

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

CONTROL NUMBER **022016**
 (RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

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ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 3/19
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September _____ Term, 2006

 Month Year

No. 01384

Name of Filing Party
 Rector Street Associates, L.P

Manayunk Neighborhood Council and Kevin Smith

vs.

Board of Building Standards and City of Philadelphia

(Check one) Plaintiff Defendant
 (Check one) Movant Respondent

INDICATE NATURE OF DOCUMENT FILED:

Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another motion been decided in this case? Yes No
 Is another motion pending? Yes No
 If the answer to either question is yes, you must identify the judge(s):
 The Honorable Gary S. Glazer

TYPE OF PETITION/MOTION (see list on reverse side) Motion to Quash Appeal	PETITION/MOTION CODE (see list on reverse side) MTQSH
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ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding)

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM

Name of Judicial Team Leader: _____
 Applicable Petition/Motion Deadline: _____
 Has deadline been previously extended by the Court?
 Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM _____ Year

Name of Judicial Team Leader: _____
 Applicable Petition/Motion Deadline: _____
 Has deadline been previously extended by the Court?
 Yes No

C. NON JURY PROGRAM

Date Listed: _____

D. ARBITRATION PROGRAM

Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM

Date listed: _____

F. OTHER PROGRAM: _____

Date Listed: _____

II. PARTIES

(Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

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FILED
 2007 FEB 26 PM 5:2
 COURT CLERK
 PHILA. CO.

III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

Richard C. DeMarco February 26, 2007 Richard C. DeMarco 67676
 (Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

This Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

<hr/>	:	
MANAYUNK NEIGHBORHOOD	:	COURT OF COMMON PLEAS
COUNCIL, INC.	:	PHILADELPHIA COUNTY
and	:	
KEVIN SMITH	:	
	:	
Appellants,	:	
	:	
v.	:	SEPTEMBER TERM, 2006
	:	
BOARD OF BUILDING STANDARDS	:	DOCKET NO. 1384
and	:	
CITY OF PHILADELPHIA	:	
	:	
and	:	
	:	
RECTOR STREET ASSOCIATES, L.P.	:	Re: 3 Rector Street
	:	Board of Building Standards
Appellees/Intervenors.	:	Case No. 0701-06
<hr/>	:	

ORDER

AND NOW, this day of , 2007, upon consideration of the Motion to Quash of the Appellee Rector Street Associates, L.P., and any response thereto, it is hereby ORDERED and DECREED that the Motion is GRANTED, and the Appellants’ above captioned appeal is QUASHED for lack of standing.

BY THE COURT:

 J.

**MANAYUNK NEIGHBORHOOD
COUNCIL, INC.
and
KEVIN SMITH**

Appellants,

v.

**BOARD OF BUILDING STANDARDS
and
CITY OF PHILADELPHIA**

and

RECTOR STREET ASSOCIATES, L.P.

Appellees/Intervenors.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

SEPTEMBER TERM, 2006

DOCKET NO. 1384

**Re: 3 Rector Street
Board of Building Standards
Case No. 0701-06**

RULE TO SHOW CAUSE

AND NOW, this day of , 2007, upon consideration of the Motion to Quash filed by Appellee Rector Street Associates, L.P., a RULE is hereby granted upon Appellants to SHOW CAUSE why the relief requested in the Motion should not be granted.

RULE RETURNABLE on , 2007, M. in Courtroom , City Hall, Philadelphia Pennsylvania.

BY THE COURT:

J.

**KLEHR, HARRISON, HARVEY,
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Rector Street Associates, L.P.

**MANAYUNK NEIGHBORHOOD
COUNCIL, INC.**
and
KEVIN SMITH

Appellants,

v.

BOARD OF BUILDING STANDARDS
and
CITY OF PHILADELPHIA

and

RECTOR STREET ASSOCIATES, L.P.

