortlessly to make this happen, they also have a concern with the electronic signs at the base of the bridge. And given the three historic churches in the immediate area, St. George's, St.

Augustine's, and Old First Reform, this is a bit of a problem. And Federal Regulations and Local Regulations make that billboard a difficult issue for us to support. But outside of those 2 issues, we think we can work out everything else on this project and have a good positive solution for this City and Old City.

Nilda Ruiz arrived at 1:45pm.

Mr. Greenberger asked what sign is Joe talking about.

Mr. Patterson replied the sign is inserted and set back as part of the building. There is a billboard on the building right now that we simply take off of the building.

Mr. Abernathy asked what will be displayed there.

Mr. Patterson replied electronic displays.

Mr. Ambrosi replied it will be for the tenants of the building and outside displays.

Mr. Syrnick asked who will be seeing it. People coming over the bridge?

Mr. Ambrosi replied yes. You would not be able to see it going east; you would only be able to see it going west.

Mr. Syrnick asked why is that important.

Mr. Ambrosi replied it is important for a number of reasons. It is important #1- it identifies the project and that project needs life. It's important from an economic point of view. It supports the project in today's world; that's what is needed. It advertises for the tenants in the building, and for outside sources. It is important for the project. You have a project that has good solid retail; at this scale it is exciting. You have the gym, outdoor bar. It needs to be a place; it needs to identify this as an exciting, successful place, and not just another brick building. I will have spent a lot of money on quality design, quality architects, and quality tenants.

Ms. Rogo Trainer asked him to be clear. You are not only going to be advertising tenants in the building, but you are going to be selling advertising to outsiders.

Mr. Ambrosi replied that's correct.

Ms. Rogo Trainer replied there are two separate issues. Building identification is important.

Mr. Ambrosi replied this is beyond building identification. It is important, but it is also for outdoor advertising, it is for tenants in the building. It is necessary for economic policy. It is a very difficult economic world.

Ms. Rogo Trainer replied so this is an electronic billboard.

Mr. Ambrosi replied it is integrated into the building, not on stilts structure, visual only in one direction.

- 5) Institutional Development District Master Plan Amendment for Aria (former Frankford) Hospital to construct a new parking garage.

Martin Gregorski, Development Planning Division and Acting IDD Administrator for the Philadelphia City Planning Commission, stated the IDD zoning is its own zoning. The zoning controls is in the Master Plan itself. Basically the only buildings that are permitted to be built are those that are approved by this Commission. It concerns parking, bulk, and occupied area. The benefit for an IDD for the Commission and for the public is that all large buildings have to come before the Commission before approval. The benefit for the IDD campus itself is that they can easily move uses around. Every time the Master Plan changes, they have to come back for approval and in this case they have to go to City Council for approval.

The item before us is for the Aria Hospital's Torresdale Campus, formerly known as Frankford Hospital. The area is Knights and Red Lion Roads. Most of the area around here is residential and some pockets of commercial. The Plan calls for the Amendment to the parking garage. This new parking garage would be a 4-story addition that would hold approximately 425 cars. That would remove all of the surface parking lots and changes to the site layout. The IDD requires 150 parking spaces, including this new addition there will be 1,761 parking spaces. As you know this is a full hospital facility with 252 beds with a medical surgical facility. Residents have supported this IDD change with the proviso that the egress and ingress will be off of Knights Road. It was once on Red Lion Road. Planning Commission staff recommendation is approval.

Ms. Ruiz asked for confirmation that the neighbors have seen this plan.

Mr. Gregorski replied there was a community meeting with the Councilman presiding over it.

Ms. Rogo Trainer asked about landscaping.

Mr. Gregorski replied there will be landscaping along the front and sides.

Mr. Greenberger replied this is a relatively low density area of the City. This is a facility that needs the garage.

Upon motion by Ms. Ruiz, seconded by Ms. Rogo Trainer, the City Planning Commission approved the Institutional Development District Master Plan Amendment for Aria (former Frankford) Hospital to construct a new parking garage.

- 6) Institutional Development District Master Plan Amendment for Temple University to construct a new School of Architecture building.

