

**PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET**

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

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

September _____ Term, 2006
Month Year
No. 01384

MANAYUNK NEIGHBORHOOD COUNCIL AND KEVIN SMITH
vs.
PHILADELPHIA BOARD OF BUILDING STANDARDS

Name of Filing Party:
Manayunk Neighborhood Council and Kevin Smith
(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 petition/motion been decided in this case? Yes No
Is another petition/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)	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):
Response to Motion to Quash

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 (required for proof of service)
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FILED
MAR 19 2007
Civil Administration

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.

Henry L. Schirmer Jr. (Attorney Signature/Unrepresented Party) 3/19/2007 (Date) Henry L. Schirmer Jr., Esq (Print Name) 92090 (Attorney I.D. No.)

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

**IN THE PHILADELPHIA COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

MANAYUNK NEIGHBORHOOD	:	MISC- AGENCY APPEAL
COUNCIL INC. ET AL.	:	
<i>Appellants</i>	:	
and	:	SEPTEMBER TERM, 2006
KEVIN SMITH	:	DOCKET NO. 1384
v.	:	
BOARD OF BUILDING STANDARDS	:	Control # 022016
and	:	
CITY OF PHILADELPHIA	:	
<i>Appellees</i>	:	

ORDER DENYING MOTION TO QUASH

AND NOW this day of 2007, upon consideration of a Motion to Quash from Intervenor Rector Street Associates Limited Partnership, and Appellant's response thereto, it is hereby ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:

J.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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Manayunk Neighborhood Council
and
Kevin Smith

<u>MANAYUNK NEIGHBORHOOD</u>	:	MISC- AGNECY APPEAL
<u>COUNCIL INC.</u>	:	
and	:	
<u>KEVIN SMITH</u>	:	SEPTEMBER TERM, 2006
v.	:	No. 01384
<u>BOARD OF BUILDING STANDARDS</u>	:	
and	:	Control # 022016
<u>CITY OF PHILADELPHIA</u>	:	

**RESPONSE OF MANAYUNK NEIGHBORHOOD COUNCIL AND KEVIN SMITH
IN OPPOSITION TO MOTION TO QUASH**

Appellants Manayunk Neighborhood Council, Inc. and Kevin Smith hereby respond to an improvidently brought Motion to Quash by purported intervenor, the Rector Street Associates Limited Partnership.

The Board of Building Standards (“Board”) heard the appeal of Manayunk Neighborhood Council (“MNC”) and Kevin Smith. The Board’s adjudication letter, attached to the Appellant’s Native of Appeal, recites that MNC, Mr. Kevin Smith, John Hunter and Mr. Hal Schirmer attended the hearing. As the parties who filed the appeal, and as persons who attended the hearing and opposed the position of the Historical Commission, MNC and Mr. Smith clearly have standing to appeal their decision before the Board of Building Standards to the Common Pleas Court.

REQUEST TO TAKE JUDICIAL NOTICE

The appellants respectfully request that the court take judicial notice of the following documents:

- 1) The Pennsylvania Department of State information for Manayunk Neighborhood Council Inc.
- 2) Letters from the Philadelphia Historical Commission files documenting the creation of the Manayunk Historic District in direct cooperation with MNC.
- 3) Excerpts from three (3) recorded deeds in the Philadelphia Dept. of Records listing restrictions and property rights that Manayunk Neighborhood Council has along

Main Street. The court is asked to take notice that 4421 Main Street is within a block of the 3 Rector Street site.