Appellees/Intervenors.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

SEPTEMBER TERM, 2006

DOCKET NO. 1384

**Re: 3 Rector Street
Board of Building Standards
Case No. 0701-06**

MOTION OF APPELLEE RECTOR STREET ASSOCIATES, L.P. TO QUASH APPEAL

Appellee, Intervenor, and equitable owner of the property located at 3 Rector Street, Philadelphia, Pennsylvania (the "Property"), Rector Street Associates, L.P., hereby files the within Motion to Quash the appeal of the Appellants Manayunk Neighborhood Council, Inc. and Kevin Smith. The Appellants have appealed the unanimous decision of the Philadelphia Board of Building Standards (the "Board") in favor of Appellee which denied Appellants' unmeritorious appeal of the also unanimous decision of the Philadelphia Historical Commission (the "Commission"), which granted permission to Appellee to construct a five story roof top addition to the long-time vacant and dilapidated warehouse structure on the Property in order to

convert it to a residential condominium building. Appellee's project enjoys the strong support of Councilman Michael A. Nutter (who has since resigned to run for Mayor), the Philadelphia City Planning Commission, the Manayunk Development Corporation and the Preservation Alliance.

Appellants' appeal must be quashed because Appellants lack standing to appeal. Appellants lack standing because they are not "directly aggrieved" nor "detrimentally harmed" by the decision appealed from pursuant to the Philadelphia Administrative Codes and Pennsylvania statutes and case law. Appellant Kevin Smith lives approximately 1 mile from the Property and is not impacted in any way by the decision of the Board. Furthermore, Mr. Smith did not individually appeal the decision of the Commission to the Board and therefore cannot appeal its decision to this Court. Additionally, upon information and belief, no resident of the Council is opposed to this project who lives within a block or within sight of the Property, and thus the organization is not directly aggrieved by the Board's decision. Thus, pursuant to the clear language of the Philadelphia Administrative Code, Pennsylvania statutes, recent case law of this Court, and case law of this Commonwealth, this appeal must be quashed immediately. Appellee avers in support of its Motion as follows:

A. The Parties

1. Appellee is Rector Street Associates L.P., with a principle place of business located at 133 S. 24th Street, Philadelphia, Pennsylvania.
2. Appellee is equitable owner of the Property by virtue of an agreement of sale.
3. Appellant Kevin Smith is an adult individual with an address of 293 Hermitage Street, Philadelphia, Pennsylvania.
4. The Council, Inc. (the "Council") is a non-profit corporation with a registered address of 293 Hermitage Street, Philadelphia, Pennsylvania.

5. Appellee City of Philadelphia and the Board of Building Standards are a first class city and a local administrative agency respectively.

B. Factual Background

6. The Property has been vacant for over five years and despite consistent efforts, has been unable to attract tenants or buyers.

7. Approximately two years ago, Appellee applied to the Department of Licenses & Inspections (“L&I”) and the Commission for approval for a five story addition to the existing, vacant and dilapidated warehouse located on the Property in order to convert it into a condominium building (the “Project”). The Property is listed on the Philadelphia Historic Register.

8. After deliberation and public hearings, on February 10, 2006 the Commission voted overwhelmingly to approve the Project “in concept.” On June 9, 2006, the Commission voted unanimously to give final approval for the Project and the addition. A copy of the Commission’s “in concept” and final decisions are attached hereto as Exhibit “A” and “B” respectively.

9. At the June 9, 2006 meeting of the Commission, Appellant Kevin Smith stated that the project “was the most promising design he had seen to date” and requested that the Commission approve the project “in concept,” rather than give final approval. See Minutes of the Commission, June 9, 2006, attached hereto as Exhibit “C”.

10. No other member of the Council other than Kevin Smith testified on the record at the June 9, 2006 hearing of the Commission. See Exhibit “C”.

11. Despite the support for the project evidenced by Mr. Smith at the Commission, and the unanimous vote of the Commission, on July 5, 2006 the Council filed an appeal of the Commission's decision to the Board.

