

2015 - Outline of Recommendations to Improve ZBA Performance, Protocol, and Procedures:

1. ZBA Support Staff –

- Establish at least one full-time administrative staff position assigned exclusively to the ZBA
- Continue administrative support by other non-exclusive PCPC staff in addition to full-time administrative staff

Discussion: ZBA caseload is such that dedicated staff are essential to improved and efficient operations. There is no dedicated ZBA staff, and current support staff also serve other boards (L&IRB, BBS, and ZBA). Management of the RCOs and monitoring of the RCO meeting process has added to the burden of the administrative staff pool. Monitoring hearing notice mailings are a significant issue. Closing the notification circle by confirming and informing the ZBA that the process is completed is desirable, but not realistic with current staffing levels.

2. Agenda Scheduling Management –

- Divide hearing day schedules into multiple time groupings, with adequate buffer time between time groupings to accommodate the occasional protracted hearing and provide the Board needed administrative time between case groupings – example: 9:30-11:00; 12:00-1:30; 2:30-4:00; and 5:30-7:00
- Broadcast an up-to-date ZBA agenda, including continuances as they are granted by the Board, on large-screen displays both inside the ZBA meeting room and hallway at the exterior of the meeting room
- Tie agenda progress broadcasting to a mobile device application providing real-time updates

Discussion: The ZBA agenda seems inefficiently managed and requires that all participants for all cases scheduled be present at the start of each hearing, causing untold professional, and non-professional, time wasted in hours waiting for a one's case to be called. It is burdensome for community volunteers and near-neighbors to attend and testify at hearings in the middle of the workday when they may be there for several hours. The hearing process must not disadvantage the individual or civic group, who are not requesting an exception to standing regulation, as is the Applicant/Appellant.

- Uncontested cases, accompanied by a RCO letter of no-less-than “non-objection”, be heard before contested cases
- Uncontested Special Exception cases be heard before contested Variance cases

Discussion: The former Fast-Track application process is no longer practiced, for cause. Perhaps, in the case that an application before the Board is determined to be non-objectionable by the host community, RCO(s), and other interested parties, those cases could be heard first, and possibly, quickly decided, in the interest of clearing the agenda and hearing room. Uncontested cases, accompanied by an RCO letter of no-less-than “non-objection”, would be heard before contested cases. Further, contested cases could be preceded by uncontested Special Exception cases.

- Reinststitute the practice of ZBA case check-in to be done by ZBA administrative staff
- Institute the practice of Advance Check-In via email or on-line application

Discussion: In the past, but not currently practiced, a ZBA administrative assistant reviewed all case materials prior to the onset of the hearing to assure that each Applicant had on hand all required documentation, thus avoiding any unprepared case from occupying a spot on the agenda and proceeding to the Board, only to have the case continued to a future date when the missing required documentation would be in evidence. Reinststituting the practice of case file preview to check applicant compliance with paperwork requirements could help avoid wait-times for Applicants, Interested Parties and Witnesses, for cases that really need a continuance that hearing day. When a check-in procedure is reestablished, there could easily be incorporated an Advance Check-In procedure, by allowing the Applicant to submit all required documentation to a ZBA Administrator via email or on-line in a predetermined number of days before the assigned hearing date.

3. Sequencing of RCO and PCPC Input –

- Direct the PCPC staff person to share with the Board record of the PCPC staff case recommendation immediately following the reading of the Refusal
- Direct the PCPC staff person to share with the Board record of the RCO case recommendation immediately following the reading of the PCPC staff recommendation
- Establish protocols by which negotiated conditions may be read into the record in the case of Variances or Special Exceptions granted by the Board

Discussion: The ZBA seems to assign little credence to RCO input, master plans, district plans, and PCPC staff positions. The PCPC staff recommendations frequently make reference to the compliance, or non-compliance, of the application relative to master plans and district plans. Positioning this information before testimony will set context for the case. The RCO meeting(s) take place prior to the hearing and reporting the outcome prior to testimony is sequentially appropriate.

A clear policy relative to provisos and agreed-upon conditions is in order. Often provisos or conditions that are negotiated by RCOs (hours of operation, trash collection details, etc.) make Variances or Special Exceptions acceptable to nearby neighbors. The ZBA often does not, or cannot, accept the RCOs negotiated provisos and they do not become part of the granted zoning variance. Most RCOs cannot endure the expense of crafting and enforcing legal agreements as an alternative to provisos adopted and enforced by the City. RCOs need to better understand the legal parameters of such provisos or conditions.

4. Acknowledge and Establish the Role of Master Plans & Adopted Plans –

- Institute the practice of positioning the PCPC staff recommendation as the first point of testimony offered during ZBA hearings

Discussion: Master Plans and Adopted Plans are practical guidelines of city planning and each represents a substantial investment in determining developmental direction and character of specific areas of the city. Such plans should guide and inform decisions regarding deviations from the standards of the applicable Code regulations. However, current ZBA procedures place the PCPC staff recommendation and reference to standing master and adopted plans at the conclusion of all other testimony, rather than at the onset of testimony where such information would serve best the process.