- 4) Letters from the Philadelphia Historical Commission files where City Councilman Nutter notes that Manayunk Neighborhood Council has a “history of involvement with the ordinance and .. the renewal and preservation of Manayunk” and the participation of Manayunk Neighborhood Council is important.
- 5) The section of the Property Maintenance Code directing enforcement of the Manayunk Historic District to the Historical Commission Staff.
- 6) The Philadelphia Historical Commission Rule and Regulations, stating in §4.5.i that a party is “an organization or person who has previously evinced an interest or position on a matter.” Also, the Historical Commission Regulations giving the staff authority over building which are being subject to “demolition by neglect.”
- 7) The Board of Building Standards appeal filed by MNC and Mr. Smith
- 8) The Board of Building Standards letter to MNC and Mr. Smith confirming the appeal date. An excerpt of the Zoning Board Transcript where counsel for intervenor states that Mr. Smith had personally filed an appeal to the Board of Building Standards.
- 9) The Case Management Order for this case, and the Phila. Civ. R. 320,
- 10) An excerpt of the ZBA transcript where Board Member Ms. Eden notes that Mr. Smith, as President of the local Civic association, has standing. Also an excerpt where Mr. Smith objects to attempts to mischaracterize his statements before the Historical Commission.
- 11) An excerpt of the ZBA transcript where John Hunter notes that the proposed building will be “almost 30 feet higher than the adjacent building, which is the highest building in the area”. The court is asked to take judicial notice that the proposed building would be the tallest building in town, and would be clearly visible throughout Manayunk and for miles around.
- 12) An excerpt of the ZBA transcript where Mr. Smith notes that he does not support the project and the minutes reflect that Mr. Smith and MNC objected to the project at the Historical Commission.
- 13) An excerpt from the ZBA transcript identifying the true property owner as Mr. Raymond Labov. Also A recorded deed indicating that Mr. Lavbov owns the property, not Rector Street Associates Limited Partnership.
- 14) Two excerpts from the ZBA transcript indicating the property had been under an agreement of sale to Mr. Waxman and Mr. Barzilay, who are the principals of a general partnership.
- 15) The Pennsylvania Department of State information indicating that Rector Street Associates Limited Partnership has no affiliation with Mr. Labov, nor Mr. Waxman, nor Mr. Barzilay. Also the case “Liberty Associates” which holds that a partnership that was never before the local agency lacks standing.

These items are attached as correspondingly numbered Exhibits.

CAUSE SHOWN WHY THE MOTION MUST BE DISMISSED

Manayunk Neighborhood Council is an incorporated civic association serving the Manayunk neighborhood for thirty seven years. EXHIBIT 1. The Main Street Manayunk Historic District was created as a result of the actions of MNC, EXHIBIT 2. MNC is recognized as an indispensable to the working of the Main Street Manayunk Historic District by local elected

officials. EXHIBIT 4.

Over the last few years, MNC has acquired easements and property rights throughout Manayunk, EXHIBIT 3, in a continuing effort to improve the character of the neighborhood. Kevin Smith and MNC members have been intimately involved with in the Manayunk Historic District, EXHIBIT 2, EXHIBIT 3, EXHIBIT 4 and attended the Historical Commission meetings, including the recent meetings regarding 3 Rector Street. MNC holds their monthly meetings at the Venice island Rec Center, which is located on the “Manayunk Towpath” property that is immediately adjacent to the 3 Rector Street Property.

Under the Historical Commission Regulations, The Historical Commission Staff are authorized to enforce the Main Street Manayunk Historic District, EXHIBIT 5, as well as identify properties that are subject to “demolition by neglect”, EXHIBIT 6, and since MNC and Kevin Smith are have attended the Historical Commission meetings they are parties, EXHIBIT 6, therefore they have standing to appeal to the Board of Building Standards. Kevin Smith and MNC are both listed as “appellant” on the appeal form, EXHIBIT 7. The City of Philadelphia and intervenor’s own counsel recognized that Mr. Smith and MNC both filed the appeal to the Board of Building Standards EXHIBIT 8.

The standing case management order and Phila. Civ. R. 320, EXHIBIT 9, indicate that the party who initiated this appeal to the Board of Building Standards, MNC and Mr. Smith, are automatically parties to this appeal of that decision. The case management order and Phila. Civ. R. do not provide for intervention by praecipe, and the court is asked to take notice that under Pa.R.C.P. Further, Phila. Civ. R. emphasized that intervention by praecipe is not authorized in an appeal to the Board of Building Standards.