12. Kevin Smith did not file an appeal as an individual from the decision of the Commission to the Board.

13. After a public hearing held July 20, 2006 before the Board, the Board unanimously affirmed the decision of the Commission and denied the Council's appeal. A copy of the August 15, 2006 decision of the Board is attached hereto as Exhibit "D".

14. On Sept 14, 2006 Kevin Smith and the Council appealed the decision of the Board to this Court.

15. On November 30, 2006, the Philadelphia Zoning Board of Adjustment (the "Zoning Board") unanimously granted variances for the Project. At the Zoning Board hearing, the Appellee had the support of then Councilman Michael A. Nutter, the Philadelphia City Planning Commission, the Philadelphia Preservation Alliance, and the Manayunk Development Corporation. See Transcript of Zoning Board Hearing, October 4, 2006, attached hereto as Exhibit "E."

C. Appellant Kevin Smith Lacks Standing To Appeal Because He Is Not "Directly Aggrieved" by the Decision of the Board.

16. Appellants have the burden to prove standing to appeal to this Court once it is challenged by Appellees. See *Treski v. National Ins. Companies*, 674 A.2d 1106, 1011 (Pa. Cmwlth. 1996) ("To justify judicial intervention, a party must allege a recognizable, adverse effect to himself and a close causal nexus between the injury and the challenged conduct").

17. Section A-801.1 of the Philadelphia Administrative Code applies to appeals to the City's Technical Boards, of which the Board is one. Section A-801.1 reads:

Any person *who is directly aggrieved* by the issuance, transfer, renewal, refusal, suspension, revocation or cancellation of any license issued pursuant to this code and the technical codes (except licenses issued pursuant to the Property Maintenance Code); by a refusal of permit pursuant to this code and the technical codes; or by any notice, order or other action by the code official as a result of any inspection pursuant to this code and the technical codes, shall have the right to appeal to the appropriate technical board as set forth in Section A-802.1.

(emphasis added).

18. The Commission had jurisdiction over the initial application made by Appellee pursuant to the provisions of the Main Street-Manayunk Historic District (the “District”), which is delineated in the Philadelphia Property Maintenance Code. (See Philadelphia Code, Sections PM-704.2-704.2.7). The Property is situated within the District.

19. The Board is a “Technical Board” listed in Section A-802.1 of the Philadelphia Administrative Code, and is the Board that is entrusted to hear appeals from licenses and permits issued pursuant to the Property Maintenance Code.

20. Thus, the Appellants appealed to the Board since an approval was issued to the Appellee pursuant to the Property Maintenance Code.

21. Since Appellants appealed to the Board, they are bound by Section A-801.1 of the Administrative Code (see above), which provides that they must be “directly aggrieved” by the decision of the Board.

22. The “directly aggrieved” standard mentioned in Section A-801.1 is the most stringent standard for standing in the Philadelphia Codes; stronger than the “any taxpayer” standard in the Zoning Code (see Philadelphia Zoning Code, Section 14-1807(1)) and the “person aggrieved” standard for the Board of License & Inspections Review (See Section 5-1005 of the Philadelphia Home Rule Charter).

23. Kevin Smith lives at 293 Hermitage Lane, Philadelphia, Pennsylvania and his house is approximately 1 mile away from the Property. See Exhibit "E," pp. 40-41.

24. This Court may take judicial notice that Mr. Smith cannot see the property from his house since he lives approximately one mile from the Property.

25. Mr. Smith does not own property within a block of the Property. *Id.*

26. The proposed project will have no impact whatsoever on Mr. Smith.

27. Therefore, Mr. Smith lacked standing to appeal to the Board and therefore lacks standing to appeal to this Court.

D. Appellant Kevin Smith Lacks Standing To Appeal Because He Was Not a Party Before the Board of Building Standards.

28. In order to appeal from a local or administrative agency, you must appear before that Board and offer testimony. See *Leoni v. Whitpain Township Zoning Hearing Board*, 709 A.2d 999, 1002 (Pa Commw. 1998).