Mr. Gregorski stated this is an IDD Master Plan Amendment for Temple University for the area bounded by 12th, 13th, Diamond, and Norris Streets. It would be on the same site as the Tyler School of Art. What they are proposing is a new School of Architecture, which will consist of 4 floors plus a mechanical penthouse, with a total gross area of approximately 51,020 square feet. This addition will be to the Mini-Arts Campus and will be an addition to Presser Hall on 13th Street. There will be a loading dock on 13th Street with one bay to supplement the loading

dock, which is along Diamond Street; They are looking for a LEED Certification building. This will bring the total gross floor area to 4,542, 610 sq. ft. The IDD requires 1,119 parking spaces. The campus already provides 2,951 spaces. Planning Commission staff recommendation is approval.

Ms. Ruiz asked where is the loading dock.

Mr. Gregorski replied on the side of the bay.

Mr. Greenberger asked where is the front of the building

Mr. Gregorski replied the front is on 13th Street.

Mr. Greenberger said from our perspective the essential figures have to do with the amount of square footage that are being added to IDD, and not the parking that is being demanded on the system.

Bernard Lee arrived at 2:00pm.

Brian McHale commented that the Temple 2020 Plan Vision should be presented to the Planning Commission before the buildings should be preceded. The IDD is a great looking goal. He thinks this will be great for the School of Architecture. What Temple is planning with its 2020 Vision, is the translation for him, is establishing a vibrant neighborhood in the heart of North Philadelphia. He uses the word neighborhood because it is a neighborhood plan and as things get larger especially the universities with Medical Centers, increasing diversified their plans not just for their students, and patients, but businesses of the surrounding neighborhoods at that point the Philadelphia City Planning Commission needs to supply the scrutiny of such a plan. Their impacts no longer explicitly are on the university; in this case it is not a problem. The Philadelphia City Planning Commission is another way for scrutiny. The Philadelphia City Planning Commission is attempting to establishing the rules of the road, and the IDDs should have to present their Master Plans every now and then to the Commission before they build buildings.

Upon motion by Ms. Rogo Trainer, seconded by Mr. Abernathy, the City Planning Commission approved the Institutional Development District Master Plan Amendment for Temple University to construct a new School of Architecture building.

Mr. Greenberger replied getting Temple to present their Master Plan is a good idea. We will follow-up on that.

- 7) Report on the Public Hearing regarding Plan of Development Regulations for the Central Delaware Riverfront Overlay District.

Mr. Gregorski, stated this is a quick recap of the Plan of Development process needed regulations for Central Delaware Riverfront Overlay. The area is bounded by Allegheny Avenue to the north, Oregon Avenue to the south, and I-95 to the river, have to meet this Plan of Development criteria. In June we took these to the Commission and we heard again in July as a report based on the results of that hearing. The report stand with the exception of one thing in the submission requirements section. In response to one of the responses we received from the community, we have asked to add another letter "r" and that would read:

" (r) A request for an exception to the requirement for a waterfront setback and/or recreational trail may be made by including with the original POD submission a separate narrative, including any supporting documentation, specifying why such a setback or trail is not feasible".

This is something you would have to answer up front, not something you would discover later at a presentation, and documentation showing the setback. This and other edits, as pointed out by the report. The City Planning Commission staff recommendation is for approval of the Plan of Development Regulations.

Mr. Greenberger replied this Commission gave an additional 30 day response period the last time. Could you please summarize what responses we received.

Mr. Gregorski stated we received two responses very recently: 1) online from Paul Boni; and 2) from the Development Workshop today. Paul Boni's letter had nice things to say about the recommendations. In response to Paul Boni's letter, we did make a change to reflect what he requested.

Mr. Syrnick asked him to please go over the word change that we made pursuant to the letter from Paul Boni.

Mr. Gregorski replied it would be in the Regulations themselves in Section 4 of the Submission Requirements would be the addition of a letter "r" on page 9 of Regulations: *" (r) A request for an exception to the requirement for a waterfront setback and/or recreational trail may be made by including with the original POD submission a separate narrative, including any supporting documentation, specifying why such a setback or trail is not feasible".*

Mr. Syrnick asked 'may be made' that way, or 'must be made' that way.

Mr. Gregorski replied it says 'may'. However, basically if you are going to ask for a setback, we are going to want to see it. The Plan of Development is going to have a question on setback and as a separate matter that is a why.

Mr. Greenberger replied if you are not going to do a setback, we are going to ask you why. So this is just a narrative asking why.

Mr. Syrnick replied he thought the comment that was made forced you to make that determination up front. Which was there for everybody. If you say may, you may do it that way or you may not do it that way, in which case we are back to where we were without that added in.