RESPONSE TO MOTION TO QUASH

A. The Parties

1. Denied. The Appellee is the Board of Building Standards. The purported intervenor is a statutory limited partnership, which was never involved in the underlying action nor in the appeal to the Board of Building Standards. While Mr. Waxman and Mr. Barzilay use the trade name “The Rector Street Associates” they are not the party which attempted to intervene. Exhibit 15.

2. Denied. The Owner is Mr. Labov, EXHIBIT 13, the equitable Owners are Mr. Waxman and Mr. Barzilay, EXHIBIT A,C EXHIBIT 14, and the Developer is Switzenbaum & Associates. EXHIBIT A. Neither the owner, Mr. Labov, nor the equitable owners, Mr. Waxman and Mr. Barzilay, nor the developer, Switzenbaum & Associates ever appeared at the Board of Building

Standards.

3. Admitted. By way of further answer, Kevin Smith is president of MNC, “well recognized” and well thought of by the ZBA.

4. Admitted.

5. Admitted.

B. Factual Background

6. Denied. Mr. Labov has attracted buyers, Mr. Waxman and Mr. Barzilay.

7. Admitted in part, denied in part. Admitted that an application was made. At the time of the application the sworn testimony of Mr. Labov was that the building was not dilapidated. It is admitted that under the “care” of Mr. Waxman and Barzilay, the property has become an eyesore, with broken windows, trash, graffiti and other problems in open violation of the Property Maintenance Code they seek relief from.

8. Admitted but irrelevant. This is an appeal by MNC and Kevin Smith from a decision of the Board of Building Standards, further, MNC and Kevin Smith are parties before the Historical Commission pursuant to the Historical Commission’s own regulations EXHIBIT 6.

9. Denied. This issue is discussed in the Zoning Board Transcript. EXHIBIT 12.

10. Admitted but irrelevant. MNC helped to create the historic district EXHIBIT 2, and Kevin Smith and MNC are recognized as crucial to the Manayunk Historic District. EXHIBIT 8.

11. Denied as a clear misstatement of the record. Mr. Smith did not support the project, EXHIBIT 12, and both MNC and Kevin Smith appealed the decision, EXHIBITS 7, 8.

12. Denied and barred by estoppel. Kevin Smith filed an appeal for himself and MNC. Intervenor attaches a ZBA transcript where Mr. Feldman Esq, states to the Zoning Board that Mr. Smith appealed the Commission Decision. Exhibit 8. Intervenor cannot swear to two different versions of the same event.

13. Admitted. By way of further answer, no other persons testified on the record or raised issues at the July 20 hearing of the BBS. See, Exhibit C. Lack of standing was not raised by the BBS, and was not preserved in the record.

14. Admitted. Kevin Smith and Manayunk Neighborhood Council appeared at the Historical Commission and pursuant to H.C. Regulation 4.5.i, they became a party and thus had standing to appeal to the Board of Building Standards. Obviously, as a party before the Board of Building Standards, MNC and Kevin Smith have standing to appeal their own decision, pursuant to Article V, Section 9 of the Pennsylvania Constitution, which guarantees an appeal from a local agency to a court of record.

15. Admitted but irrelevant. The variances were granted to David Waxman and Alon Barzilay. The general partner of Rector Street Associates Limited Partnership is “Manayunk Housing LLC,” EXHIBIT 15, and that entity was never involved in the Zoning Board Hearing, or with this appeal.