29. Kevin Smith's appeal to the Board was solely on behalf of the Council, and not in an individual capacity. See copy of Appeal to Board of Building Standards filed by Manayunk Neighbors, a copy of which is attached as Exhibit "F".

30. Since Kevin Smith did not appeal individually to the Board of Building Standards, he was not a party before the Board. Therefore, he cannot appeal individually to this Court.

E. Appellant Manayunk Neighborhood Council Inc. Lacks Standing to Appeal Because They Have No Member Directly Aggrieved by the Decision of the Board.

31. As stated in paragraph 16 above, the party seeking redress from the Courts has the burden to prove it has standing once the issue is raised.

32. The Council was represented at the Board hearing by Kevin Smith and his wife Jane Glenn. As stated above, Mr. Smith (and his wife) live approximately one mile from the Property and do not own property near the Property.

33. The only other member of the Council who appeared to contest the project at the Board was John Hunter, who lives at 4308 Terrace Street in Philadelphia. Mr. Hunter lives approximately one half mile away from the Property, and cannot see the Property from his home.

34. Upon information and belief, no member of the Council who is opposed to the Project is within sight of the Property, nor owns property on the same block as the Property.

35. No member of the Council is impacted in any way by the Board's decision.

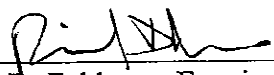
36. Therefore, since none of the Council's members are directly aggrieved by the decision of the Board, the Council is not directly aggrieved by the decision.

37. Therefore, the Council does not have standing to appeal the decision of the Board to this Court.

WHEREFORE, Appellee Rector Street Associates L.P. requests that this Court quash the appeal of Kevin Smith and the Manayunk Neighborhood Council for lack of standing.

Respectfully submitted,

KLEHR, HARRISON, HARVEY,
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**MANAYUNK NEIGHBORHOOD
COUNCIL, INC.**
and
KEVIN SMITH

Appellants,

v.

BOARD OF BUILDING STANDARDS
and
CITY OF PHILADELPHIA

and

RECTOR STREET ASSOCIATES, L.P.

Appellees/Intervenors.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

SEPTEMBER TERM, 2006

DOCKET NO. 1384

**Re: 3 Rector Street
Board of Building Standards
Case No. 0701-06**

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH APPEAL

I. INTRODUCTION

This appeal must be quashed because Appellants must meet the most stringent standard in this Commonwealth with regard to standing, and cannot do so. The Philadelphia Administrative Code, Section A-801.1, provides that only those persons “directly aggrieved” by an action of the Department of Licenses and Inspections (“L&I”) with regard to the applicable technical code at issue, in this case the Property Maintenance Code, may appeal to one of the technical boards-in this instance, the Board of Building Standards (the “Board”). Our courts

have held that an Appellant must demonstrate a significant enough stake in the decision in order to take an appeal. As discussed below, the Appellants in this case simply cannot demonstrate any significant stake or interest in the outcome of this project to justify their appeal. They simply are opposed to the project on general and/or aesthetic grounds. Such an interest is not sufficient to demonstrate standing and is waste of this Court's precious resources and time.

Appellant Kevin Smith lives approximately a mile from the Property and will not be impacted in any way by the project. Furthermore, none of the Council's members lives close enough to the Property to demonstrate any impact from the project to satisfy the strict standard of direct aggrievement. Therefore, the Appellants have no standing to appeal and this appeal is an abuse of this Court's resources.

II. FACTUAL BACKGROUND

Approximately two years ago, Appellee applied to L&I and the Philadelphia Historical Commission (the "Commission") for approval for a five story addition to the existing, vacant and dilapidated warehouse located on the property known as 3 Rector Street, Philadelphia (the "Property") in order to convert it into a condominium building (the "Project"). After extensive deliberation and numerous public hearings, on February 10, 2006, the Commission approved the Project "in concept" and on June 9, 2006, the Commission voted unanimously to give final approval for the Project. At the June 9, 2006 meeting of the Commission, Appellant Kevin Smith stated that the project "was the most promising design he had seen to date" and requested that the Commission approve the project "in concept," rather than give final approval. See Exhibit "A". No other member of the Council other than Kevin Smith testified on the record at the June 9, 2006 hearing of the Commission.

