

# The Legal Intelligencer

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## **The Importance of Obtaining Support When Seeking Zoning Relief**

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This article provides practical guidance on how to navigate the zoning process in Philadelphia after the Department of Licenses and Inspections (L&I) reviews an application and determines that relief from the Zoning Board of Adjustment will be necessary.

Specifically, it will focus on the next and crucial phase of the zoning process: working with project neighbors, the recognized civic association and the district city councilperson in order to obtain their non-opposition or support.

Many zoning applicants do not devote enough attention to this critical part of the process and in doing so run the risk of approval delays, an adverse zoning board decision, or even if zoning board approval is granted, time consuming and costly appeals brought by neighbors and other aggrieved parties.

### **Overview of the Process**

First, congratulations. You have reached the point in the zoning process where L&I has completed its review of your application and issued you a "refusal" meaning that the project requires a variance or a "referral." Zoning relief is necessary, and you are preparing to file a notice of appeal to the zoning board.

If you have come this far, you have typically obtained prerequisite approvals/stamps from city agencies such as the Planning Commission, Streets Department, and the Philadelphia Water Department. With these prerequisite approvals in place, you submitted the necessary plans, applications and filing fees. L&I reviewed these materials and determined that your submission does not meet the zoning code requirements of the subject property with respect to use, dimensions or perhaps both.

For example, perhaps the home that you seek to construct on a vacant lot exceeds the height or story requirements of the underlying zoning district or perhaps the subject property's residential zoning does not allow a restaurant use. In these, and countless other situations, L&I cannot at this point issue a

zoning/use permit and will now require that you obtain relief from the zoning board.

Within 30 days of receiving the refusal or referral, you must file an appeal to the zoning board containing an explanation of your application and why you are entitled to relief from the zoning board. Once the appeal is filed, the zoning board will schedule you for a hearing. For an extra charge, you can request that your appeal be heard on an accelerated basis. Many times this is well worth the money, as non-accelerated appeals can take up to twice as long.

Also, any corporation having an interest in a matter before the zoning board must be represented by counsel. In fact, it is recommended that all applicants consider legal representation, since an experienced land use and zoning attorney has critical expertise about the process and will be prepared to establish the need for the requested zoning relief.

Now that your hearing date has been scheduled, it is imperative that you reach out (if you have not already) to the immediate neighbors, the recognized civic association, and the district city councilperson in order to obtain their non-opposition or support.

### **Basis for Public Participation**

The role of public input in the zoning process can be best appreciated in light of the criteria the zoning board considers when evaluating requests for zoning relief. For example, in a variance case, the Philadelphia Zoning Code requires that an applicant establish 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."

Beyond establishing hardship, a variance applicant also must establish that relief is broadly consistent with the health, safety and welfare of the surrounding community. Civic associations and immediate neighbors will assert that they are in a position to opine as to whether a variance applicant has satisfied this broad standard.

For example, they may attend your zoning hearing and submit letters or provide actual oral testimony for the zoning board to consider in determining whether the application "would substantially or permanently injure the appropriate use of adjacent property" or "impair an adequate supply of light and air to adjacent property."

The zoning board considers the input provided by neighbors and civic groups in weighing the asserted hardship against the interests of the neighbors and general public.

### **Obtaining Support**

How do you actually reach out and work with the immediate neighbors, recognized civic group and district councilperson as your zoning board hearing approaches? Below is a list of hints and practice pointers that I have developed not only in representing clients before civic groups and the zoning board, but also as an active member of my own Philadelphia neighborhood civic association.

- **Impact Assessment:** At the outset, conduct a candid assessment of the project's impact on the

surrounding neighbors and overall community. Place yourself in the shoes of the immediate neighbors and anticipate all concerns, objections and questions. For example, is the proposal's height going to tower over surrounding residences? How much traffic and congestion will be generated by the proposed use? Will the proposal be made of materials that are starkly different than the existing urban fabric? At the earliest possible point, an attorney should insist that efforts be made to minimize negative impacts. The use of appropriate building materials, landscaping and building setbacks can go a long way in reducing concerns. For retail/commercial uses, a willingness to agree to reasonable days and hours of operation and trash disposal procedures will satisfy the legitimate concerns of neighbors.

