



**Report to
the City Planning Commission
on the June 8, 2010, Public Hearing
Regarding Plan of Development Regulations
for the Central Delaware Riverfront Overlay District**

Revised August 17, 2010

Pursuant to Section 14-1638 of the Philadelphia Code, on April 20, 2010, the Philadelphia City Planning Commission (PCPC) adopted regulations governing the review and approval of “Plans of Development” (POD) in the Central Delaware Riverfront Zoning Overlay District. These regulations specify the process, materials, and criteria required by the City Planning Commission to review applicable developments on property located within the Overlay District. The regulations consist of eight sections delineating the City Planning Commission’s review:

- Preamble (a statement of findings and intentions);
- Definition of Terms;
- Scope of Review;
- Submission Requirements;
- Hearing Process;
- Decisions of the Commission;
- Review of Zoning Permit Applications, and;
- Appeals.

Under the terms of Section 8-407 of the Philadelphia Home Rule Charter, the Law Department subsequently approved these regulations and they were filed with the Department of Records for a 30-day public inspection and comment period. The Charter specifies that, during this period, any person affected by the regulations shall be afforded a public hearing before the promulgating body and the City Solicitor.

On May 14, 2010, such a hearing was requested by The Development Workshop, Inc. As a result, a hearing on the POD regulations was convened by the City Planning Commission on June 8, 2010.

The Home Rule Charter further requires that a report of the hearing, reaffirming the regulations or modifying them with the approval of the Law Department, again be filed with the Department of Records. The regulations become effective on the tenth day following the filing of the report.

This document constitutes the report of the June 8, 2010, public hearing on the POD regulations. It presents a summary of the public comments made at the hearing. For each of these comments, the PCPC staff provides a finding and recommendation, including suggested revisions, modifications, or clarifications to the regulations as originally adopted.

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

Staff Finding: The POD regulations list a number of submission requirements in Section 4 that specify what elements the PCPC will consider in its review. In addition, Section 6 of the regulations states that the PCPC will consider whether the proposed development is appropriate in scale, density, character, and use for the surrounding community, as required by Section 14-1638 of the Philadelphia Code. Section 6 further provides that the PCPC will consider additional criteria including proposed uses, waterfront setback, waterfront access, front yard, and overall aesthetics (only if the Commission feels this would have an adverse impact on the area).

While these criteria may not be exact quantifiable measures, the ordinance requires the PCPC to adopt regulations that provide objective standards for design review “*as may be necessary.*” The very nature of the POD review process does not lend itself to precise quantifiable certainty, thereby requiring the Commission to use its professional expertise and judgment in rendering an action. What should be clear to all concerned is that the base zoning of a parcel, with all of its use, dimensional, and other requirements, cannot be amended by a POD review. In the end, the base zoning is the standard for objective review.

Staff Recommendation 1: The staff recommends minor changes to Section 3 of the regulations, to emphasize that conformance with the base zoning is the essential standard for POD review. Furthermore, the base zoning of a parcel, with all of its entitlements, cannot be amended by the POD

review process. The Commission, in reviewing aspects of a development beyond its base zoning requirements, is interpreting the spirit of the overlay as expressed in Section 1 of the regulations. To make this clearer, the staff recommends reorganizing the text of this section to read as follows:

...Items subject to the POD review will include:

- (a) Conformance with the base zoning, including;*
 - i. proposed uses;*
 - ii. density of the development, including the scale, height, and massing of the structures, as well as the unit count and composition;*
 - iii. amenities included in the project, which may include landscaping;*
 - iv. parking requirements*
 - v. site design and layout as it relates to the base zoning requirements;*
- (b) Connections to adjacent sites, areas, and the development's surroundings;*
- (c) Measures proposed to encourage street life and visible human activity, and to promote an appropriate and continuous "urban fabric" in the overlay district;*
- (d) Proposed streetscape improvements;*
- (e) Parking and traffic impacts of the development, including the location and means of servicing buildings;*
- (f) The appearance of the building, including its form, legibility, and materials;*
- (g) Aspects of the development relating to issues of sustainability, efficient building performance, and the mitigation of negative environmental impacts, as they relate to overall site design.*

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, and members of the PCPC should not have any communications or otherwise receive any information regarding the POD outside the hearing.

Staff Finding: The staff acknowledges that the parties to an administrative proceeding are entitled to a fair hearing before an impartial body, and to a determination made without bias, hostility, or prejudgment. Having a PCPC staff member present the development plans to the Commission could lead to a false impression of bias or prejudgment.