Despite the support for the project evidenced by Mr. Smith at the Commission, and the unanimous vote of the Commission, on July 5, 2006 the Council filed an appeal of the Commission's decision to the Board. Kevin Smith did not file an individual appeal from the decision of the Commission to the Board, but solely filed on behalf of the Council. After a public hearing held July 20, 2006 before the Board, the Board unanimously affirmed the decision of the Commission and denied the Council's appeal. See Exhibit "D".

On Sept 14, 2006 Kevin Smith and the Council appealed the decision of the Board to this Court.

On November 30, 2006, the Zoning Board of Adjustment ("Zonig Board") unanimously granted variances for the Project. At the Zoning Board hearing, the Project had the support of then Councilman Michael A. Nutter, the City Planning Commission, the Philadelphia Preservation Alliance, and the Manayunk Development Corporation. See Exhibit "E."

III. LEGAL ARGUMENT

A. Appellants Have to Meet the Most Stringent Standard for Standing In This Commonwealth.

There has been much litigation regarding issues of standing to appeal administrative or local board decisions in this Commonwealth. However, most of the litigation involves appeals in a zoning context, where the Philadelphia Zoning Code has the most liberal standard for standing (i.e. the "any taxpayer" standard contained in Section 14-1807(1) of the Philadelphia Zoning Code).¹ In this case however, the Appellants are confronted with the most stringent standard

¹ Because special interests groups used the liberal standard to appeal Board decisions where they were not otherwise adversely impacted by the decision, the Pennsylvania State legislature acted to eliminate "taxpayer standing" by passing House Bill 1954, which amended Section 17 of the First Class City Home Rule Act (P.L. 665, No. 155), to require that an appellant from an administrative Board be "detrimentally harmed" by the decision appealed from. The Governor of the State of Pennsylvania signed House Bill 1954 into law on November 30, 2004. Section 17 now reads:

Section 17.1. Specific Powers. In addition to any aggrieved person, the governing body vested with legislative powers under any charter adopted pursuant to this act shall have standing to appeal

for standing, even greater than the “detrimentally harmed” standard promulgated by the State Legislature, or the “person aggrieved” standard applicable to other local boards, such as the Board of Licenses and Inspection Review.

Appellants filed an appeal from a decision of the Commission, which had jurisdiction to review applications for permits within the Main Street-Manayunk Historic District (the “District”), which is delineated in the Philadelphia Property Maintenance Code (See Philadelphia Property Maintenance Code, Section PM-704.2 et seq.). Thus, when the Appellee obtained the unanimous decision by the Commission in favor of its project, the Appellants had to appeal to the proper Board. Since their appeal was from a decision regarding the Property Maintenance Code, which is one of the City’s “technical Codes”, they were compelled to appeal to the proper Board, which is the Board of Building Standards. Thus, Appellants were bound by the standards for standing contained there. To wit, the Philadelphia Administrative Code Section A-801.1 states as follows:

Any person who is directly aggrieved by the issuance, transfer, renewal, refusal, suspension, revocation or cancellation of any license issued pursuant to this code and the technical codes (except licenses issued pursuant to the Property Maintenance Code); by a refusal of permit pursuant to this code and the technical codes; or by any notice, order or other action by the code official as a result of any inspection pursuant to this code and the technical codes, shall have the right to appeal to the appropriate technical board as set forth in Section A-802.1.