C. Kevin Smith Has Standing as a Party and Person under Local Agency Law..

16. Denied as Treski is about the heavy burden to establish standing under a class action certification in a class action, “[Treski]Appellants cannot maintain a class action against the named insurance companies,” Treski at 674 A.2d 1112, and thus is entirely unrelated to the issue of standing in zoning cases., However, as to this case, Treski (a decision about standing to be a class action) is not controlling. The determination of who is aggrieved can vary with the particular type of action involved, and according to its statutory basis; the criteria for being aggrieved in a zoning case has evolved uniquely as to that type of proceeding. Active Amusement Co. v. Zoning Bd. of Adjustment, 84 Pa. Commw. 538 This is not a class action case. Further denied as a conclusion of law. In addition, the applicants waive any objection to MNC and Kevin Smith’s standing by failing to raise the issue during the proceedings before the board. Cohen v. Zoning Board of Adjustment, 53 Pa. Commonwealth Ct. 311, 417 A.2d 852 (1980); Active Amusement Co. v. Zoning Bd. of Adjustment, 84 Pa. Commw. 538, 545

Denied as Kevin Smith is directly aggrieved by the decision in his appeal to the Board of Building Standards, “a person who is permitted to appear ... and cross-examine witnesses and present evidence, is a party to those proceedings, and is entitled to appeal a grant over his or her opposition, as an aggrieved party.” In re Larsen, 532 Pa. 326, 449-450

Waived as the issue of standing was never raised before the Historical Commission or

before the Board of Building Standards.

Waived as it is hornbook law that an intervenor may not seek to hijack another party's appeal by bringing a motion to quash: Goodrich Amram Standard Pennsylvania Practice 2d, § 2329:5 "Grounds for refusing intervention: petitioner not in subordination." To the extent an answer is necessary, this is the standard to become a lead plaintiff in a class action lawsuit, and this has nothing to do with this case. MNC and Kevin Smith appeared at the Board of Building Standards. They have standing to appeal that decision. In Re Larsen,

17. Admitted but irrelevant. MNC and Kevin Smith are not pursuing a complaint against Mr. Waxman and Mr. Barzilay for broken windows and demolition by neglect, they are appealing their own case from the Board of Building Standards.

18. Denied as a conclusion of law. To the extent an answer is appropriate, admitted in part, denied in part. Admitted that the Manayunk Historic district which MNC created is placed under the property maintenance code. EXHIBIT 5. Denied that the full historical commission has jurisdiction, as the express language of the PM code requires that an application must be approved by the staff. Id.

19. Denied as a conclusion of law.

20. Denied as a conclusion of law and a misstatement of documents of record. The notice of appeal states that MNC and Kevin Smith appeal from decision of the Board of Building Standards. is of record, it fully sets out the reasons for the appeal Further denied as the Appellee is Philadelphia Board of Building Standards, not Intervenor "Rector Street Associates L.P."

21. Denied as a conclusion of law. The application of the Main Street Manayunk Historic District is an issue of first impression for the court. City Council enacted the Main Street Manayunk Historic District and specifically directed that any proposal must receive the approval of the Historical Commission Staff. It is undisputed that they 3 Rector Street Project did not receive the required approval from the Historical Commission staff. This staff decision was never appealed, not by the owner Mr. Labov., not by the equitable owners Mr. Waxman and Barzilay, not by the developer Switzenbaum & Associate and not by the limited partnership, Rector Street Associates, nor by any limited partner nor by and general partner.

22. Denied as a conclusion of law. Denied as a misstatement of the law. Standing to appeal to a technical board was decided by City of Phila. v. Phila. Bd. of License and Inspection Review, 669 A.2d 460 (. “Under the traditional standing requirement, in order to be "aggrieved," one's interest must be substantial and immediate as well as direct. However, Section 752 of the Law and Section 702 of the Administrative Agency Law with the identical language, 2 Pa. C.S. § 702, require only that the injured interest be direct. See Pennsylvania Game Commission v. Department of Environmental Resources, 521 Pa. 121, 555 A.2d 812 (1989); Nernberg v. City of Pittsburgh, 153 Pa. Commw. 219, 620 A.2d 692 (Pa. Cmwlth. 1993). City of Phila. v. Phila. Bd. of License, 669 A.2d 460, 462-3 n4.