Staff Recommendation 2: The staff recommends requiring the applicant to present development plans at the POD hearing. We believe it is permissible for the PCPC staff to offer a recommendation on the POD at the hearing, if called upon to do so by the Commission. We further recommend that the PCPC address *ex parte* communications in the regulations, by adding the following modified provision from the Municipalities Planning Code ("MPC") as a new item 5(d):

(d) The Commission shall not communicate, directly or indirectly, with any applicant or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

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

Staff Finding: We acknowledge that in administrative proceedings, the burden of proof generally rests with the party asserting the affirmative of any issue. For instance, an applicant applying to an agency for a privilege bears the burden of proving his or her entitlement.

Staff Recommendation 3: As noted above, staff recommends revising the regulations to require the applicant to present the POD, instead of having a PCPC staff member represent the development project. This will also eliminate any appearance of bias or prejudice. The staff recommends that item 5(e) – formerly 5(d) – be revised to read as follows:

(e) The applicant will present the POD proposal at the hearing. The Commission, in its discretion, may request staff to offer an advisory recommendation on the proposal.

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

Staff Finding: As a rule, the PCPC should have a Law Department representative present at all POD hearings, even though it is not a legal requirement. Findings of fact will have to be drafted; however, this does not have to be done by an attorney. In addition, an attorney does not have to be present to rule on evidentiary matters considering that local agencies are not bound by technical rules of evidence at agency hearings under § 554 of the PA Local Agency Law.

Staff Recommendation 4: While no changes to the text are necessary, staff recommends that a Law Department representative be present at all POD hearings as a matter of Commission policy.

Public Comment 5: The provision in Section 5(g) of the POD regulations, allowing persons demonstrating a “direct interest” in the decision a reasonable opportunity to present relevant evidence and testimony, is unclear. The PCPC should consider adopting the MPC standard for appearing before the Commission at POD hearings.

Staff Finding: Under the PA Local Agency Law, no adjudication is valid as to any party unless that party has been afforded reasonable notice and an opportunity to be heard (§ 553). A party is statutorily defined as any person who appears in a proceeding before an agency who has a *direct interest* in the subject matter of such proceeding (2 Pa. C.S. § 101).

To provide more certainty, the regulations could be revised to limit those parties who may present evidence, cross-examine, etc. to *aggrieved* parties. This is the standard used by a court to determine if a party has standing to appeal a PCPC decision to the Court of Common Pleas. To show that a party is aggrieved, that party must show a direct, substantial, and immediate interest in the outcome of the POD hearing.

As an alternative to the aggrieved party standing, the MPC standard could be adopted. Under the MPC, the parties to a hearing are the municipality, any person *affected* by the application who has made a timely appearance of record before the board, and any other person permitted to appear by the board.

A third alternative suggested by the City’s Law Department is to adopt provisions similar to those used by the Zoning Board. The Zoning Code allows any person or organization to offer testimony, regardless of whether that person or organization would have standing to appeal the Zoning Board’s decision. In addition, the Zoning Board allows a person or organization that is represented by an attorney to present evidence and cross-examine.

Staff Recommendation 5: The staff recommends using the broadest and most inclusive alternative for “standing” at POD hearings, in order to give voice to all affected parties. As a result, the staff recommends modifying the text of item 5(h) – formerly 5(g) – to reflect the MPC standard. Staff recommends that the regulations read as follows:

(h) The parties to the hearing are the municipality, and any person affected by the application who has made a timely appearance of record before the Commission, and any other person including civic or community organizations permitted to appear by the Commission.

Public Comment 6: In the submission requirements for Section 4(q), the phrase “to the extent applicable,” is vague. How is it determined whether a plan for a recreational trail along the waterfront is “applicable?”

Staff Finding: Whether a plan for a recreational trail is “applicable” is determined by the provisions of the Ordinance. Section 14-1638(7) requires the applicant to create a recreational trail within the waterfront setback (or dedicate the waterfront setback area to the City) only in commercially zoned districts. In addition, §14-1638(6)(b) provides the PCPC may grant an exception to the waterfront setback requirements (and, therefore, the recreational trail requirement) where it determines that the setback is not feasible. As provided in Section 6(a)(ii) of the POD regulations, when determining feasibility, the PCPC will consider factors including the existing structure, topography, incompatible land use, and any negative impacts on the health, safety, or welfare of the public.

The staff acknowledges that procedural transparency with regard to Section 4(q) can be enhanced by requiring any applicant seeking an exception to the waterfront setback and recreational trail requirement to state this exception request as part of the original POD submission.

Staff Recommendation 6: To address this issue, staff recommends adding item 4(r) to read as follows:

(r) Any request for an exception to the requirement for a waterfront setback and/or recreational trail must 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.