(emphasis added). Section A-802.1 of the Administrative Code reads as follows:

A-802.1 General: Appeals filed pursuant to Section A-801 shall be submitted to the technical board specified in Table A-802.1. The code official shall transmit to such board all the documents, or photocopies

any decision of a zoning hearing board or other board or commission created to regulate development within the city. As used in this Section, the term “aggrieved person” does not include taxpayers of the city that are not detrimentally harmed by the decision of the zoning hearing board or other board or commission created to regulate development. (emphasis added).

thereof, which constitute the record upon which the action appealed from was taken and the reasons for said action.

Subject Code	Technical Appeal Board
Building Code Electrical Code Energy Conservation Code Existing Building Code Fuel Gas Code Mechanical Code Performance Code for Buildings and Facilities Plumbing Code Property Maintenance Code Residential Code	Board of Building Standards
Building and Residential Codes - Accessibility for the physically disabled	Pennsylvania Accessibility Advisory Board
Fire Code	Board of Safety and Fire Prevention
Zoning Code	Zoning Board of Adjustment

Thus, since the Board of Building Standards was the appropriate Board to hear the appeal, the Appellants were bound by Section A-801.1, which requires that they be “directly aggrieved” by the decision appealed from in order to appeal to the Board. As discussed below, Appellants cannot prove any direct aggrievement.

1. Appellants Have the Burden to Prove Standing to Appeal Once the Issue is Raised.

Appellants have the burden to demonstrate that they have standing to appeal to this Court once it is raised by an Appellee, which has been done through the proceeding motion. The issue

of standing is a challenge to the parties' ability to seek redress from the Courts. Accordingly, our courts have consistently held that the burden *is on the party seeking redress* to prove that it has standing to sue. In the case of *Parents United for Better Schools v. School District of Philadelphia*, 646 A.2d 689 (Pa. Cmwlth. 1994) the Commonwealth Court stated:

The essential inquiry in determining the standing of a litigant is:
“*Have the [litigants] alleged such a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult...questions.*”
Baker v. Carr, 399 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). Taking guidance from federal interpretation of standing principles, our Supreme Court has outlined the factors which must be considered in *William Penn Garage v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). First, *the litigant must allege an interest* which has been adversely affected; that is, has the party been harmed by the action which is challenged.

(emphases added) *Parents United*, 646 A.2d at 691. The Pennsylvania Supreme Court has stated that “a plaintiff...*must allege and prove* an interest in the outcome of the suit which surpasses ‘the common interest of all citizens in procuring obedience to the law.’” (emphasis added) *Upper Bucks County Vocational-Technical School v. Upper Bucks County Vocational Technical School Joint Committee*, 504 Pa. 418, 421, 474 A.2d 1120, 1122 (1984).

The Commonwealth Court stated in *Treski v. National Ins. Companies*, 674 A.2d 1106 (Pa. Cmwlth. 1996):

“To justify judicial intervention, *a party must allege* a recognizable, adverse effect to himself and a close causal nexus between the injury and the challenged conduct.” *American Booksellers Association, Inc. v. Rendell*, 332 Pa. Super 537, 554, 481 A.2d 919 (1984) (citation omitted). To prove a substantial interest *a party must demonstrate* a discernible adverse effect on his interests which surpasses the common interest in all citizens in procuring obedience to the law.
William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 192, 346 A.2d 269 (1975).

(emphasis added) *Treski*, 674 A.2d at 1111. Thus, there can be no doubt that the party seeking redress must demonstrate that it has standing to seek relief from the Court, once it is challenged. Therefore, it will not be enough for the Appellants to claim that it is the Appellee's burden to prove standing. According to the above case law, it is the burden of the Appellants to prove that they have standing to maintain this appeal. They cannot as explained below.