Mr. Gregorski replied he thinks this is just wordsmith with this. There will be Plan of Developments that have nothing to do with the river, and these submission requirements are for all of them. If you want to build a property behind I-95 that is zoned "C2", this requirement is not necessary for them. They don't have to include a narrative of why there is no setback for them.

Mr. Syrnick replied he thought if you had a Plan of Development and if it was applicable you had to state it up front to justify it and why it wasn't feasible. You would only have to do that if you were putting in a riverfront setback. It doesn't read the way I thought it should.

Ms. Ruiz asked should it read shall.

Mr. Gregorski replied if we should change that to shall he doesn't think that will change anything. If we have a plan come in, it is going to be obvious if it is going to need a setback or not in their Plan of Development.

Mr. Jastrzab replied he thinks the intent was that if the developer is requesting an exemption, then they should provide a separate narrative with documentation so that we could see that up front. On that basis, I don't think we have any problem with changing 'may' to 'must'. Because it is conditional on whether or not on what they are asking for be an exemption.

Craig Schelter, of the Development Workshop, stated he was there with Rich Lombardo of Ballard Spahr, and Neil Sklaroff an attorney with Ballard Spahr. He told the Commissioners that they should have a packet in front of them (see Exhibit "A").

Mr. Lombardo stated that every place in the code there is an ending. It is set-up that way. You may not be here in a year. You may not be here with a change of Administration. You would be putting a project in limbo by tabling it. It should be established, not drawing it out. We need more meetings. In today's world you lose financing or incur more costs.

Mr. Schelter replied regarding the 75 days that a developer will have to wait on a decision. We don't know when that will be done. Developers asked us about it, and we could not get an answer, so we could not give them an answer.

Neil Sklaroff stated since the Commission didn't receive his letter, he is going to respond to staff recommendations. The commission should not have any contact with anyone, but the staff need to go forward. The applicant should present their proposal, and the staff should not offer advisory information. The applicant will have the opportunity to present their proposal. Someone will be asked how did you come up with that decision. The City will have standing. You are going to be going into a new role. You are not investigators, you are not the DAs. We agree with staff recommendation. We advise to have legal counsel on hand. Objective standards the threshold result in arbitrary decisions.

Mr. Abernathy replied regarding the 75 days. Is the current Regulations clear enough about the 75 days?

Mr. Boni, attorney and resident, thank the Commission for the opportunity to make his comments on the Regulations. First, these Regulations have drastically improved. Staff recommendations make the broadest recommendation for all interested parties, for environment, for open space, for all those who represent those groups. For anyone within ear shot, he hopes these broad recommendations get included in the new zoning code. He thinks there are going to be problems, and they need the rules. If someone wants the riverfront setback, they need to state it up front, and not figure it out when you get to page 45 when you are filling out the form. It must be made up front. He agreed with Mr. Sklaroff that there must be no contact with the Commission. He accidentally omitted from his letter that under the Home Rule Charter, the Philadelphia City Planning Commission doesn't have the authority. It needs to change either by Home Rule Charter or to go before City Council. We need to do it. Generally, he is a happy camper.

Ms. Rogo Trainer asked what kind of criteria do you foresee as objective criteria.

Mr. Boni replied is it feasible to have setback, but right now it is required a certain setback with a continuous waterfront trail. It makes him nervous that we could have development without setbacks. First would be percentages, and second would be procedural requests. They are required to do so on their own. That is not a good reason because it would cost a lot of money. The other area is the plan of development. It really does mean much to him.

Mr. Schelter replied take out sentence 4 in Section 4 "Any other information that the Commission deems necessary".

Ms. Rogo Trainer asked why.

Mr. Schelter replied that is totally open-ended.

Mr. Lombardo replied the look at the bulkhead line in continuing the trail. What do you do if the bulkhead line occurs at the end of a property? East and west the bulkhead line is at the sidewalk or the river. Lack of objective standards.

Stephen Wexler replied primarily not being a lawyer, he would like to thank Paul Boni for establishing the advocacy group. Since the City is the governing body, he would urge you to accept the public comments. The language is more broad and covers more than staff's recommendation. Overtime you will need to have objective standards.

Ms. Rogo Trainer asked what is the next step.

Ms. Ruiz asked what is the item the Craig Schelter says to strike.

Mr. Syrnick replied it is item (p) in Section 4. I understand what the he is saying that all of the other items up to item (o) needs to have everything in there without item (p).