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

Staff Finding: Many of the items required for the POD review are also required for the review of any new, large development projects. For example, site plans, surveys, landscaping plans, storm water management plans, and certain topographical information are all required for site plan review at the Commission staff level. Items such as gross floor area calculations, setbacks, occupied area calculations, dimensions, and locations of off-street parking and loading with their access driveways, and signage are either required for PCPC review or by the Zoning Unit of the Department of Licenses and Inspections to apply for a zoning permit.

However, in an effort reduce the cost burden of a traffic study for smaller-sized developments, and to ensure consistency with other PCPC review processes (e.g. the Civic Design Review process proposed as part of the new Zoning Code), the staff recommends increasing the threshold for a required traffic study to developments having either a minimum of 25 new residential dwelling units or a minimum 100,000 gross square feet of floor area.

Staff Recommendation 7: Staff recommends revising item 4(k) to read as follows:

(k) A traffic study and mitigation plan for any POD which includes either a minimum of 25 new dwelling units or a minimum of 100,000 gross square feet of development;

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

Staff Finding: A 75-day window for Commission action is specifically cited in the ordinance creating Section 14-1638(12)(a) of the Philadelphia Zoning Code. As with all plans submitted to the agency, the staff will work with developers to ensure that the review process is concluded in the most expeditious manner possible.

Staff Recommendation 8: No changes to the text are necessary.

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

Staff Finding: These comments are purely speculative. We believe that the present state of the economy and developers' difficulties in obtaining financing far outweigh any chilling effect that this review process will have on future development.

Staff Recommendation 9: No changes to the text are necessary.

Public Comment 10: The PCPC should post a PDF of the proposed POD on its website prior to the informational meeting.

Staff Finding: In most cases, the PCPC already posts information on many of the important projects in which the staff is involved. We will post all- POD related documents on the website as well. This should become a general policy, rather than required by regulation.

Staff Recommendation 10: While no changes to the text are necessary, staff recommends posting PDF documents on the Commission's Web site for thorough public inspection as a matter of Commission policy.

Public Comment 11: In the submission requirements detailed in Section 4(b), the applicant should be required to provide a letter stating that he or she has met with the local residents. It should not be sufficient for the applicant merely to provide a statement indicating that although substantial efforts were made to hold such a meeting, no such meeting took place.

Staff Finding: The PCPC places a great importance on the input of the affected community for any project. This is why item 4(b) was included in the regulations in the first place. However, while it is important to encourage such input, local residents should also not be in a position to hold up the POD process by refusing to hold a meeting on the development. If a developer makes a genuine effort to meet with the community, but is not successful in meeting with them in a timely manner, the developer must have the opportunity to proceed with the review process, recognizing that the community group will participate in the POD hearing itself.

Staff Recommendation 11: Staff recommends a minor change in item 4(b), substituting the word "documenting" for "indicating," requiring a higher standard of proof of the developer's efforts to meet with local residents. This documentation can take the form of written or electronic correspondence exchanged with local residents or community organizations proposing a meeting on the development. Staff recommends that item 4(b) read as follows:

(b) A letter from the developer stating that he or she has met with local residents at a meeting where a member of the Commission staff was also present, to discuss the relevant proposal, or a letter documenting that substantial efforts have been made by the developer to hold such a meeting, but such a meeting never took place;

**CITY OF PHILADELPHIA
CITY PLANNING COMMISSION
As Revised, August 17, 2010**

Items in italics represent revisions to the regulations as originally adopted on April 20, 2010.

Regulations Regarding Approval of a Plan of Development Pursuant to § 14-1638 of The Philadelphia Code for Properties Located in the Central Delaware Riverfront Overlay District

Section 1. Preamble

These regulations implement the Central Delaware Riverfront Overlay District (Bill No.090170-A) that was signed into law on August 17, 2009 and codified in Section 14-1638 of The Philadelphia Zoning Code. The purpose of the Central Delaware Riverfront Overlay is to provide development guidance and controls during the period in which a public policy master plan is prepared for the Central Delaware riverfront. These regulations are not intended to take the place of a master plan, but to give developers and communities more certainty as to the expectations of the City as to both process and intent.

Given the sensitivity of development in the Central Delaware riverfront and the extraordinary attention planning along the riverfront has received in the last several years, the Central Delaware Riverfront Overlay calls for projects located east of Columbus Boulevard/Delaware Avenue or adjacent to the Delaware River and for all other commercially zoned properties in the Central Delaware Riverfront District to be subject to a Plan of Development. The Plan of Development process will require the approval of the Planning Commission for each project, even if the project is otherwise in conformance with the regulations of the base zoning for a given parcel. The purpose of the Plan of Development process is to help ensure that development proposals conform to the goals articulated in the Civic Vision for the Central Delaware - 2007. These goals were accepted by the Planning Commission on April 21, 2009 as the working guidelines for development and public policy planning in the area, now being developed in the master plan.