B. Appellant Kevin Smith Lacks Standing to Appeal and His Appeal Must Be Quashed.

1. Kevin Smith is not Directly Aggrieved by the Decision of the Board

As stated *supra*, Kevin Smith must demonstrate that he is "directly aggrieved" by the decision of the Board. He cannot. Case law of this commonwealth has well-established standards regarding whether a party is "aggrieved."² In order to be considered an "aggrieved person," that person or party:

...must have a direct interest in the subject-matter of the particular litigation...[A]nd not only must the party desiring to appeal have a direct interest in the particular question litigated, but his interest must be immediate and pecuniary, and not a remote consequence of the judgment. The interest must also be substantial. (citation omitted)

Keystone Raceway Corp. v. State Harness Racing Comm., 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1961). A direct interest "requires a showing that the matter complained of causes harm to the party's interest." *Pittsburgh Trust v. Zoning Board of Adjustment*, 604 A.2d 298, 303 (Pa. Cmwlth. 1992). The interest must be "immediate" and not "a remote consequence" of the decision. *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 197, 346 A.2d 269, 283 (1975).

Applying these standards to this case, it is clear that Mr. Smith cannot meet this standard. He admitted that he lives approximately one mile from the Property, and does not own property within a block of the Property. Exhibit "E", pp. 40-41. At the public hearings held for this

² Note that this is a lesser and looser standard for an Appellant to meet than "direct aggrievement."

project, Mr. Smith presented general objections, mostly of a technical or aesthetic nature, and *none of his objections had anything to do with the Project's impact upon him or his property.* He even stated to the Historical Commission at the June 9, 2006 meeting that the design of the project "was the most promising design he had seen to date" and requested that the Commission approve the project "in concept." See Exhibit "A". Clearly, Mr. Smith is not even aggrieved by the decision of the Board, let alone "directly aggrieved," as he must be to appeal to the Board. Thus, his appeal must be quashed.

2. Recent Decisions of this Court Support the Quashing of Mr. Smith's Appeal.

This Court, in two recent decisions involving the standing of community groups and other protestants, clarified who has standing to appeal from an administrative board based on the new standard for aggrievement, or "harm," announced in Pa. House Bill 1954, which promulgated the "person aggrieved" standard. In *Society Created to Reduce Urban Blight, et al v. Zoning Board of Adjustment, et al.*, Court of Common Pleas, Philadelphia County, November Term, 2005, Docket Number 1048, this Court struck down the standing of several community groups and a special interest group who could not demonstrate that they were "detrimentally harmed" by the granting of zoning variances for a billboard sign. This court upheld standing only for an individual who resided next to the property where the sign would be erected, and who would be able to see the sign from his residence. A copy of this decision is attached hereto as Exhibit "G."

In the matter of *Gary Spahn v. Zoning Board of Adjustment, et al.*, Court of Common Pleas, Philadelphia, September Term 2005, Docket No. 0111 and 0115, this Court struck down the standing of an individual who appealed a decision of the Zoning Board granting variances for the construction of two single family homes. *Even though the individual lived one and a half*

blocks from the property, this Court determined that he did not have standing because he could not articulate any actual and direct harm from the granting of the variances for the homes. A copy of this case is attached hereto as Exhibit “H” for this Court’s convenience.

These decisions were based on the standard announced by the Pa. State Legislature in H.B. 1954 (see Footnote No. 1), which requires an Appellant to be “detrimentally harmed” by a local agency or board decision in order to appeal that decision. “Detrimental harm” is a synonym for “aggrievement,” and shows the extent to which an individual must be harmed by a board decision in order to be able to appeal it. In this case, the standard is even more stringent, since the Administrative Code states that the person must be “directly aggrieved.” Since Mr. Smith, who is at least a mile away from the Property, cannot even meet the lesser standard of aggrievement, he certainly cannot meet the more stringent standard of *direct* aggrievement. Therefore, he has no standing and his appeal must be quashed.

