

Findings of Fact

1. On April 28, 2006, Rector Street Associates, L.P. ("Applicant"), applied to the Department of Licenses and Inspection for a Zoning Permit and/or Use Registration Permit to permit the erection of a five (5) story addition above an existing two (2) story building (plus basement) to be used for multi-family dwelling having twenty-two (22) single-family dwelling units on floors one (1) through six (6) with accessory storage on each floor, fifteen (15) accessory parking spaces to be located at the basement level with six (6) additional accessory parking spaces at the first level, a lobby to be included at the first floor, erection roof deck atop the sixth floor, newly constructed seventh floor addition housing elevator penthouse and balconies at floors two (2) through six (6). (*See Application for Zoning Permit and/or Use Registration Permit Number 060428029*)
2. Applicant maintains a business address at 200 South Broad Street, Sixth Floor, Philadelphia, PA 19102 (*See Application for Zoning Permit and/or Use Registration Permit Number 060428029*; a copy of the Application; copy of the Petition of Appeal; and a copy of the Notice of Appeal)
3. On June 11, 2006, the Application was refused for Application Number 060428029 by the Department of Licenses and Inspections. (*See Notice of Refusal of Permit for Application Number 060428029, dated June 11, 2006*)
4. The Subject Property is designated G-2 Industrial and is currently vacant. (*See Application for Zoning Permit and/or Use Registration Permit Number 060428029*)
5. The Refusal was issued because the proposed use does not conform to the use designated for a G-2 industrial district, specifically that dwellings other than for a caretaker, watchman or custodian on the same lot as the main use are not permitted in this district, the required side yard area is six (feet) minimum (the proposed being nine (9) -inches and required-accessory-parking-of thirty-four (34)-spaes-(the-proposed-accessory--parking being twenty-one (21) spaces. (*See Notice of Refusal of Permit for Application Number 060428029, dated June 11, 2006; and see also §14-508 of the Philadelphia Zoning Code*)
6. Applicant filed a Petition of Appeal to the Zoning Board on November June 16, 2006. (*See Petition of Appeal, dated June 16, 2006, in Calendar No. 06-0812*)
7. The Appeal states that Applicant wishes to legalize the use of the Subject Property as a seven (7) story residential building, for twenty-two (22) families, accessory storage, fifteen (15) accessory parking spaces at the basement level and six (6) additional accessory parking spaces at the first level, with a lobby in the first floor, a roof deck atop the sixth floor, a newly constructed, seventh floor addition housing elevator Penthouse, balconies at floors two (2) through six (6) and demolition as per plans. A literal enforcement of the Zoning Code will impose an unnecessary hardship and the limited demolition will not adversely affect the public health, safety, welfare or traffic in the area. (*See Petition of Appeal, dated June 16, 2006, in Calendar No. 06-0812*)

8. Prior to the Hearing in Calendar Number 06-0812, Manayunk Neighborhood Council drafted an unaddressed letter outlining potential uses of the Subject Property dated August 13, 2006. (*See* letter of Kevin Smith, President, Manayunk Neighborhood Council dated August 13, 2006)
9. Prior to the Hearing in Calendar Number 06-0812, Manayunk Neighborhood Council sent a letter of opposition with exhibits to the Zoning Board dated August 23, 2006. (*See* letter from Kevin Smith, President, Manayunk Neighborhood Council to David Auspitz, Zoning Board, dated August 23, 2006)
10. Unmarked exhibits include: color aerial and other photographs of the surrounding area; Lower Venice Island Master Plan Draft Report dated October, 2005; Design Guidelines for the tow path dated January, 2005; an unmarked rendering; and information concerning Thyssen Krupp, elevator manufacturer.
11. Protestant exhibits include: exhibit 1 - Deed from Flora Karasion to Raymond S. Labov dated December 23, 1986; unnumbered Philadelphia Inquirer article dated December 31, 2001 regarding RichardsApex, Inc.; and unnumbered color aerial photograph.
12. A Hearing was held in Calendar No. 06-0812 before the Zoning Board on October 4, 2006 (*See* N.T. (06-0812) 1)
13. On the day of the October 4, 2006 Hearing, a letter in support of the Application was submitted to the Zoning Board by the Fourth Council District. (*See* letter from Julia Chapman, Fourth Council District to David Auspitz, Zoning Board dated October 4, 2006)
14. At the Hearing on Calendar No. 06-0812, Applicant submitted an exhibit package which contained the following: a copy of the Application; a copy of the Notice of Refusal; a copy of the Petition for Appeal; photographs of the Subject Property and Surroundings and Interior; Agreement of Sale; Color Renderings; Zoning Plan and Elevations; Floor Plans, Zoning Map/Aerial Photographs; relevant Philadelphia Code Sections (14-508); Hardship Affidavit of Property Owner Raymond Labov; letter of support from City Council Fourth District (formerly Michael Nutter) to Board of Building Standards dated July 20, 2006; support letter of Manayunk Development Corporation dated August 22, 2006.; support letter of the Preservation Alliance dated August 21, 2006); Historical Commission Approval Letter and Minutes dated June 21, 2006 and February 24, 2006 (Conceptual Approval and Minutes included as well); Manayunk Development Corporation parking availability letter dated August 22, 2006; and a Memorandum of Law. (*See* Applicant's Exhibit Packet)
15. On October 4, 2006, Joy L. Griffin, a neighbor to the Subject Property, testified in opposition to the Application on the basis that the addition of more apartments would be

a hardship on the neighborhood. (See Appearance Statement for Joy L. Griffin; and N.T. (06-0812) pages 68-69)