23. Admitted but irrelevant. Kevin Smith lives in the municipality at issue, Philadelphia. Further, Kevin Smith is within sight of the Main Street Manayunk Historic District

24. Denied as irrelevant, obviously Mr. Smith cannot see the proposed five story addition because it has not been constructed yet. However, the evidence of record states that the five story addition to the Labov building will make it “almost thirty (30) feet higher than the adjacent building, which is the highest building in the area.” EXHIBIT 11. The court may take judicial notice that the addition to the Labov building will thus be visible for several miles

25. Admitted. However, Manayunk Neighborhood Council has legal interests up and down Main Street, including property at 4421 Main Street, within one block. Further, MNC holds their meetings at the Venice Island Rec. Center, which is the “Manayunk Towpath” property immediately adjacent to the site.

26. Denied. Both as an individual, a resident of Manayunk and as President of MNC, the Kevin Smith will be impacted by the project. Kevin Smith negotiated about the project, attended meetings with the Developers and local agency hearings. The Commonwealth Court has already specifically found in Society Hill Civic Assn. v. Board of L&I Review, 2006 Pa. Commw. LEXIS 405, that persons who negotiate with developers and attend meetings have a direct, immediate and substantial interest in the outcome of those negotiations and government decisions.

27. Denied. Mr. Smith has standing to appeal to the Board as a party under the Commission Regulations, however, this issue was never raised at the Historical Commission and thus was

waived. Mr. Smith has standing to appeal to the Board of Building Standards, however the motion also fails to establish that standing was raised, thus the issue is waived again.

D. Kevin Smith Has Standing As a Party or Person Before the Commission and Board.

28. Denied as a misstatement of the law. The Local Agency Law specifically provides standing for “persons” who did not attend the hearings, as well as “parties” who did attend.

29. Denied. Kevin Smith filed an appeal naming himself and MNC, EXHIBIT 7, and opposing counsel even stated that Mr. Smith appealed before the Board, EXHIBIT 12, and the Board’s own adjudication recites that Kevin Smith was present and gave testimony.

30. Denied. Intervener’s argument is ridiculous. Kevin Smith filed and signed the appeal EXHIBIT 7, the Board sent him a letter confirming his appeal, EXHIBIT 8 and opposing Counsel stated that Mr. Smith had appealed to the Board of Building Standards, Id.

E. Manayunk Neighborhood Council Inc. Has Standing as to Appeal

31. Denied for all the reasons in Paragraph 16 supra. The standing test of *Treski* is not applicable to this hearing. The standing test of *Society Hill Civic Assn. v. Board of L&I Review*, 2006 Pa. Commw. LEXIS 405 is applicable, and MNC negotiated with the developers, but also attended hearings.

32. Admitted. Paragraph 25 reciting MNC’s use of the adjoining “Towpath Property” and the deeds to MNC, EXHIBIT 3, are incorporated by reference.

33. Denied as the project has not been built, therefore it is not visible. Mr. Hunter has specifically stated that the project would be almost 30 feet taller than the tallest building, EXHIBIT 11, and that he works in the building adjacent to 3 Rector Street, EXHIBIT E. Further, Mr. Hunter can see the property from his work, which is on one side of the 3 Rector Street Building, and from the building where MNC meets, which is on the other side of the 3 Rector Street Building.

34. Denied as the project has not been built, therefore it is not visible, however, if built, it would be the tallest building in town and visible for miles. Further, MNC members meet at the “Manayunk Towpath” property adjacent to the 3 Rector site.

35. Denied. The members of MNC, including but not limited to Kevin Smith, Jane Glenn, and John Hunter, negotiated with the developers, attended meetings, appealed to the Board of Building Standards. Any of these actions grants standing, under In Re. Larsen, or under Society Hill Civic.