3. Kevin Smith Did Not Appeal Individually to the Board.

Furthermore, Mr. Smith cannot appeal to this Court because he was not a party to the Board of Building Standards proceedings. The appeal he filed was on behalf of the Council, and not in any individual capacity. See Exhibit “F.” An individual does not have standing to appeal a decision of the Zoning Board to the courts when he or she does not appear at the Zoning Board hearing. See *Leoni v. Whitpain Township Zoning Hearing Board*, 709 A.2d 999, 1002 (Pa. Cmwlth. 1998). Furthermore, a party must appear at a board hearing in order to preserve any appellate issues (See *Mack v. Zoning Hearing Board of Plainfield Township*, 558 A.2d 616, 618 (Pa. Cmwlth. 1989)). Since Mr. Smith did not appear at the Board, other than specifically on behalf of the Council, he was not a party to that proceeding and thus cannot appeal to this Court. Therefore, his appeal must be quashed.

C. Appellant Manayunk Neighborhood Council Lacks Standing to Appeal and Its Appeal Must Be Quashed.

1. No Member of the Council is Directly Aggrieved by the Decision of the Board.

This Court must quash the Council's appeal because it does not have any members that can prove they are "directly aggrieved." Where the standing of a civic association is at issue, it is not enough for the association to demonstrate a general interest in the matter, the association must demonstrate that one of its members will be harmed by the agency's decision. In the matter of *Pittsburgh Trust, supra*, the Commonwealth Court spoke on the issue. The Court stated:

...[A]n association, even without sustaining injury itself, may nevertheless have standing to commence litigation as the representative of its members who are suffering immediate or imminent injury because of the disputed action. *Paratransit Association of Delaware Valley, Inc. v. Yerusolim*, 114 Pa. Cmwlth. 279, 538 A.2d 651 (1988). Moreover, where...an association claims standing to sue, it must be alleged that at least one of the members "has or will suffer 'a direct, immediate, and substantial injury' to an interest as a result of the challenged action." *Citizens for State Hospital v. Commonwealth*, 123 Pa. Cmwlth. 150, 156, 553 A.2d 496, 498-99 (1989), cert. denied, 494 U.S. 1017, 110 S.Ct. 1321, 108 L.Ed.2d 496 (1990).

Pittsburgh Trust, 604 A.2d at 304. Thus, it is clearly not enough for a civic association to merely assert a general interest in a matter, the association must assert *an injury* to at least one of its members. As stated *supra*, it is the Appellant's burden to prove standing once the challenge is raised.

According to the records of the Commission and the Board, no member of the Council other than Kevin Smith, his wife Jane Glenn and John Hunter³ attended any of the public hearings that took place for this project. Only Mr. Smith and his wife's name appear in any minutes of the Historical Commission's meetings. Thus, it can be inferred that no member of the

³ As stated above, Mr. Hunter lives at 4308 Terrace Street, which is approximately one half mile away from the Property.

Council felt strongly enough about the Project or they would have attended the public meetings. Additionally, there is no evidence whatsoever in this record that any member of the Council was impacted or harmed in any way by the Project. As the case law above states, there must be an adverse impact to at least one of the members of a community organization in order for the organization to be able to demonstrate that it has standing. This cannot be done in this case.

As recited in Section III(A) and III(B)(1) of this Memorandum, the standard for “aggrievement” is a strict one, and in order to prove standing, a person must demonstrate more than just a causal objection to a project. As explained by this Court, in order to prove standing a person must demonstrate an actual interest and some type of harm from the decision appealed from. The opposition in this case, voiced mainly by Mr. Smith and his wife, and to a lesser extent Mr. Hunter, is clearly and indisputably a general objection to development in the Manayunk area having nothing whatsoever to do with any actual impact on the Appellants. The concept of standing exists to prevent abuse of our Court’s precious judicial resources and to ensure that legal challenges are made by the appropriate party. Such resources should be preserved for those legal matters where there are actual interests at stake and actual harm suffered. This appeal is surely not one of those matters, and is a abuse of this Court’s time and resources.

IV. CONCLUSION

For the above stated reasons, Appellee 3 Rector Street Associates L.P. requests that this Court quash the appeal of Kevin Smith and the Manayunk Neighborhood Council, Inc.

Respectfully submitted,

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