Plan of Development review is not intended to be an open-ended review of any aspect of the proposed development, but to be limited to certain key issues that are regarded as potentially having an impact on the quality and character of the surrounding community.

Section 2. Definitions

“Commission”: The Philadelphia City Planning Commission

“Executive Director”: Executive Director of the Philadelphia City Planning Commission

“POD”: Plan of Development

Section 3. Scope

Pursuant to Subsection (12) of Section 14-1638 of The Philadelphia Zoning Code, entitled “Central Delaware Riverfront Overlay District,” the City Planning Commission hereby adopts the following rules and regulations governing the review and approval of “Plans of Development.”

Every new development or redevelopment has impacts on the immediate surroundings, the neighborhood, and the larger urban context. The responsibility of protecting this public realm falls on the City Planning Commission. The Plan of Development is an extension of this already existing charge.

In reviewing a proposed POD, the City Planning Commission will consider any item that will have an effect or impact on this public realm. Such items subject to the POD review will include:

- (a) Conformance with the base zoning, including:
 - i. proposed uses;
 - ii. density of the development, including the scale, height, and massing of the structures, as well as the unit count and composition;
 - iii. amenities included in the project, which may include landscaping;
 - iv. parking requirements
 - v. site design and layout as it relates to the base zoning requirements;*
- (b) Connections to adjacent sites, areas, and the development’s surroundings;*
- (c) Measures proposed to encourage street life and visible human activity, and to promote an appropriate and continuous “urban fabric” in the overlay district;*
- (d) Proposed streetscape improvements;*
- (e) Parking and traffic impacts of the development, including the location and means of servicing buildings;*
- (f) The appearance of the building, including its form, legibility, and materials;*
- (g) Aspects of the development relating to issues of sustainability, efficient building performance, and the mitigation of negative environmental impacts, as they relate to overall site design.*

While such a list obviously cannot be all-inclusive, it should serve as notice to developers bound by the POD, on what to expect from this review process.

Section 4. Submission Requirements

A complete POD submission shall include the following items; however, the Commission may in its discretion waive one or more of these requirements:

- (a) A narrative demonstrating how the project is “appropriate in terms of scale, density, character and use for the surrounding community”;*
- (b) A letter from the developer stating that he or she has met with local residents, at a meeting where a member of the Commission staff was also present, to discuss the relevant proposal, or a letter documenting that substantial efforts have been made by the developer to hold such a meeting, but such a meeting never took place;*
- (c) A Site Plan, including a survey, showing the boundaries, area, length and width dimensions of the site(s), including existing conditions;*
- (d) The proposed maximum gross floor area;*
- (e) The dimensions and heights of the proposed structures or existing structures to be retained, and the use or uses intended for each such structure;*
- (f) The gross floor area and occupied area of all buildings on the property;*
- (g) The dimensions and location of all parking areas, all driveways leading thereto, and all other private drives, ways or streets intended for use by automobile traffic;*

- (h) The dimensions and location of all off-street loading facilities;
- (i) The dimensions and locations of all signs;
- (j) A landscaping plan, including the dimensions and characteristics of any open space;
- (k) *A traffic study and mitigation plan for any POD which includes either a minimum of 25 new dwelling units or a minimum of 100,000 gross square feet of development;*
- (l) A parking management plan describing the proposed policy on and resources for parking for patrons, employees and managers, and anticipated traffic and parking management resources;
- (m) Building floor plans, elevations (which must indicate the location of all materials), sections and renderings, including a materials board;
- (n) Identification of all public and private areas;
- (o) A storm water management plan;
- (p) Any other information that the Commission deems necessary for a decision; and
- (q) To the extent applicable, a plan for a recreational trail along the waterfront, which shall include the following:
 - i. a minimum of twelve (12) foot wide trail surface with a three (3) foot shoulder, and is designed in such a manner as to accommodate emergency vehicle access;
 - ii. plans for the connection of the trail to adjacent properties; and
 - iii. compliance with all applicable ADA requirements.
- (r) Any request for an exception to the requirement for a waterfront setback and/or recreational trail must 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.