36. Denied. Any member of Manayunk Neighborhood Council who negotiated with the developer and attended a meeting is a directly aggrieved party. Any member who has a “direct interest” in the Manayunk Historic District by living, working advocating for the Historic District is aggrieved by the decision of the Board of Building Standards. Any decision that depreciates the decades of work that MNC has spent in establishing the Historic District, working with the Historical Commission on the District aggrieves the members of MNC. As MNC has been constantly negotiating with developers and obtaining property rights EXHIBIT 3, a decision that circumvents the Historic District., and does so regarding the property immediately adjacent to MNC’s meeting place, is directly aggrieving to Manayunk Neighborhood Council.

37. Denied. The Manayunk Neighborhood Council clearly has standing to appeal the decision of the Board to this Court, under Article V, Section 9 of the Pennsylvania Constitution, under the Local Agency Law, under the Historical Commission Regulations, under Phila. Civ. R. 320 and under In Re. Larsen and Society Hill Civic Association.

WHEREFORE, Kevin Smith and the Manayunk Neighborhood Council request that this Court deny the motion to quash because Mr. Smith and MNC clearly have standing to appeal their own case.



Henry L. Schirmer Jr., Esq.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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and
Kevin Smith

MANAYUNK NEIGHBORHOOD	:	MISC- AGNECY APPEAL
COUNCIL INC.	:	
and	:	
KEVIN SMITH	:	SEPTEMBER TERM, 2006
v.	:	No. 01384
BOARD OF BUILDING STANDARDS	:	
and	:	Control # 022016
CITY OF PHILADELPHIA	:	

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO QUASH

I INTRODUCTION

This case is an appeal by MNC and Kevin Smith from the decision of the Board of Building Standards about their own appeal. The issue presented by this motion is whether Mr. Smith and Manayunk Neighborhood Council, have standing in their own appeal. As a simple and well settled matter of law, MNC and Kevin Smith obviously have standing to bring an appeal in their own case.

II ARGUMENT

STANDING

The intervenor, "the Limited Partnership" grossly misstates the law of standing. There is no separate "directly aggrieved" standard in statutes or case law. "Because the term 'aggrieved' is widely used in jurisdictional statutes to refer to any person with an interest sufficient to confer standing, we see no reason to restrict its meaning here..." William Penn Parking Garage, Inc. v. Pittsburgh, 464 Pa. 168, 207.

The intervenor misstates the legal standard applicable to this case. First there is no separate "directly aggrieved" standard applicable to Philadelphia. Appeals from the decision of the board of the Dept. of L&I follow the Local Agency Law, and they only require that a person establish a "direct interest" under §752 to appeal from an agency decision, which is lower standard than the "direct, immediate and substantial interest need to initiate a lawsuit. Appellants clearly have a direct, immediate and substantial interest in their own appeal. Appellants, Manayunk Neighborhood Council, clearly have standing to ensure the proper administration of the Main Street Manayunk Historic District code as it applies to their own appeals, and to a building adjacent to the location of their meetings.

Second, the court must ignore intervenor's bizarre assertion that this case is governed by *Treski* because *Treski* is about a standing in a class action, where a plaintiff is required to file a motion to prove the meet the high standards for acting as a class action plaintiff. Intervenor entire argument is based on the fundamental misunderstanding that this is not a class action, and MNC and Kevin Smith are not required to plead and prove the elements of class certification. The intervenor's blatant misrepresentation regarding controlling law is inexplicable and inexcusable.

Thus, to bring this appeal, the Appellants only need to establish a "direct interest." As parties before the Board of Building Standards, Appellants have a direct interest in their own appeal and they may properly appeal to Common Pleas court under the Local Agency Law.

DIRECT INTEREST

Appeals from the boards of the Department of Licenses and Inspections are governed by the "direct interest" standard set forth by Section 752 of the Local Agency Law. Appeals from a local agency have a lower standard, any person with a "direct interest" in an adjudication of a board of the Dept. of Licenses and Inspections may appeal to Common Pleas under the Local Agency Law. The "direct interest" standard to appeal an agency decision is actually lower than the "direct immediate and substantial interest" needed to institute a suit at law; and much lower than the Treski standard for a petition to become a class action plaintiff.