Ms. Rogo Trainer said she assumes the Legal Department has reviewed it.

John Mondlak, City Solicitor, replied a number of lawyers have worked with this and it is certainly changeable.

Mr. Abernathy replied everything is not guaranteed.

Mr. Greenberger replied he wanted to quote Rich Lombardo "you can't draw this out forever". You are drawing it out forever. Paul Boni says about setbacks along the 6 or 7 mile of waterfront. This is covering everything. If you start to confront one condition, it will lead to 50 conditions. There will be arguments about setbacks for 50 ft. where it calls for 60. He doesn't think it's a big deal. We are responding because of an Ordinance that established this authority.

Ms. Rogo Trainer asked about the Ordinance.

Mr. Abernathy replied some of the folks are objecting to more power for the Planning Commission. Council is going to put the power in to the hands of the planners. It is important to have these Regulations to assist the Planning Commission to make decisions along the riverfront.

Ms. Ruiz replied that she agrees that you must have something in place.

Mr. Lee replied as an attorney, is that this makes it difficult to do as of right. You will see what I am talking about as it comes up in the future.

Mr. Greenberger replied this was a bit of an experiment. This was always intended as a temporary overlay in place. We have had only one plan come before us.

Upon motion by Ms. Ruiz, seconded by Ms. Rogo Trainer, the City Planning Commission approved Plan of Development Regulations for the Central Delaware Riverfront Overlay District with changed "must and any".

8) *Philadelphia2035 Update*

Danielle DiLeo Kim stated give an update on the progress of the Comprehensive Plan known as the Philadelphia 2035 Plan. She said the ideas of the public meetings that were generated so that we can add it to the Citywide portion of the Comprehensive Plan since the beginning of the year. We have been meeting with our Citywide groups. We will share with you in our October meeting. The Communication Group – the ZCC and CPI, you will see more in the future. There are 3 scenarios: 1) growth – 100 thousand new residents tested, we had a slightly lower number; 2) boon scenario; and 3) no growth. We are preparing for another series of meeting taking place in October. We picked 4 areas in the City for the meetings. There were 31 maps generated. We went through housing, transit, energy, parks, and transit improvements. People had to agree on what we should strive for in the City. Rated the top 5. Centennial District – possibly what can be more transit. Agricultural – community gardens, and large clearing of land. Energy sufficient – sea of parking around the stadiums. Navy Yard – more supportive for green space. Waterfront trail – lets have 1 trail that is 13 miles long and transit parallel to that. The most popular ides is rapid transit along the Roosevelt Boulevard. So these are the ideas that the public came up with. We don't know about energy fields in South Philadelphia.

Mr. Syrnick asked not one made comments out of Northwest Philadelphia.

Mr. Greenberger replied there are things not in the people's consciousness. As we have seen population shrinkage. A lot of those parcels want development on it. There is a continuance of vacancies.

Mr. Syrnick adjourned the City Planning Commission Meeting of August 17, 2010 at 3:17pm.

SUMMARY

- 1) Approval of the Minutes of the July 29, 2010 meeting. Approved
- 2) Executive Director's Update.
- 3) *Information Only: Development proposal for the University City Science Center, 3737 Market St. (Introduced by Andrew Meloney; Presented by Christopher Kenney, UJMN Architects; Curt Hess, UCSC).* Presented
- 4) *Information Only: Proposed mixed-use development at 401 Race St. (Introduced by William Kramer; Presented by Ronald Patterson, representing the development team).* Presented
- 5) IDD Master Plan Amendment for Aria (former Frankford) Hospital to construct a new parking garage (Presented by Martin Gregorski). Approved
- 6) IDD Master Plan Amendment for Temple University to Construct a new School of Architecture building (Presented by Martin Gregorski) Approved
- 7) Report on the Public Hearing regarding Plan of Development Regulations for the Central Delaware Riverfront Overlay District (Presented by Martin Gregorski) Approved
- 8) Philadelphia2035 Update (Presented by Danielle DiLeo Kim) Presented

EXHIBIT "A"

Development Workshop, Inc.
Room 5170
51st Floor
1735 Market Street
Philadelphia, PA 19103-7599

August 17, 2010

Alan Jay Greenberger, AIA
Executive Director
Philadelphia City Planning Commission
1515 Arch Street, 13th Floor
Philadelphia, PA 19102