- **Civic Groups:** Identify the appropriate civic group or groups. It is highly recommended that you contact the city planning commission and the district councilperson to determine which civic group is recognized as the official voice of the local community. In some neighborhoods there may be more than one such group.
- **Property History:** Fully understand the property's zoning history. By learning what applications have and have not been previously approved, you will have critical information in determining the likelihood of zoning approval for your application. For example, if the zoning board has previously denied a request to convert a single-family home to a duplex, it is unlikely that it will now reach a different conclusion. Sometimes the best advice an attorney can provide to a client is that a desired application has limited prospects for approval and a different approach should be considered.
- **Strategy:** Before conducting any meetings, devise and implement a public strategy. This includes determining who supports the project and obtaining their assistance as well as identifying local leaders who can be helpful. Attempt to understand who might oppose and why. Begin to consider how you can counter this opposition. Keep the property as clean and attractive as possible during the process. If relevant, discuss the project with immediate neighbors prior to the community meeting.
- **Meeting Logistics:** Schedule a meeting time with the civic group and be fully prepared to present your project. Make sure that you understand and follow the zoning protocols of the civic group. Be aware of what presentation materials are expected. Understand the voting procedure of the civic group. If possible, try to confer with the leadership of the civic group before making the actual presentation in order to gain insight on how the application might be received.
- **The Meeting:** When meeting with the civic association, expect emotions. For many people, their home is their most valuable asset and they may initially react with hostility to any change in the status quo that they perceive may have an adverse impact. Be honest and respectful to neighbors. The development team must earn the trust and respect of the neighbors and civic association. If you are not perceived as credible, it will be exceedingly difficult to obtain support regardless of how desirable your application may be and what promises you make.
- **Consider Revisions:** After you have received feedback from the meeting, do not hesitate to recommend revisions to the original application that will address the neighbors' concerns. Remember, obtaining an approval that includes most (but not all of what you originally sought) is almost always better than complete denial of the original application. Request the opportunity to reappear before the civic association and present your amended plan. Most neighbors will appreciate honest efforts to work with

the community and strive for a compromise.

- **Third Parties:** If appropriate, enlist the help of the district councilperson or the city planning commission to serve as a mediator. If the neighbors and community association will support your application, request a letter of support from the district councilperson.
- **Resolve Outstanding Issues:** Aggressively work with concerned neighbors to resolve objections prior to the zoning board hearing. Be creative and flexible. Consider proviso agreements in which you reach binding understandings with civic groups and neighbors in the event that the zoning board approves your requested relief.
- **Present Your Case:** If you cannot reach an understanding with the neighbors and civic group, be prepared to explain to the zoning board the reasonable efforts that you made and why they were ultimately unsuccessful.

## **Impact**

The position taken by neighbors and civic associations plays an important role in the zoning approval process. Support of the immediate neighbors will most likely result in the support of the civic group. It is likely that the district councilperson will support an application if the civic group and neighbors support the project. The position of all of these entities can impact the city planning commission's non-binding recommendation that it provides to the zoning board.

While it is not certain that the zoning board will deny an application in the face of community and councilperson opposition, it is very likely that the zoning board will much more closely scrutinize such applications and expect a thorough explanation in a variance case for the asserted hardship and why the requested relief is broadly consistent with the health, safety and welfare of the surrounding community.

At the same time, an application that has the support of the civic group, immediate neighbors, district councilperson and city planning commission will be in a much better position to receive a positive response from the zoning board.

The community still plays an important role in the Philadelphia zoning process. Assuming you have followed the above-suggested steps, you will have put your application in the best light to be heard and considered by the ultimate decider, the zoning board. •

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