Therefore, a person "directly aggrieved" is simply a restatement of the "direct interest" standard established under the language of Section 752 of the Local Agency Law. The specific standard for a "direct interest" is set forth in *Nernberg v. City of Pittsburgh*, 153 Pa. Commw. 219, which held that the requirement that an interest be "direct" simply means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains. Here, a historic building, adjacent to the property where MNC members come to meet is being left to rot because the developers were denied permission to demolish it outright. This clear violation of the spirit of the Property Maintenance Code and the Manayunk Historic District clearly triggers a "direct interest" in MNC as the entity that advocated for the Historic District to be established.

PARTIES AND PERSONS

Further, the express language of the Local Agency Law negates every one of intervenor's arguments that only a party may appeal. Further, in Department of Aging v. Lindberg, 503 Pa. 423, 469 A.2d 1012 (1983), our supreme court said that the breadth of the Administrative Agency Law is demonstrated by section 702 "which grants standing to appeal agency determinations to any person 'aggrieved' and not just to parties to the agency actions." In *Beers v. Unemployment Compensation Board of Review*, 118 Pa. Commonwealth Ct. 248, 546 A.2d 1260 (1988), appeal granted 521 Pa. 623, 626, 627, 557 A.2d 726, 728, 729 (1988), overruled for other reasons, the court clearly sets out that a "person" may appeal even if they were not a "party." The court relied on *Darlington, McKeon, Schuckers & Brown*, 1

Pa.Appellate Practice § 501.12 to find that an agency adjudication may be appealed by “any aggrieved person (as distinguished from party) who has a direct interest (as distinguished from a direct, immediate and substantial interest) in the adjudication”

STANDING REGARDING A HISTORIC DISTRICT

The question of the standing of a local civic association and its members was recently presented to Commonwealth Court. The Court held that

the Association and its members were directly involved in the subject of this litigation by negotiating . . . for preservation of the facades . . . and expressing their concerns at various public meetings before the Architectural Committee and before the Commission. Because of its purpose to promote preservation and restoration of historic buildings in the . . . area, the Association has a substantial, direct and immediate interest in the outcome of this litigation. Clearly, the Association had standing to appeal.

Soc'y Hill Civic Ass'n v. Phila. Bd. of License & Inspection Review, 905 A.2d 579. Given this clear, and recent statement of standing, MNC as the entity that established the Manayunk Historic District, clearly has standing. Further, as the Exhibits clearly reflect that Appellants have been involved in negotiations for the preservation of the neighborhood EXHIBIT 3, and with Mr. Waxman and Mr. Barzilay, the Appellants have standing. Further, as the appellants have obviously participated at the public meetings of the commission and the zoning board, the appellants clearly have standing.

CONSTITUTIONAL RIGHT TO AN APPEAL

Article V, Section 9 of our state constitution which insures a right of appeal "from a court of record or from an administrative agency to a court of record or to an appellate court" Article V, Section 9 of our Constitution reflects the deeply felt common law notion that all persons are entitled to at least one judicial review of original adjudications which directly affect them. Pennsylvania Dep't of Aging v. Lindberg, 503 Pa. 423, 427-8. Here, MNC and Kevin Smith have a constitutional right to review of their treatment before the Board of Building Standards.

ATTENDANCE

In Aquaro v. Zoning Bd. of Adjustment, 673 A.2d 1055, the court held that a person who attends a hearing becomes a party and is therefore aggrieved and may appeal.

Additionally, Mr. Aquaro was clearly a party in the proceeding before the ZBA for he was represented by counsel, who cross-examined the witnesses, and he testified as an objector. Naimoli v. Zoning Hearing Board of the Township of Chester, 56 Pa. Commw. 337, 425 A.2d 36 (Pa. Cmwlth. 1981). As a party to the adjudication, Mr. Aquaro is aggrieved by the adverse decision of the ZBA.