Joseph R. Syrnick
President and Chief Executive Officer
Schuylkill River Development Council
2314 South Street
Philadelphia, PA 19146

Re: Central Delaware Riverfront Overlay District
Comments to the July 20, 2010 Report to City Planning Commission

Dear Messrs. Greenberger and Syrnick:

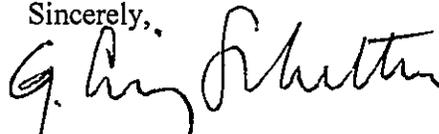
Please find enclosed the considered comments of the Development Workshop, Inc. in response to the July 20, 2010 Report to City Planning Commission on the June 8, 2010, Public Hearing Regarding Plan of Development Regulations for the Central Delaware Riverfront Overlay District. While our comments relate to Public Comment numbers, there are grouped toward similar substantive or procedural issues.

We strongly believe that major shortcomings continue to exist in the staff response regarding objective standards of review, onerous and expensive submission requirements, open ended decision timing, and discouragement of outside investment.

With regard to process, we believe that an applicant not the PCPC staff bears the burden of proving entitlement. Because the PCPC decision regarding a Plan of Development (POD) is final, the PCPC must act as an objective adjudicative body. The PCPC would be well advised to have an attorney present to draft findings of fact and to rule on evidentiary matters.

As always we continue to push for positive development in Philadelphia to add to the City's tax base and population and to simultaneously support existing neighborhood investment. We request an opportunity to be heard at the City Planning Commission meeting August 17, 2010.

Sincerely,



G. Craig Schelter
Executive Director

Alan Jay Greenberger, AIA
Joseph R. Syrnick
August 17, 2010
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MS/djh
Enclosure

cc: City Planning Commission Members
Mr. Duane H. Bumb
Mr. Robert Dubow
Mr. Patrick J. Eiding
Bernard Lee, Esquire
Mr. Richard Negrin
Ms. Nancy Rogo Trainer, A.I.A.
Ms. Nilda Iris Ruiz

**Additional Development Workshop, Inc. Comments
to July 20, 2010 Staff Report to the City Planning Commission**

Public Comment 1: The POD regulations lack objective criteria governing the review process.

The empowering ordinance requires the Commission to adopt regulations that provide objective standards for design review as may be necessary. While the Staff Finding admits that the "base zoning is the standard of objective review," the Staff somehow suggests that the "POD review process does not lend itself to precise quantifiable certainty." The Staff Finding presupposes that there are other permissible standards which are not objective and for which the Commission shall use its expertise and judgment in adjudging a POD application . . . as if the objective standards do not require Commission expertise. Unless the Staff can point to the legislative record to support such a contorted interpretation, this would be a clear misreading of the ordinance.

Objective standards are the fundamental legal nexus for review, and the threshold principle from which this Commission should not stray. Reliance on subjective standards without definition that are, for the absence of certainty, amorphous and ambiguous results only in arbitrary decisions. Arbitrary decisions will not and cannot withstand scrutiny in the public forum or on review by the courts.

Criteria such as "appearance of the building," legibility," "sustainability," "efficient building performance" are undefined, unknown and subject to change over short periods of time. "As may be necessary" is not license to ignore the need for objective standards, obviate the clear direction of City Council or usurp City Council's legislative authority.

Valid standards are subject to definition and description. City Council placed upon the Commission the direction to establish objective standards in the ordinance clearly to address the lack of standards in the ordinance itself. The ordinance does not require the "precise quantifiable certainty" that the Staff Finding suggests, but does require standards and requirements that are "objective."

The Philadelphia Zoning Code already contains examples that are objective, and criteria in portions of the proposed subsections (b) through (g) can lend themselves to objective standards (parking impact, streetscape improvements, sustainability, and negative environmental impact). Difficult, perhaps, but that does not make the task any less important. By failing to provide objective standards behind each criteria would be to choose to follow some sections of the ordinance and not others. If the Commission cannot accept the clear direction to establish objective standards, then the Commission should seek to have the ordinance amended.

We submit that the establishment of subjective standards attempts to impose "taste" on projects. In Pennsylvania, we do not legislate "taste."

Public Comment 7. The section 4 submission requirements are overly onerous and expensive.