The board typically operates on a building-by-building transactional basis rather than fully reviewing the larger planning/development issues occurring in the neighborhood or city. The ZBA is not in a position to become the de facto planning commission. The standing of the Planning Commission must be strengthened.

5. Key Role of Points Of Refusal and Specific Applicable Criteria Governing ZBA Judgments –

- Direct the Board to focus its management of each case on the specific points of the Refusal appealed
- Direct the Board to urge all participating parties offering testimony to base such testimony on the specific points of the Refusal appealed
- When voting its position on any case, the Board might best state in what ways the application and testimony meet, or do not meet, the standards guiding the Board's granting, or not granting, the appeal

Discussion: The ZBA does not currently adequately focus on the specific points of the Applicant's Refusal. As such, hearing presentations and testimony meander and, sometimes, do not adequately address the points of the Refusal and in what way(s) the appeal meets the standards by which the Board considers each case. By directing all hearing participants to focus on the salient points of the Refusal, the Board may succeed in managing its agenda more effectively and hearing records may be improved.

The ZBA does not adequately articulate, and specifically press the appellant and/or witnesses to address, the eight specific criteria relative to a Use Variance sought, and/or the eleven specific criteria relative to a Dimensional Variance sought. Focus on the specific criteria may actually speed testimony by providing a format for points of testimony, rather than the Board attempting to extract the essential points from rambling testimony.

6. Live Streaming ZBA Meetings –

- Institute the practice of live-streaming all ZBA hearings
- Re-broadcast all ZBA hearings at a time convenient to the day-time working public

Discussion: The hearings at the ZBA are a matter of great public interest, especially for community members who wish to observe the proceedings but who are not able to take off from work to attend. It would be a public service to have the hearings live-streamed over the internet, and also archived. In addition to making the hearings more widely available, streaming the hearings would also tend to help improve the conduct of all participants.

As an example, a company called www.granicus.com live streams (and archives) all hearings of the Board of Zoning Appeals for the City of Alexandria, Virginia: <https://alexandria.legistar.com/DepartmentDetail.aspx?ID=19163&GUID=A3726B77-7120-4E9A-B946-AA84E638BE71&Search=> Granicus also live streams for the Pennsylvania Gaming Control Board, which spends about \$1,250/month for the service, in addition to up-front equipment costs . For more information, the Gaming Board's Director of Communications, Doug Harbach, is willing to be consulted, at dharbach@pa.gov and 717-703-2813.

At one point, PlanPhilly.com was reportedly seeking funding for video-taping ZBA hearings (although not live streaming). Consultation with PlanPhilly, and its affiliate WHYY, may be warranted.

7. Notification of ZBA Decision –

- Establish a clear protocol for notification of decision to all those identified as hearing attendees and participants
- Carry out notification of decision via registered, return receipt mail service
- Require that all ZBA variance approvals be posted in writing on city website with minimum one paragraph explanation for why the board did or did not grant the variance.

Discussion: Due to demands on the administrative staff pool, clerical tasks like ZBA decision notification to all - Applicant, Counsel for the Applicant, Interested Parties - is not always done in a timely fashion or comprehensively. There is no evidence of a specific procedure being in place. Recorded date of the decision 'floats' (changes in response to date of most-resent inquiry) in City's on-line Activity Tracker. These variables combine to create the appearance of a non-transparent system, untimely appeals, and resulting administrative problems.

8. Establishment of Basic ZBA Board Member Qualifications –

- Establish basic qualifications for each seat to ensure a broad base of experience and expertise

Discussion: Appointees to the ZBA currently need not meet specified qualifications, unlike other comparable agencies, such as the PCPC. Professionalizing the composition of the Board by establishing specific qualification standards will ensure a high-quality board and professional results.

9. Zoning Code Training for ZBA Members –

- Establish basic training protocols for all ZBA board appointments
- Establish continuing education protocols for all ZBA board members

Discussion: Few ZBA board members illustrate broad, comprehensive expertise in the details of the Code relevant to the work of the Board. In its role as a judicial body, all Board members should be capable of a thorough command of the relevant technical materials of the Code.

10. Increased Pay Scale for ZBA Board Members –

- Increase compensation commensurate with the experience and professionalism appropriate to the position
- Provide compensated case file review period for ZBA members to study all scheduled cases prior to hearings

Discussion: Increasing the pay scale for all ZBA Board Members would increase the prospect of drawing the best talent to the Board as well as broadcast the value of the Board's work in the view of the incoming administration, by establishing appropriate, professional-level compensation for the position and time invested. Providing opportunity for all cases to be studied by ZBA members prior to hearing will increase understanding of each case and reduce the need for on-the-record questions and explanations.

Key Steps Towards Reducing the number of Zoning Appeals:

- **Complete the re-mapping process as quickly as possible;**
- **Urge all members of Council to act on all re-mapping bills prepared by PCPC;**
- **To adjust the current culture of zoning appeals, make clear that all applicants have the right to appeal an L&I Refusal, but no one has a *right* to a variance; and**
- **Insist on a detailed annual review of all Refusals, Variance and Special Exception appeals in order to best identify and inform remedial Code amendment actions, as appropriate.**