See Also Active Amusement; Baker v. Zoning Hearing Board of West Goshen Township, 27 Pa. Commw. 602, 367 A.2d 819, 822-23 (Pa. Cmwlth. 1976)("Having appeared and participated as a party before the Board, Mrs. Baker was necessarily aggrieved by the adverse decision of the Board. To hold otherwise would reduce to a nullity for purposes of the appeal obtaining the status of a party before zoning hearing boards.")

Accordingly, appellants were parties under the Historic Commission rules and regulations, and clearly, the appellants were recognized and testified at the Board, therefore Mr. Smith and MNC have standing to appeal the Board decision to the Court of Common Pleas. Further, the Pennsylvania Supreme Court has emphatically held that a person who appears before a local agency has standing to appeal that agency's decision. In Re Larsen.

WAIVER

At the most basic level, any challenge to standing has been waived, as the motion entirely fails to show that standing was ever raised before the Historical Commission or at the Board of Building Standards. Clearly the issue of standing was waived; it was not raised by the property owner, Mr. Labov, nor by the equitable owners Mr. Waxman and Mr. Barziley, nor by the developer Switzenbaum & Associates, nor by the City or any of the agency boards, therefore the issue was waived. Walker v. Zoning Bd. of Adjustment, 2005 Phila. Ct. Com. Pl. LEXIS 68. Additionally, standing was not mentioned by the Intervenor in a petition to intervene, therefore the intervenor waived the issue of standing.

VIOLATION OF THE SPIRIT OF INTEVENTION

It is hornbook law that Intervenors may not bring a motion to quash, "[L]ikewise a petition to intervene on an appeal of a zoning matter will be refused where the intervenors seek to quash the appeal ... since these remedies are not in subordination to the propriety of the action but, rather, tend to relegate the appeal to a secondary and subordinate position." Goodrich Amram Standard Pennsylvania Practice 2d, § 2329:5 "Grounds for refusing intervention: petitioner not in subordination" (citing Pierce Junior College v. Schumacker, 17 Pa. Commw. 604, 333 A.2d 510 (1975)). therefore the intervenor's motion to quash is not only ill-advised, but expressly prohibited by the standards of practice in Pennsylvania, and therefore the motion to quash is clearly frivolous.

The supposed intervention by Rector Street Associates L.P. is a nullity, as a limited partnership cannot bring an action in its own name, but may only act through its general partner. Pa.R.C.P. No. 2027. The general partner of Rector Street Associates is a company called "Manayunk Housing LLC". Clearly, this entity was never present at the Historical Commission, nor at the Board of Building Standards and never filed a proper petition to intervene with this court. Thus, the supposed intervention of a limited partnership, without the limited partners, is a nullity.

LOCAL RULES

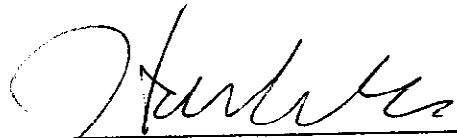
The Philadelphia Civil Rules for local agency appeals makes the party who brought the appeal to the agency below an automatic party. Phila Civ. R. 320. Therefore, as it is indisputable that Mr. Smith and MNC brought an appeal to the Board, and the board decided that appeal, Mr. Smith and MNC have standing to appeal that adjudication to the Common Pleas Court. Phila Civ. R. 320(2)(E),

SUMMARY

This motion, purportedly brought by an entity that lacks capacity to intervene, which attempts to raise an issue that has been waived, which horribly misstates the legal standard for standing, is therefore clearly brought without any reasonable basis in fact or law and must be denied.

WHEREFORE, the Appellants request that the Motion to Quash be denied.

Respectfully submitted



Henry L. Schirmer Jr., Esq.