Section 5. Hearings

(a) Hearings on POD proposals will be conducted at regularly scheduled Commission meetings, unless otherwise determined by the Commission in its discretion. Except as otherwise provided in these regulations, there will be at least two public meetings of the Commission to consider each POD proposal. The first meeting will be an informational only meeting at which no Commission action will be taken. The Commission will set aside a reasonable amount of time at this meeting to take public comment on the POD proposal from anyone present at the meeting. The second meeting will provide a formal hearing on the POD. The Commission's decision will be taken at the conclusion of the formal POD hearing. Properties with a base zoning of "C1" or "C2" Commercial shall be exempt from the requirement of an informational only meeting.

(b) The Commission's decision on a proposed POD shall be by vote of a majority of the members present and constituting a quorum at a POD hearing.

(c) A POD hearing shall be open to the public, with reasonable notice and opportunity provided for public comment. Notice of a POD submission shall be posted on the property and on the Commission's website at least fourteen (14) days prior to the scheduled POD hearing.

(d) The Commission shall not communicate, directly or indirectly, with any applicant or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

(e) The applicant will present the POD proposal at the hearing. The Commission, in its discretion, may request staff to offer an advisory recommendation on the proposal.

(f) The Commission shall have the power to administer oaths for the testimony of witnesses at a POD hearing.

(g) The applicant shall be given reasonable notice of the hearing and an opportunity to present relevant evidence and testimony of witnesses in support of the POD. Reasonable cross-examination shall be permitted. The applicant may appear in person or by his attorney.

(h) The parties to the hearing are the municipality, and any person affected by the application who has made a timely appearance of record before the Commission, and any other person including civic or community organizations permitted to appear by the Commission.

(i) Testimony given at a POD hearing shall be recorded and a full and complete record shall be kept of the proceedings.

Section 6. Decisions of the Commission

(a) At a formal POD hearing, the Commission will either approve, conditionally approve, deny or table the POD for later action. The Commission shall approve the POD only if it determines, based on its review of the submission and evidence presented, that the POD provides for development appropriate in scale, density, character and use for the surrounding community. As required by Section 14-1638 of The Philadelphia Zoning Code, entitled “Central Delaware Riverfront Overlay District,” the Commission will consider criteria including but not limited to the following:

- (i) Uses: Section 14-1638 prohibits certain uses and requires other 'active uses' under certain conditions. POD review will confirm that the proposed development is in conformance with Section 14-1638 and, in cases where the proposed use is not clearly defined in Section 14-1638, make a determination as to the appropriateness of the proposed use in relation to uses in the immediate area and the broader goals of enlivening the public environment at or near the riverfront.
- (ii) Waterfront Setback: Section 14-1638 requires an unencumbered setback of certain dimensions for the purposes of public access by foot and bicycle. The Commission, in its discretion, may decide that a waterfront setback is infeasible in certain locations. Existing structures, topography, incompatible land use, and any negative impact on the health, safety, or welfare of the public may be considered in making this determination. Recognizing that each site is different in dimension and that the required setback has implications for development on a given site, POD review will determine whether the required setback is feasible, and if not, establish the degree of setback that is feasible to ensure the potential for a continuous public path on or near the riverfront.

- (iii) Waterfront Access: POD review will determine the adequacy and appropriateness of the location of any required public access to the riverfront and will also determine limitations on the public hours of access based on issues of public safety and public health.
- (iv) Front Yard: POD review will determine whether the landscape and hardscape design in any setback from the property line is appropriately open and visible to building and public space entrances.
- (v) Aesthetics: POD review will only comment on the overall aesthetics of a proposed development if, in the opinion of the Commission, specific proposals have a clear and definable adverse impact on the development potential and character of the surrounding area.

(b) The Commission shall render a decision within seventy-five (75) days of receiving a POD submission that complies with the requirements of Section 4 of these regulations. If the Commission fails to render a decision within seventy-five (75) days of a complete POD submission, the approval of the Commission shall be presumed. If any amendments are made to the POD, whether at the request of the Commission or the applicant, the Commission shall have seventy-five (75) days from the date of amendment to render a decision.

(c) A decision of the Commission on a POD shall be in writing, shall contain findings and conclusions supporting the decision, and shall be served upon the applicant and his or her attorney of record and on such other persons as have notified the Commission in writing of their interest in the matter.

(d) The approval (with or without conditions) or disapproval of a POD by the Commission shall constitute the final decision of the City on the POD proposal.

Section 7. Review of Zoning Permit Applications

The Executive Director is hereby authorized to review any zoning permit applications issued on properties within the district, to determine whether or not such permits would be in conformity with the approved POD.

Section 8. Appeals

Any person aggrieved by an approval (with or without conditions) or denial of a POD proposal by the Commission may appeal the decision to the Court of Common Pleas.