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Philadelphia City Planning Commission
One Parkway, 13th Floor
1515 Arch Street
Philadelphia, Pennsylvania 19102

Re: Comments on POD Regulations

Dear Members of the Planning Commission,

Thank you for this opportunity to provide public comments on the Commission's draft regulations regarding Plans of Development, which were last revised in the official Report of the June 8, 2010, Public Hearing. The draft regulations are getting much better and I thank you for your good work on this matter.

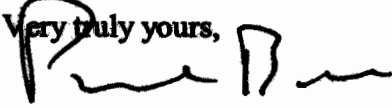
I write as a resident of the City and also as a land-use attorney who often represents Philadelphia citizens, community groups or other non-profits. I do not submit these comments on behalf of any client.

My comments are as follows:

1. Citizen participation in hearings: I am pleased with the current language and with Staff Recommendation No. 5. However, the language could be improved if it would also reference "established area advocacy groups." This would allow groups such as the Pennsylvania Environmental Council, Penn Future, the Preservation Alliance for Greater Philadelphia, SCRUB and others to have confidence that they can participate fully. Please note that I have not been asked by any of those groups to make this comment. The Philadelphia area is fortunate to have these groups, which have developed expertise in their subject areas; and the POD process would benefit from their involvement.
2. Lack of objective standards: The Ordinance appropriately requires the Commission to have objective standards for both the feasibility of the waterfront setback (Ordinance Section 6 (ii)) and also for the design review of Plans of Development (Ordinance Section 12 (a)). It is concerning that the current draft regulations do not contain objective standards. While the current draft does list a number of factors, these are not objective standards and they will likely not significantly constrain future Planning Commissions who might be influenced by political forces. I offer three concepts that might help:

- a. *Include distances and/or percentages:* Regarding the waterfront setback, there are only a limited number of narrow or small properties. The regulations could include distances or percentages to determine what the waterfront setback should look like. For instance, if the depth of the property is too narrow (east-to-west), then a narrower waterfront setback can be allowed; but having regulatory distances or percentages would help guide the Commission's decisions. As to design reviews of Plans of Development, it is important for objective and measurable design standards to be promulgated in these regulations. The current lack of objective standards, if not changed, may lead to appeals of approved Plans of Development and may also make the entire program vulnerable to a facial attack for lack of compliance with the Ordinance.
- b. *Procedural mechanisms:* To help prevent improper decision-making about the waterfront setback by future Planning Commissions, the draft regulations could be amended to include a number of legal mechanisms to assist the process. For instance, the regulations can state that: (i) There is a "rebuttable presumption that a waterfront setback is feasible at each parcel"; (ii) The Commission can issue an exception to the requirement of a waterfront setback if the applicant rebuts the presumption by "clear and convincing evidence" demonstrating that it is infeasible to have a setback; (iii) The applicant must include in its submission "an alternatives analysis showing how setbacks of the required size and of various smaller sizes, if included, would be infeasible;" and, (iv) the "demonstration of infeasibility cannot include any reference to financial infeasibility or self-imposed infeasibility." These types of concepts are already used in other areas of land-use law and would make it clear that the City places a high value on having a continuous waterfront setback.
- c. *Transparency and identification of critical issues:* Another way to prevent poor decision-making by future Commissions is to make the underlying information more easily identifiable. For instance, the Section 4 Submission Requirements could include a new section requiring that any applicant who is seeking an exception to the requirement of a waterfront setback must include a "separate narrative, including any supporting documentation, as to why it asserts that the waterfront setback is not feasible." This way, the Commission and the public, at the earliest possible time, can see clearly how and why the applicant is asserting that an exception is warranted. This would highlight this particular issue in a transparent way and would better enable the public to provide commentary or other input.

I appreciate the ability to submit these comments. Thank you for your good work on these regulations.

Very truly yours,


Paul Boni