The Staff comment that “many of the items required for the POD review are also required for the review of any new, large development projects” ignores that review of “as-of-right” submissions for zoning permits does not include such matters as density of the development, the scale, height, and massing of the structures, the unit count and composition, amenities included in the project, connections to adjacent sites, areas, and the development’s surroundings, parking and traffic impacts of the development, and the appearance of the building, including its form, legibility, and materials except as specifically provided in objective criteria.

Furthermore, the regulations do not establish any rationale or analysis to support the need for a traffic study for developments having either a minimum of 25 new residential dwelling units or a minimum 100,000 gross square feet of floor area along Christopher Columbus Boulevard. This presupposes, in addition, a negative impact without any explanation what are the negative impacts. Until a basis is shown to support the triggering of a traffic study and mitigation plan, we submit that this added obligation to the submission requirements results in an overly onerous and expensive process.

In particular, the traffic study and mitigation plan requirements reveal a non-growth bias that assumes that development in compliance with existing codes is harmful while negating the concept of “as-of-right” zoning.

Public Comment 8: The deadline for a final decision is too open-ended and could be continued indefinitely.

Although the 75-day time period for the Planning Commission to take action is specifically cited in the ordinance creating Section 14-1638(12)(a) of the Central Delaware Zoning Overlay, the time period should not be open-ended. 75-days should be a limit on how long the Commission has to act after which its approval is presumed. This is common practice through the Philadelphia Code and the City Charter as a method to assure timely review and action.

In reviewing plans submitted by developers under other provisions of the Zoning Code, the Planning Commission performs their review within a proscribed time limit. It should be the same for POD review and approval.

Public Comment 9: The POD process will discourage outside investment and act as a *de facto* moratorium on development.

The Staff Finding is purely speculative and does not cite any basis upon which this claim can be made. We believe that the question can and should be professionally analyzed to ascertain the added cost to a proposed development that will be incurred (in terms of time and money) because of the imposition of the new submission requirements. We do not know however, of any Staff expertise with which this claim is put forward.

This will not change because of the state of the economy but excessive time delays and submission costs before the issuance of permits can impact the ability and/or cost of obtaining financing.

Public Comment 2: Because the PCPC's decision regarding a POD is a final decision and not merely advisory, the PCPC must act as an objective, adjudicative body. The PCPC's decision should be based solely on the evidence and testimony presented at the hearing, any member of the PCPC should not have any communication or otherwise receive any information regarding the POD outside of the hearing.

We agree with the adoption of the MPC's statements with regard to the unbiased record upon which a quasi-judicial body must make its decision. We strongly advise the Commission to accept the original MPC language ("any party and his representatives") that has proven to comply with law and prohibits contact with any party or participant and not just any applicant. Commission members should have no *ex parte* communications about the subject matters of a hearing. Since a member of the Commission in these circumstances must avoid even the appearance of a conflict of interest (including a decision based on a predetermined opinion), the Commission members have an ethical obligation to base decisions solely on the record developed in the course of due process hearings.

Public Comment 3: The applicant, not the PCPC staff, should present the POD, and bear the burden of proving entitlement.

As previously stated, the obligation of presenting a POD should bear on the applicant, and we agree with this part of the Staff Recommendation. However, the Commission should play no advocacy role in the proceedings and should not request the Staff to offer advisory opinions. The applicant and other parties have the ability to call the Staff members as witnesses in their own discretion, and the Commission should have the power to issue subpoenas upon the request of parties. Of course, the City has standing to participate in the hearings and, therefore, call witnesses. The Commission should also note that, once called to testify, the Staff members will be subject to cross-examination by persons allowed to be parties in the hearings by the Commission.

In accepting this new role for the Commission, the members should understand that they are to be cast into new roles as objective deciders. You will decide what are the facts from the record. You will apply the governing law to the facts. It is up to the parties before you to present those facts and inform you of the applicable law. You are, however, not investigators.

Public Comment 4: The PCPC should have an attorney present to draft finding of fact and to rule on evidentiary matters.

We believe that the better practice is for the Commission be advised by its attorney during the course of conducting hearings. The advice that you have been accustomed to seek from the Staff, you should now seek first from your legal counsel.

While we agree with the Staff Recommendation, we must qualify the Staff Finding. While the proceedings before the Commission are not bound by technical rules of

evidence, the Commission may not ignore principals of law. Technical issues that range from whether an expert is qualified to give opinions on various issues to how to handle objections to limits of due process are difficult enough for experienced boards; the Commission will be well advised to keep legal counsel close at hand.

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