16. On October 4, 2006, Jane Glenn, Manayunk Neighborhood Council testified in opposition to the Application on the basis that the resulting building would be create a blockade to the river. (See Appearance Statement for Jane Glenn; and N.T. (06-0812) page 58)

17. On October 4, 2006, John Hunter, Manayunk Neighborhood Council testified in opposition to the Application on the basis that the resulting building Joy L. Griffin, a neighbor to the Subject Property, testified in opposition to the Application and expressed concern regarding the design and footprint of the planned structure and parking. (See Appearance Statement for John Hunter; and N.T. (06-0812) pages 48-52)

18. Subsequent to the Hearing, Applicant's counsel submitted a Proviso with a Revised Zoning Plan and Elevation and Exterior Elevations Plan. (See letter from Brett D. Feldman, Esq. to Chairman Auspitz, Zoning Board, dated November 3, 2006)

19. The Zoning issued its Decision granting Applicant's variance on November 30, 2006. (See Notice of Decision for Application Number 060428029, dated November 30, 2006).

Conclusions of Law

1. Pursuant to §14-1801(l)(c) of the Philadelphia Zoning Code, the Zoning Board of Adjustment may, after public notice and public hearing authorize, upon appeal, in specific cases, such variance from the terms of this Title as will not be contrary to the public interest[^] where-, owing to special-conditions[^]ar literal enforcement-of-the-provisions[^]-of this Title would result in unnecessary hardship, and so that the spirit of this Title shall be observed and substantial justice done, subject to such terms and conditions as the Board may decide.

2. Pursuant to the Zoning code §14-1802(1) and (2), the Zoning Board is required to consider twenty (20) separate criteria prior to granting a variance including, but not limited to, whether a literal enforcement of the provisions of this Title would result in unnecessary hardship; that the conditions which the appeal for a variance is based are unique to the property; that the variance will not substantially or permanently injure the appropriate use of adjacent conforming property; that the special conditions or circumstances forming the basis for the variance did not result from the actions of the applicant; that the grant of the variance will not substantially increase congestion in the public streets; that the grant of the variance will not impair an adequate supply of light and air to the adjacent property; and that the grant of the variance will not adversely affect the public health, safety or general welfare.

3. § 14-508(3)(b) of the Philadelphia Code contains the provisions for allowable uses in industrial districts. The Subject Property is designated G-2, which does not permit dwellings, except such as are used for the residence of a caretaker, watchman, or custodian on the same lot with the principal use and located at least ten (10) feet from any other buildings. The proposed use is for a residential building, disallowed under the Zoning Code. Therefore a variance is required for the proposed use.

4. § 14-508(4)(c)(2) of the Philadelphia Code provides for the minimum side yard area requirements, specifically that if a side yard is used, there must be a minimum of six (6) feet. The proposed use is for nine (9) inches, in contravention of the Code. Therefore a variance is required for the proposed use.

5. §14-508(3)(b) of the Philadelphia Code contains the provisions for allowable uses in industrial districts. The Subject Property is designated G-2, which does not permit dwellings, except such as are used for the residence of a caretaker, watchman, or custodian on the same lot with the principal use and located at least ten (10) feet from any other buildings. The proposed use is for a residential building, disallowed under the Zoning Code. Therefore a variance is required for the proposed use.

6. § 14-508(9) of the Philadelphia Code provides with every building erected in this district there shall be provided one off-street parking space for each 1,000 square feet in such building, amounting to thirty-four (34) spots at the Subject Property. The proposed use calls for twenty-one (21) spots in contravention of the Code. As such, a variance is required.

7 The Supreme Court of Pennsylvania has defined a variance as,

"... a departure from the exact provisions of a zoning ordinance... granted where a strict enforcement of the literal terms of the ordinance will result in unnecessary - hardship upon a particular-property over- and above the- hardship that may be-imposed... on all properties in that community." Brennen v. Board of Adjustment, 409 Pa. 376, 187 A.2d 180 (1963).

8 Zoning ordinances are presumed valid. The burden is upon the party challenging such an ordinance to show otherwise. Lantos v. Zoning Hearing Board of Haverford Township, 621 A.2d 1208, 153 Pa. Cmwlt. 591 (1993).

9 The burden of proof in obtaining a variance is upon the landowner. Evidence in support of the variance must be presented showing a hardship unique or peculiar to the property. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Yeager v. Zoning Hearing Board of the City of Allentown, 779 A.2d 595 (Pa. Cmwlt. 2001).

10 The hardship, underlying the request for a variance, must not be self-created. Manavunk Neighborhood Council v. Zoning Board of Adjustment, 815 A.2d 652 (Pa.

Cmwlth. Ct. 2002); N. Pugliese. Inc. v. Palmer Township Zoning Hearing Board, 140 Pa. Cmwlth. 160, 592 A.2d 118 (1991). -

11 An adverse economic impact alone is not sufficient to grant a variance. SCRUB v. Zoning Board of Adjustment, 814 A.2d 847 (Pa. Cmwlth Ct. 2003).

12 After a review of the record and the consideration of the evidence presented, the Zoning Board finds that the Applicant has met its burden in support of the variance. Granting a variance in the instant matter would not create an overuse of the property and overall not pose a threat to the health, safety and welfare of nearby residents in contravention of §14-101. Applicant has provided ample indicia of hardship. Therefore, the Zoning Permit and/or Use Registration Permit is granted.

Respectfully Submitted,

Administrator, Zoning Board of Adjustment

Vote of the Board on Application No. 060428029

David L. Auspitz	Yes.
Eleanor M. Dezzi	: Yes.
William E. Hall	Yes.
Judith Eden	Yes.
Samuel Staten, Jr.	Yes.